



# School Resources to Support Military-Connected Students

## Sharing Student Information and Education Records

Legal Guidelines and Considerations When Transferring  
Student Records to Another School

*As of April 15, 2019*



**CLEARINGHOUSE**  
FOR MILITARY FAMILY READINESS

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# Introduction

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Military-connected children move an average of six to nine times during their lives as students in grades kindergarten through 12<sup>th</sup> grade (Department of Defense Education Activity [DoDEA], n.d.). Because military-connected children are a mobile population, school administrators need to be aware of the laws, rulings, and guidelines regarding the sharing of student information and educational records to support these students as they transition between schools. In general, public schools and DoDEA schools have a right to share student records with receiving schools. However, under the governance of federal legislation and the Department of Defense (DoD), it is still essential for schools to respect students' privacy and personally identifiable information (PII). Consequently, some ambiguity regarding the threshold for sharing details included in students' disciplinary records exists. Disciplinary records may contain information related to student safety that is important for schools to know when they accept a student into their district; however, this information may also contain stigmatizing information about a student. This review will evaluate what is known from currently existing legislation and will generate recommendations for best practices in transferring details of student disciplinary records in a manner that balances privacy and safety.

## Governing Documents

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There are various legislative documents that describe the rules related to the sharing of military-connected students' educational records, including (a) Family Educational Rights and Privacy Act of 1974 (FERPA, 20 U.S.C. § 1232g), (b) The Every Student Succeeds Act of 2015 (ESSA, Pub. L. No. 114-95 § 114 Stat. 1177), and (c) DoDEA System of Records Notice (SORN) 26 (DoDEA, 2011). FERPA and ESSA applies to all schools funded by the U.S. Department of Education;



DoDEA SORN 26 applies to DoDEA schools, which are funded by the DoD rather than the U.S. Department of Education. As approximately 80% of military-connected students attend public schools (De Pedro et al., 2018), FERPA will affect most military-connected students. However, DoDEA SORN 26 will affect the 7% of military-connected students who attend DoDEA schools from kindergarten through grade 12 (DoDEA, 2019). As such, it is valuable to address rulings for students attending both non-DoD schools (funded by the U.S. Department of Education) and DoDEA schools.

## Non-DoD rulings

According to FERPA (20 U.S.C. § 1232g), education records refer to records that are directly related to a student and are maintained by the school for students 18 years old and younger.

Under the ruling of FERPA, the ESSA (Pub. L. No. 114-95 § 114 Stat. 1177) states:

In accordance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), not later than 2 years after the date of enactment of this part, each State receiving Federal funds under this Act shall provide an assurance to the Secretary that the State has a **procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion**, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.

States must decide how to share disciplinary records that contain information on student suspension or expulsion when students transfer schools. Ultimately, the details that are shared are at the state's discretion. In accordance with FERPA, schools should also consider whether a student has made an "articulable and significant threat" when deciding what information to release to others. Specifically, Section 99.36, part C, of FERPA states:



An educational agency or institution may consider the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. **If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.**

As an example, the U.S. Department of Education (n.d.) states that school officials may disclose information about a student without consent if there is a reported threat of “substantial bodily harm” to the student or another person.

In sum, states must have a procedure in place for deciding what information to include when sharing disciplinary records about a student’s suspension or expulsion. Any details that have been included in a student’s record *may* be shared if there is a concern related to self-harm or harm toward others, but specifics are not *required* to be shared. Moreover, the details that are shared from a student’s disciplinary record fall to the discretion of the school from which the student transfers, which will likely be influenced by state mandates.

## DoDEA rulings

According to DoDEA SORN 26, there are two categories of educational records: contemporary school files and historical school files. Specifically, these files address attendance and discipline, health records, school ancillary services, school mediation agreement and hearing results, school special education, school student records, student administrative, student record request and disclosures, and transcripts (DoDEA, 2011). Under DoDEA SORN 26, attendance and discipline files are described as:



Information reflecting attendance and **disciplinary actions**, to include **teacher referrals**, tardy and/or admission slips, **correspondence to and from parents, student and/or witness statements, school disciplinary investigation files, student consequences (punishments), and similar related information.**

In addition to defining the content included in the aforementioned records, DoDEA SORN 26 also includes information on routine uses of records. According to DoDEA SORN 26, there are unique scenarios in which student records may be shared outside of the DoD:

**To appropriate parties**, including parents of a student age 18 or over, **in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other students**; and to teachers and school officials in non-DoD schools who have been determined to have a legitimate educational interest in the student, provided that the official making the disclosure maintains a record that documents the **articulable and significant threat to the health or safety of a student** or other individuals that formed the basis of the disclosure and identifies the parties to whom the information was disclosed.

Moreover, like FERPA, the DoDEA SORN 26 document suggests that details of disciplinary records *may* be shared with receiving schools when a student's disciplinary background creates foreseeable risk of harm to self or others as evidenced by an "articulable and significant threat to the health or safety of a student" (DoDEA, 2011). Again, specifics are not *required* to be shared.

## Recommendations

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The language used across the above-mentioned documents is meant to allow for flexibility across environments and schools. The challenge with the use of more flexible terminology is that the expectations may vary vastly across systems and states. For example, in reference to DoDEA



SORN 26, some schools may have different perspectives about what information is necessary to “protect the health or safety of the student or other students.” Consequently, across both non-DoD and DoDEA schools, guidance is limited regarding what *specific* behaviors, in a student’s disciplinary record, are reportable to a receiving school and in a manner that respects student privacy and PII and adequately protects student safety. Currently, there are no known precedents that outline examples of details to report. The remaining portion of this review aims to offer recommendations that describe the threshold for including disciplinary details when sharing student records with another school.

- FERPA and DoDEA SORN 26 use the words “health or safety” when describing whether it is appropriate to share disciplinary information, consequently, non-DoD and DoDEA schools are encouraged to **clarify the meaning of “health or safety”** in their systems. **Schools may consider using the guidelines for mandated reporting to structure their definition of “health or safety.”**
- For military-connected students who move from a non-DoD school to either another non-DoD school or to a DoDEA school, it is important that school professionals at DoDEA and non-DoD systems **research the guidelines and policies** regarding the sharing of disciplinary records from the state in which the student’s sending school is located. Gaining a full understanding of the guidelines and policies will help the receiving school officials determine what details may typically be included or excluded from a student’s record.



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