



Ratwik, Roszak & Maloney, P.A.

444 Cedar Street, Suite 2100  
Saint Paul, Minnesota 55101

---

(612) 339-0060  
www.ratwiklaw.com

## **Data or No Data? What is the Deal**

**Christian R. Shafer**  
**crs@ratwiklaw.com**

**2026 MASE Best Practices Conference**  
**May 15, 2026**

### **I. DATA PRIVACY - GENERALLY**

#### **A. Laws Governing Data Privacy**

##### **1. The Family Educational Rights and Privacy Act (“FERPA”)**

FERPA is a federal law that protects the privacy of student education records. FERPA applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. This includes virtually all public schools and school districts.

##### **2. The Individuals with Disabilities Education Act (“IDEA”)**

The IDEA is a federal law that ensures students with a disability are provided with a Free Appropriate Public Education (“FAPE”). Pursuant to the IDEA, the United States Secretary of Education is required “to ensure the protection of the confidentiality of any

---

NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2026 Ratwik, Roszak & Maloney, P.A.

personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies...” 20 U.S.C. § 1417(c). The privacy protections under Part B of the IDEA are found at 34 CFR 300.560–300.577.

### 3. **The Minnesota Government Data Practices Act (“MGDPA”)**

The MGDPA is a state law that controls how government data are collected, created, stored/maintained, used, and released/disseminated. The MGDPA sets out certain requirements relating to the right of the public to access government data and the rights of individuals who are the subjects of government data. Educational data are classified and governed by this law.

## **B. Educational Data**

### **1. Definitions.**

- a. “Government data” is defined broadly to include all data collected, created, received, maintained, or disseminated by a government entity, regardless of its physical form, storage media or conditions of use. (Minn. Stat. § 13.02, subd. 7).
  - i. This term is broad enough to include any piece of data received or created by a teacher. It includes all e-mails sent or received through a school-operated e-mail system.
    - **Reminder:** As the owner of its devices and e-mail systems, the District reserves the right to review, monitor, and search those devices and systems at any time. Employees shall have no expectation of privacy with regard to those devices or systems.
  - ii. **It also includes all e-mails, text messages, social media messages** and other messages that a staff member receives (or sends) on his or her personal device if those messages are related to his or her job duties (e.g., a text message with a parent about a student, or a Facebook message with a coworker about a parent).

- b. Unless otherwise classified by the MGDPA or another law, “government data” are “public data,” meaning that they are “accessible to the public” pursuant to the MGDPA. (Minn. Stat. §§ 13.02, subds. 14 and 15 and 13.03, subd. 1).
- c. “Private data” is data which a law, a statute, or a regulation says the subject of the data may see but members of the public may not examine without consent from the subject of the data or a court order authorizing disclosure of the data. (Minn. Stat. § 13.02, subd. 12).
- d. “Confidential data” is data which, pursuant to a law, a statute, or a regulation is excluded from viewing **not only** by the public but also by the subject of the data. (Minn. Stat. § 13.02, subd. 3).

The term “confidential” is often misused by both school staff and members of the public because they think that it is equivalent in meaning to the term “private.” **It is not.** This distinction is critical because, as we will see, treating a private record as a confidential record excludes the subject of the data from access to the document and, thus, violates the rights of the subject of the data.

- e. “Educational data” means data on individual maintained by an educational agency or institution by a person acting for an educational agency or institution which relates to a student.
- f. “Student” means an individual currently or formerly enrolled or registered, or an applicant for enrollment or registration, at a public school, and individuals who receive shared time educational services from a public school.
- g. So-called “desk drawer records” are not educational data. Records of **instructional personnel** which are in the sole possession of the maker and are not accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, are not educational data. Minn. Stat. § 13.32, subd. 1(a).

- 2. **Health Data.** Per the MGDPA, “[h]ealth data concerning students, including but not limited to, data concerning immunizations, notations of special physical or mental problems and records of

school nurses are educational data.” Minn. Stat. § 13.32, subd. 2. Records that schools maintain on special education students, including records on services provided to students under the Individuals with Disabilities Education Act (IDEA), are “education records” under FERPA. This is because these records are: (1) directly related to a student, (2) maintained by the school or a party acting for the school, and (3) not excluded from the definition of “education records.”

