

Confidentiality of Records and Interagency Sharing of Educational Records

Juvenile Legislative Update 2013



Discussion Topics

- What is a “Record” or “File” concerning a child?
- The general requirement of “Confidentiality” of juvenile records.
- To whom may records concerning a child be disclosed?
- What are “Educational Records”?
- Who can request and obtain Educational Records?
- What is a “Juvenile Service Provider”?
- When can Educational Records be requested and/or shared?
- What are the duties of the “Provider” of Educational Records?
- What are the duties of the “Juvenile Service Provider” who receives Educational Records?
- What is the status Educational Records once they are disclosed/shared?
- How are Juvenile Service Providers to deal with the Costs of Obtaining and Sharing Educational Records?

What is a “Record”?



- Anything in the nature of documents or files that contain information concerning a child, including:
- Personally identifiable information;
 - Information obtained for the purpose of diagnosis, examination, evaluation, or treatment; OR
 - Information obtained for making a referral for treatment of a child by a private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of a child under order of the juvenile court.

Confidentiality of Records

Texas Family Code, §58.005

- Provides for the “**confidentiality**” of records relating to a child involved in a proceeding under Title 3 of the Texas Family Code.
 - Title 3 of the Texas Family Code is the Juvenile Justice Code.
- Provides for the “**confidentiality**” of the records of **any agency** that is dealing with a child under orders from a juvenile court in a delinquency proceeding or a child in need of supervision proceeding under Title 3.

**To whom may records
concerning a child be
disclosed?**

➤ **Records and files concerning a child involved in a Title 3 proceeding may be disclosed ONLY to:**

- The professional staff or consultants of the agency or institution;
- The judge, probation officers, & professional staff or consultants of the juvenile court;
- An attorney for the child;
- A governmental agency if the disclosure is required or authorized by law;
- A person or entity to whom the child is referred for treatment or services if:
the agency or institution disclosing the information has entered into a **written confidentiality agreement** with the person or entity regarding the protection of the disclosed information;

➤ **Records and files concerning a child involved in a Title 3 proceeding may be disclosed ONLY to:**

- The Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; OR
- With leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

Interagency Sharing of Educational Records

**First, what are
“Educational Records”?**

➤ **“Educational Records”** means the records in the possession of a primary or secondary educational institution that contain information relating to a student, including information relating to the student’s:

- Identity;
- Special needs;
- Educational accommodations;
- Assessment of diagnostic test results;
- Attendance records;
- Disciplinary records;
- Medical records;
- Psychological diagnoses.

What is a “Student”?

Texas Family Code, § 58.0051 (a) (3)

➤ A person who is:

- Registered or in attendance at a primary or secondary educational institution; and
- Is younger than 18 years of age.

- **When must a primary or secondary educational institution disclose its' educational records?**
- **Who can request an educational record?**
- **When can educational records be requested?**

Obtaining Educational Records from Schools

Texas Family Code, §58.0051(b)

- An independent school district or a charter school **SHALL** disclose information contained in a student's educational records to a Juvenile Service Provider (JSP) **if the student has been:**
 - Taken into custody under §52.01 of the Family Code; **OR**
 - Referred to a juvenile court for allegedly engaging in delinquent conduct or conduct indicating a need for supervision

**Who are
“Juvenile Service Providers”?**

Juvenile Service Provider (JSP)

➤ Includes:

- Any state or local juvenile justice agency with custody or control over the juvenile offender
- Health and human services agencies and the Health and Human Services Commission
- Juvenile justice alternative education programs
- Court with jurisdiction over juveniles
- District and County Attorneys
- Children's advocacy centers

Record Provider's Duties

Texas Family Code, §58.0051(d)

- An independent school district or a charter school that discloses confidential information to a JSP may not destroy a record of the disclosed information before the seventh anniversary of the date the information is disclosed.
- An independent school district or a charter school SHALL comply with a request from a JSP for confidential information contained in a student's educational records regardless of whether other state law makes that information confidential.

Juvenile Service Provider's Duties

Texas Family Code, §58.0051(e)

- **A JSP that receives confidential information from independent school district or charter school **SHALL:****
 - certify in writing that the JSP receiving the confidential information **has agreed not to disclose it to a third party**, other than another JSP; and
 - use the confidential information **only:**
 - to verify the identity of a student involved in the juvenile justice system; and
 - to provide delinquency prevention or treatment services to the student.

Best Practices

- **Remember: Personally identifiable information cannot be disclosed to a third party**
- **Personal information , such as medical records cannot be read aloud in open court.**
- **Only make recommendations for treatment in court, rather than stating the specific test results.**

Sharing of Information Between JSPs

Texas Family Code, §58.001 (f)

➤ **Development of Internal Protocols**

- A JSP may establish an internal protocol for sharing information with other JSPs as necessary to efficiently and promptly disclose and accept the information.
- The protocol may specify the types of information that may be shared.
- A JSP may enter into a Memorandum of Understanding (MOU) with another JSP to share information according to the JSP's protocols.
- Whether or not a JSP establishes internal protocols or enters into MOUs, it shall comply with this section regarding the handling of educational record, unless such compliance violates federal law.

Status of Shared Information

Texas Family Code, § Section 58.001 (g)

- The sharing of confidential information among JSPs does not affect the confidential status of the information being shared.
- The information may be released to a third party only as directed by a court order or as otherwise authorized by law.
- Personally identifiable information disclosed to a under this section of the Family Code is not subject to disclosure to a third party under the Texas Public Information Act.

Fees

Texas Family Code, §58.0051 (h)

- A JSP that requests information from another JSP pursuant to §58.0051 shall pay a fee to the disclosing JSP in the same amounts charged for the provision of public information under the Texas Public Information Act, **unless**:
 - There is a Memorandum of Understanding (MOU) between the requesting JSP and the disclosing JSP that:
 - prohibits payment of a fee;
 - provides for the waiver of a fee; or
 - provides an alternate method of assessing a fee.
 - The disclosing JSP waives the payment of the fee; **OR**
 - Disclosure of the information is required by law other than Family Code, Chapter 58, Subchapter A (Records).

**THE
END**