3. **Student Records are Generally Not Covered by the HIPAA.** School districts may be subject to the HIPAA if they engage in certain transactions, such as billing health plans electronically for medical services. *See* 45 C.F.R. § 160.102. However, even if the *school district* is subject to the HIPAA, most *student records* are exempt from the HIPAA privacy requirements. The HIPAA specifically exempts records that are subject to the FERPA from its so-called privacy rule. 45 C.F.R. § 160.103(2)(i). Virtually every student record is subject to the FERPA. *See* 34 C.F.R. § 99.3. Thus, those records are exempt from the HIPAA.

### C. **Photos and Videos Considered Education Records**

1. **Guidance.** In 2018, the Family Policy Compliance Office (“FCPO”), released a document addressing frequently asked questions concerning school districts’ responsibilities under FERPA with respect to photos and videos that are considered education records. FAQs on Photos and Videos under FERPA, FCPO (April 19, 2018).
2. **“Directly Related” Factors.** FERPA does not define what it means for a record to be “directly related” to a student. The FCPO guidance clarifies that school districts should “examine certain types of photos and videos on a case-by-case basis to determine if they directly relate to a student.” The guidance also includes a list of “factors that may help determine if a photo or video should be considered ‘directly related’ to a student.”
  - a. The educational agency or institution uses the photo or video for disciplinary action (or other official purposes) involving the student (including the victim of any such disciplinary incident);
  - b. The photo or video contains a depiction of an activity:

- i. that resulted in an educational agency or institution's use of the photo or video for disciplinary action (or other official purposes) involving a student (or, if disciplinary action is pending or has not yet been taken, that would reasonably result in use of the photo or video for disciplinary action involving a student);
    - ii. that shows a student in violation of local, state, or federal law;
    - iii. that shows a student getting injured, attacked, victimized, ill, or having a health emergency;
  - c. The person or entity taking the photo or video intends to make a specific student the focus of the photo or video (e.g., ID photos, or a recording of a student presentation); or
  - d. The audio or visual content of the photo or video otherwise contains personally identifiable information contained in a student's education record.
3. **Videos with Multiple Subjects.** Under Minnesota law, if there are multiple data subjects, all subjects have the same right to access the data. FERPA guidance complicates this a little for videos that constitute private data / protected education records on multiple students.
4. **What about Requests to observe or listen in on classes?** According to the OSEP, the "FERPA does not specifically prohibit a parent or professional working with the parent from observing the parent's child in the classroom." *Letter to Mamas*, OSEP (Dec. 8, 2003). The Student Privacy Policy Office reiterated this position, specifically with regard to virtual learning in March 2020. However, parent observations may lead to inadvertent disclosure of records if parents see IEPs, grades, and other private data or education records that are protected from disclosure under FERPA or the MGDPA while they are observing their student.

## II. DISCLOSURE OF PRIVATE EDUCATIONAL DATA

- A. Students under the age of 18 share the right of access to their records with their parents or guardians (or individual acting as parent or guardian in the

absence of parent or guardian). (Minn. Stat. § 13.02, subd. 8). In most cases, parents can see any educational record a school maintains about their child.

1. Minor students do not have a right to exclude their parents from access to their educational records.
  - a. However, a minor has the right to request that the school deny their parent(s) access to data. In the rare case where: (1) the school receives such a request; (2) it determines that it is in the minor's best interest to do so; **and** (3) the record in question is not an "educational record" as defined in the FERPA, the school may withhold data from a parent. (Minn. R. 1205.0500).
  - b. Determining who is and who is not a parent is one of the most frequently raised data privacy issues you will encounter. Step-parents, significant others, brothers and sisters, and grandparents are usually not parents, unless they are also legal guardians. (Minn. Stat. § 13.02, subd. 8).
    - i. In the case of divorce, both parents have the right to access educational records, unless a court order says otherwise. (34 C.F.R. § 99.4).
    - ii. One caveat, a person is considered a "parent" if they are acting as a "parent" in the absence of a parent or guardian. (34 C.F.R. § 99.3, Minn. Stat. § 13.02, subd. 8). For example, a step-parent having sole responsibility for a student while the custodial parent is on military deployment might be considered a parent for purposes of access to records.
    - iv. Minnesota law expressly allows parents to authorize other individuals to access educational data about their children and attend school conferences. (Minn. Stat. § 13.32, subd. 10a). Any parent with legal custody can exercise this authority without the agreement of any other parent.
  - c. FERPA regulations require the school to use "reasonable methods" to identify and authenticate the identity of parents, students and others to whom the school discloses personally

identifiable information from education records. (34 C.F.R. §99.31 (c)).

- B.** If the student is over the age of 18, the student must give **informed consent** before his or her parent can access educational records.

**Exceptions:** Clarified in the FERPA regulations, schools may disclose education records of students over 18 to parents, without student consent, if a student is a dependent of the parent for federal income tax purposes (this will include the majority of high school students) or the disclosure is in connection with a health and safety emergency, as discussed below.

- C. Pursuant to a valid court order or subpoena.** School districts may disclose educational data in response to a valid court order or subpoena, but FERPA requires that the School give the parents and student notice that it intends to comply with the court order or subpoena. (34 C.F.R. § 99.31(a)(9)(ii)). The notice must be provided a reasonable time before the school complies with the court order or subpoena.

1. Staff members who receive a subpoena that may require them to release information on students or other staff should promptly contact their supervisor and human resources to discuss their obligations and options.
2. Receipt of a subpoena only authorizes disclosure of records required by the subpoena. It does not authorize any other disclosure, including preparing for testimony or other collaboration with an attorney representing either party or a government entity.

- D. Pursuant to a statute** specifically authorizing access to private data.

- E.** The data has been properly designated as **directory data**.

1. Information which a school district properly designates as “directory information” constitutes public data on individuals. Under the FERPA, such information will be identified by school district policy. Directory data typically includes, but is not necessarily limited to, the student’s name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, and awards received.

- a. Under both State and federal law, the school can only disclose “directory” information if it has informed parents and students of the types of directory information that may be released. (34 C.F.R. § 99.37, Minn. Stat. § 13.32, subd. 5).
  - b. Pursuant to Minnesota law, schools **may not designate** the following information as directory information: a student’s or parent’s home address, telephone number, email address, or other personal contact information. (Minn. Stat. § 13.32, subd. 5(c))
- F. To proper authorities because of a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. FERPA regulations allow disclosure when the school, taking into account the totality of the circumstances, determines there is an articulable and significant threat to the health or safety of the student or other individuals. (34 C.F.R. § 99.36).
- G. To proper health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations.
- H. High schools must, within sixty days of a request, release to military recruiting officers the names, addresses and telephone numbers of students in grades 11 and 12. Parents have the right to refuse the release of this information.
- I. To the juvenile justice system in limited cases or specific data in response to an appropriate request by the juvenile justice system. This provision is limited to situations where the data concern the juvenile justice system and the ability of the system to effectively serve, prior to adjudication the student whose records are released; provided that the authorities to whom the data are released submit a written request for the data that certifies that the data will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student and the request and a record of the release are maintained in the student’s file. Minn. Stat. § 13.32, subd. 3(i).
- J. To the officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, even after the student has actually enrolled in another school. (34 C.F.R. § 99.31(a)(2)).

- K.** To other school officials in the school, including teachers, who have a legitimate educational interest in the information. The MGDPA also clarifies that within a governmental agency or entity, private information may be accessed by “individuals within the entity whose work assignments reasonably require access.” (Minn. Rule 1205.0400, subp. 2). These provisions can cover volunteers, consultants, and agents of the school.
1. FERPA regulations require schools to use “reasonable methods” to ensure school officials are only given access to those education records in which the official has a legitimate educational interest. (34 C.F.R. § 99.31(a)(1)(ii)).
  2. Contractors, consultants, volunteers, and other parties to whom a school district has outsourced “institutional services or functions” are considered “school officials” if that party: (1) performs an institutional service or function for which the school district would otherwise use employees to perform; (2) is under the direct control of the district with regard to the maintenance and use of educational records; and (3) is subject to the requirements of 34 C.F.R. § 99.3(a) with regard to the use and redisclosure of education records. (34 C.F.R. § 99.31(a)(1)(i)(B)).
  3. Likewise, under Minnesota law, school district staff can discuss personally identifiable information from a student’s education records without the written consent of the student’s parent to other school staff, including teachers, if the school has determined that each recipient of the information has a legitimate educational interest in such records. (Minn. Stat. § 13.32, subd. 3(e)).
- L.** To the United States Attorney General pursuant to an ex parte court order that permits collection of educational records relevant to an investigation or prosecution of an act of domestic or international terrorism. This FERPA regulation is consistent with the USA Patriot Act. (34 C.F.R. § 99.31(a)(9)(ii)).
- M.** Reporting Serious Crimes of Disabled Students. The IDEA states that school districts may exercise their responsibilities under state and federal law to report a crime committed by a disabled student to law enforcement and judicial authorities. *See* 20 U.S.C. § 1415(k)(6). The IDEA further states that a school district reporting such a crime *must* ensure that copies of the special education and disciplinary records of the disabled student are transmitted “for consideration by the appropriate authorities to whom it reports the crime.” *Id.*

- N.** Possession of a firearm. In compliance with the Federal Gun-Free Schools Act (20 U.S.C. 7151), Minnesota law requires that school districts have in place a policy which refers to law enforcement any pupil who brings a firearm to school unlawfully. *See* Minn. Stat. § 121A.06. This explicit requirement in the law permits a school district to report a student to law enforcement notwithstanding any provision of the Data Practices Act.
- O.** To the Commissioner of MDE for the purposes of an assessment or an investigation of a maltreatment of minors report. Minn. Stat. § 13.32, subd. 3(n).
- P.** Sharing information with law enforcement.
1. The IDEA sets specific guidelines with respect to the transmittal of special education and disciplinary records when a school district reports a student with a disability to the police. Specifically, “[a]n agency reporting a crime committed by a child with a disability must ensure that copies of the special education records and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.” 34 C.F.R. 300.535(b)(1).
  2. The district is still limited to releasing records to the extent permitted under FERPA. 34 C.F.R. 300.535(b)(2).
  3. It is the district's responsibility to seek and obtain parental consent to transmit a student's education records to appropriate law enforcement officials when it reports a crime. *Klein Indep. Sch. Dist.*, 121 LRP 34545 (SEA TX 09/03/20) (“The IDEA does not place the burden on a parent to ensure records potentially relevant to criminal proceedings involving the student are provided. It is the District's obligation to do so.”).
  4. FERPA allows districts to disclose education records to the juvenile justice system when the disclosure concerns the system’s ability to effectively serve the student whose records are released.“ 34 C.F.R. 99.31(a)(5)(i).
    - a. In the ordinary course of business, neither this provision nor its counterpart in the Minnesota Government Data Practices Act allows a school district to disclose private educational data / protected education records to law enforcement as part

of a law enforcement investigation or prosecution. *See, e.g.,* Minn. Dept. of Admin. Op. 97- 50.

5. FERPA also allows the disclosure of disciplinary action taken against a student for behavior that posed a significant risk to the student or to other individuals. The disclosure may be made to school officials in other schools who have a legitimate educational interest in the behavior of the student. 34 C.F.R. 99.36 (b).

### III. BEST PRACTICES FOR SAFEGUARDING EDUCATIONAL DATA

- A. **Discussing student information.** Bus drivers, aides, and other transportation staff and contractors can discuss student information and pass that information along to other school officials if the **school** has determined that each recipient of the information has a legitimate educational interest in knowing or accessing the student's private educational information or if the parent or eligible student has provided consent.
- B. **Preventing unintentional disclosure of private education data.** The Minnesota Department of Education has advised that, as a best practice, school professionals who have a legitimate educational interest in sharing private student educational data should not discuss student information in community areas such as hallways, lounges, and parking lots in order to prevent the unauthorized disclosure of private student data. Furthermore, privacy of information can often not be guaranteed when using emailing and faxing as communication methods. School staff should carefully weigh the risks of the communication methods they use. Overall, school staff should refrain from discussing personal student information in public areas and be aware of the security risks of the communication methods used when sharing private student data, such as in emails or text messages.
- C. **Social Media.** School staff should not post anything on social media (or anywhere else) concerning special education students, including pictures and/or comments which identify the student as a special education student. *See* Dept. of Administration Advisory Op. 04-024 (school district did not comply with the MGDPA in publishing a photograph of a student in the school's yearbook on a page that identified the student as receiving special education services). School staff should also refrain from discussing any the terms of a student's IEP, the services a student receives, or any other particulars of a student's special education status.

**Note:** Use discretion. As a general rule, school staff and school

administrators should not put anything in writing that they would not want read out loud in court. It is possible that every social media post, email, text and/or instant message may become part of the record in administrative proceedings and/or litigation.

**D. Disclosure to Others.** Drivers, aides, and other staff should not disclose data about any student to other students, parents, or anyone outside of the school district without permission from the school district's responsible authority.

**E. Staff and Contractors Must Take Care to Physically Protect Data From Improper Disclosure**

1. Passwords and other means of protecting electronic data
2. Maintaining physical copies of data in a safe and secure manner

#### **IV. WHAT TYPES OF INDIVIDUALS MAY EXERCISE PARENTAL RIGHTS?**

**A. Who is a Parent?** Generally, the term "parent" refers to a biological parent, adoptive parent, or legal guardian. *See, e.g.*, Minn. Stat. § 120A.22, subd. 3; Minn. Stat. § 121A.41, subd. 6.

1. **Private educational data.** The FERPA defines a "parent" to include "an individual acting as a parent in the absence of a parent or a guardian." 34 C.F.R. § 99.3.
2. **Special education.** In the context of special education, the term "parent" also includes "an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare." 34 C.F.R. § 300.30(a).
3. **Grandparents.** Grandparents are generally not considered "parents" unless they have been appointed as a child's legal guardian.
4. **Stepparents.** A stepparent has no parental rights unless the stepparent adopts the child or the child's "parent" delegates parental authority. Minn. Stat. § 259.59.

5. **Parents of adult children.** Generally speaking, parental rights transfer to children upon the age of majority. Parents of a student over 18 may still have the right to access the student's data under FERPA if the student is a dependent on the parent's tax return. In addition, parents of adult children may retain rights to participate in special education decision-making in specific circumstances.
6. **Adoption.** Adoption generally removes "parental responsibilities" from a child's biological parents and prevents the biological parents from exercising any legal rights over the child. Minn. Stat. § 259.59, subd. 1. Adoption by a stepparent does *not* terminate the legal rights or responsibilities of the parent to whom the stepparent is married. *Id.*, subd. 1a. Adoptive parents are "legal parents of the child with all the rights and duties" associated with being a legal parent. *Id.*, subd. 1.
7. **Unmarried parents.** The biological mother of a child born to a mother who was not married to the child's father when the child was born and/or conceived has sole custody of the child until paternity has been established or until custody is determined in a separate proceeding. Minn. Stat. § 257.541, subd. 1. If paternity has been recognized, the father may petition for rights of parenting time or custody in an independent action. The proceeding must be treated as an initial determination of custody wherein the courts will assign legal and physical custody according to the best interests of the child. Minn. Stat. § 257.541, subd. 3.

**B. Who is a Guardian?** A guardian is an individual appointed by the court to act as a child's "parent" if both parents' parental rights have been terminated, or if both parents have died. A court may appoint the Minnesota Commissioner of Human Services, a licensed child-placing agency, or an individual who is willing and capable of assuming the appropriate duties and responsibilities related to the child as the child's guardian. Minn. Stat. § 260C.325, subd. 1.

1. Upon appointment by a court, a guardian receives "legal custody of the child," including the right to make educational decisions on behalf of the child. Minn. Stat. § 260C.325, subd. 4; *See also* Minn. Stat. § 524.5-207 (guardian has powers of a parent whose rights have not been terminated).
2. The termination of parental rights by court order "sever[s] and terminate[s]" a parent's "rights, powers, privileges, immunities,

duties, and obligations, including any rights to custody, control, visitation, or support.” Minn. Stat § 260C.317, subd. 1.

**C. Delegation of Parental Rights.** Minnesota law allows “parents,” “legal custodians,” “nonprofessional guardians,” and “professional guardians” of minor children and legally incapacitated persons to delegate parental rights “by a properly executed power of attorney.” Minn. Stat. § 524.5-211.

1. By law, the maximum time period that such a delegation by a “parent,” “legal custodian,” or “nonprofessional guardian” can be effective is one year. By law, the maximum time period that such a delegation by a “professional guardian” can be effective is thirty days. *Id.*, (a)-(b).
2. A “parent” who wishes to delegate parental authority must give or mail a copy of the delegation document to any other parent within 30 days of its execution unless: (1) the other parent does not have “parenting time” or has “supervised parenting time;” or (2) there is an Order For Protection (“OFP”) against the other parent to protect the parent, legal custodian, or guardian who is delegating his or her power. *Id.*, (c).
3. A professional guardian delegating parental rights must submit the power of attorney to the court. *Id.*, (b).
4. A “parent,” “legal custodian,” and “guardian” cannot delegate his or her authority to consent to marriage or adoption of a minor child. *Id.*, (a)-(b).
5. A “parent,” “legal custodian,” and “guardian” may also delegate authority by designating a standby custodian or temporary custodian in accordance with Minnesota law. *Id.*, (d).

## V. SPECIFIC CONCERNS IN RESPONDING TO REQUESTS FOR DATA

**A. Draft Documents.** Parents are entitled to receive draft documents, if they exist and are responsive to their request for data. Draft documents can be confusing, especially if they are not labeled as a draft. Draft documents that contain things that are later not included in the final draft presented to parents can also raise additional questions, especially if the draft includes “venting” language or language directed at a parent.

**B. Emails and Text Messages.** Emails about students (and their parents) are student data which must be produced at parental request, even if the email was a “private” discussion between district staff.

1. The same standard applies to text messages, “private” message through social media, and other electronic communications. The definition of “government data” in the MGDPA specifies that data is data, regardless of the storage medium.
2. Gossip or negative comments with fellow staff members about parents or students occasionally get back to parents. The results can be painful and devastating. If a staff member would not say something to a parent’s face, he or she should not say it in an email (or text message, or private social media message) to someone else. The tone of communications with parents and about parents should always be positive.
3. In order to ease the burden of producing emails during a dispute, we recommend that all emails to/from/about special education students and their parents be printed and stored in the student’s file on a regular basis. This does not need to include e-mails that are sent to the student population as a whole, unless that e-mail specifically references the student.

**C. Source Data and Testing Protocols.** Parents are increasingly asking for the data underlying progress reporting. While parents are generally entitled to receive their students’ underlying work product, test protocols that do not have their students’ work on it (e.g., the testing booklet that accompanies the scantron) are generally not educational data / education records, as they do not identify the student or contain the student’s information. This is an area we recommend consulting the school’s attorney on before responding to a request, but it is something that the school may be able push back on if there is a request for source data that specifically includes standardized testing.

**D. School Nurse and Social Worker Records.** School nurses and social workers are often involved in special education evaluations and educational programming. Yet their records are frequently missing from students’ educational files.

1. All medical, social work, and psychological records retained by the school nurse, social worker, or psychologist are school district

records. All such records are subject to the FERPA and the MGDPA, regardless of where/how they are stored.

2. **School Nurse and Social Worker Records are Not Subject to the HIPAA.** School nurses and social workers often defend the absence of their records on the grounds that they must protect the privacy of the students' records pursuant to the HIPAA. That law, however, specifically exempts educational records that are protected by the FERPA from its privacy rules. The FERPA, in turn, applies broadly to any record created by the school district or a district employee because the student was enrolled in its programs. This includes school nurse and social worker records.
3. **There is No Confidential Relationship.** Along similar lines, all data generated by a school nurse or social worker about a particular student is "educational data" pursuant to the Minnesota Government Data Practices Act. Other school employees have a right to review such data if necessary to provide the student with educational services. Because they are school employees, nurses and social workers should not assume that their provision of services to or discussion with a student is "privileged" or not subject to disclosure.

## VI. PERSONNEL DATA

- A. "Personnel data" means data on individuals collected because the individual is or was a government employee or an applicant for employment, a volunteer, or acts as an independent contractor for a government entity. Minn. Stat. § 13.43, subd. 1. Personnel data about a current or former employee is private unless a specific statutory exception applies. *Id.* at subd. 2(a).
- B. **Statutory exceptions.** The following personnel data are public:
  1. Name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and value of any added remuneration, including expense reimbursement, in addition to salary;
  2. Job title and bargaining unit; job description; education and training background (but not grades and grade point averages, *see* Op. Minn. Dep't Admin. 13-006 (Mar. 5, 2013)); and previous work experience;

3. Date of first and last employment;
4. The existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
  - a. Information regarding the nature, type, quality, or characteristic of the complaint, or which identifies an individual employee, is private data which cannot be disclosed to the public. *See Navarre v. South Washington Cty. Sch.*, 633 N.W.2d 40 (Minn. App. 2001), *aff'd in part, rev'd in part*, 652 N.W.2d 9 (Minn. 2002).
  - b. The number of complaints received is public data which must be disclosed. *See id.*
5. The final disposition of any disciplinary action, together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body. Final disposition occurs:
  - a. when the government entity makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. *See Harlow v. State Dep't of Human Servs.*, 883 N.W.2d 561 (Minn. 2016);
  - b. when the employee resigns after the final disposition of the government entity or arbitrator;
  - c. in the case of arbitration proceedings under a collective bargaining agreement, at the conclusion of the arbitration proceedings or the employee's failure to timely elect arbitration; or
  - d. in the case of a veteran, after the Veterans Preference hearing. *See Annandale Advocate v. City of Annandale*, 435 N.W.2d 24 (Minn. 1989).
6. The terms of any agreement settling any dispute arising out of an employment relationship, including a buyout of a superintendent's contract, and, in the event more than \$10,000 in public money is involved, the specific reasons for the agreement;

7. Work location, a work telephone number, badge number, and honors and awards received;
8. Payroll sheets, and other data accounting for an employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reason for the use of sick or other medical leave or other non-public data. Minn. Stat. § 13.32, subd. 2(a).

**C. “Public Official” Exception.** Data related to complaints or charges against public officials are treated differently. In a charter school, a public official includes individuals employed in positions that are comparable to school district superintendents, principals, “business managers; human resource directors; athletic directors . . . ; chief financial officers; [and] directors and in a charter school, individuals employed in comparable positions.” Minn. Stat. § 13.43, subd. 2(e)(4)(iv). Data relating to a complaint or charge against a public official is public if:

1. the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or
2. potential legal claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement.

**D. Employee Medical Status.** The fact that an employee is on medical leave or has taken medical leave may be disclosed. The reason for the leave is considered private data and may not be disclosed. *See Navarre*, 633 N.W.2d 40; *see also* Op. Minn. Dep’t Admin. 99-019 (July 7, 1999).

**E. Personnel Data with Other Subjects.** The Supreme Court has also held that data is private personnel data if the government maintains the data **solely because the individual is or was an employee**. *KSTP-TV v. Metropolitan Council*, 884 N.W.2d 342 (Minn. 2016). The Court further held that the determination of the government’s purpose in maintaining data is to be made at the time of the data request. *Id.* Further, the Court has also held that, even if the data is private personnel data, other subjects of the data may still have a right to access the data. *Burks v. Metropolitan Council*, 884 N.W.2d 338 (Minn. 2016).

**F. Applicant Data.** The following personnel data regarding current or former applicants is classified as public:

1. Veteran status;
2. Relevant test scores;
3. Rank on eligible list;
4. Job history;
5. Education and training; and
6. Work availability.

Names of applicants are private data, except when considered as finalists for a position. A “finalist” means an individual who is selected to be interviewed prior to selection. *See* Minn. Stat. § 13.43, subd. 3. Sometimes, personnel committees (not the entire Board) interview applicants. A committee is not the appointing authority. In that case, since the Board did not interview the applicants, the applicants’ names are not public data. Given that the Board made the hiring decision without interviewing any of the applicants, there are no finalists within the meaning of the statute and only the name of the applicant who was hired is public data. Op. Minn. Dep’t Admin. 00-050 (Nov. 3, 2000); Op. Minn. Dep’t Admin. 00-065 (Dec. 5, 2000).

**G. Statements and Investigation Materials.** The complainant is entitled to a copy of his or her “statement” provided to a government entity in connection with a complaint or charge against an employee. Minn. Stat. § 13.43, subd. 2(d).

1. Investigation notes or summaries – other than a verbatim recording of a person’s complaint – do not constitute a statement to which the complainant is entitled access. Op. Minn. Dep’t Admin. 05-019 (May 6, 2005).
2. However, under the Minnesota Supreme Court’s opinions in *Burks* and *KSTP-TV*, complainants and witnesses *may be* entitled to notes and summaries from their investigatory interviews if they are subjects of the data. The fact that interview notes and summaries are also private personnel data on the subject of the complaint does not trump their right as data subjects to access the data. *Burks*. If and when complainants and witnesses request data maintained for

an investigation, contact your attorney for a close analysis of whether the requesting individual is a data subject.

- H. Harassment Data.** When allegations of sexual or other types of harassment are made against an employee, the employee does not have access to data that would identify the complainant or other witnesses if the responsible authority determines that the employee's access to the data would either threaten the personal safety of the complainant or a witness or subject the complainant or witness to harassment. Minn. Stat. § 13.43, subd. 8. If a disciplinary proceeding is initiated against the employee, data on the complainant or witness shall be available to the employee as may be necessary for the employee to prepare for the proceeding. *Id.* This is the only section of Minn. Stat. § 13.43 limiting the complaint subject's access to data on them.

## **VII. RECORDS RETENTION**

- A. Requirement to Develop Records Retention Schedule** (Minn. Stat. § 138.17, subd. 7)

It shall be the duty of the head of the governing body of each school district to establish and maintain an active, continuing program for the economical and efficient management of its records. Public officials shall prepare an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the school district having custody of the records, *establishing a time period for the retention or disposal of each series of records*. When the schedule is unanimously approved by the records disposition panel, the head of the school district having custody of the records may dispose of the type of records listed in the schedule at a time and in a manner prescribed in the schedule for particular records which were created after the approval. A list of records disposed of pursuant to this subdivision shall be maintained by the school district. When records containing not public data as defined in section 13.02, subdivision 8(a), are being disposed of under this subdivision, the records must be destroyed in a way that prevents their contents from being determined.

Charter schools are subject to Section 138.17. *See* Minn. Stat. § 124E.03, subd. 5(b).

- B. State Model Records Retention Schedule and Local Retention Schedule**

1. Pursuant to Minnesota Statute Section 138.17, a School District General Records Retention Schedule (“Retention Schedule”) has been established for school districts. With limited exceptions, the Retention Schedule establishes the *minimum* period of time for maintaining various types of records. *See* Minn. Stat. § 138.17.
2. While the State provides this model policy, each school district and charter school may modify the model policy or develop its own policy.
3. School districts and charter schools must formally adopt a schedule. The schedule must be approved by the Records Disposition Panel, which is comprised of the attorney general, legislative auditor in the case of state records, state auditor in the case of local records, and the director of the Minnesota Historical Society.
4. If a school district or charter school has not previously adopted the model policy or developed its own schedule approved by the Records Disposition Panel, the district does not have authority to destroy records without seeking approval to destroy specific records pursuant to Chapter 138 of Minnesota Statutes. Any destruction of records without prior approval is a violation of the law.

**C. Remember the IDEA has its own provisions about data privacy.**

1. The IDEA data privacy provisions closely mirror the FERPA data privacy provisions.
  - a. For example, the definition of education record is the same under IDEA and FERPA.
    - i. "Education records" are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. *See* 34 C.F.R. 99.2.
    - ii. Education records means the type of records covered under the definition of “education records” in 34 C.F.R. part 99. *See* 34 C.F.R. 300.611(b).