



## Destruction of Special Education Records

**MYTH:** Special education teachers and related services providers can destroy the raw data collection records including data charts and notes once this data has been used to complete the IEP goal progress reports at the end of each reporting period.

**FACT:** The IDEA refers to the Family Educational Rights and Privacy Act (FERPA) for the definition of “educational records” and “records.” An educational record is any record directly related to a student that is maintained by the public agency or a person acting on behalf of the public agency. A record is any information recorded in any way, including, but not limited to, handwriting, print, computer media, video, audio tape, film, microfilm, and microfiche. FERPA allows an exception for those records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. The Department of Education in the Notice of Proposed Rulemaking at <https://www2.ed.gov/legislation/FedRegister/finrule/2000-3/070600a.html> explained that the main purpose of the “sole possession records” exception to the definition of education records “is to allow school officials to keep personal notes private. For example, a teacher or counselor who observes a student and takes a note to remind himself or herself of the student’s behavior has created a sole possession record, so long as he or she does not share the note with anyone else”. Remember that once the information is shared, the record is no longer considered a sole possession record.

The DOE writes in the decision letter for Complaint #1251 (Letter to Baker, December 28, 2005) that: *Notes about students prepared by school officials (such as teachers, speech-language therapists, clinicians, etc.) are not considered “personal” under this provision merely because they are kept in the school official’s office or desk drawer, have not been shared with anyone, or are used to prepare “official” or “final” reports. Rather, in order to qualify for this exception, the notes or other records must be kept in the sole possession of the maker (except a temporary substitute) and be used only as a personal memory aid. That is, the exception for “sole possession records” is intended to protect “personal notes” used to jog a teacher’s memory about a particular matter or event, such as a note reminding the teacher to call a parent or that the student was disruptive during play time. It is not intended to exclude from the definition of “education records” detailed or comprehensive notes that record specific clinical, educational or other services provided to a student, or that record the school official’s direct observations or evaluations of student behavior, including the student’s success in attaining specified objectives. This is true whether or not the notes are used later to prepare an “official” or “final” progress report or IEP for the student. That is, a parent has a right under FERPA to inspect and review these kinds of detailed or comprehensive notes about a student maintained by a school official and is not required to rely solely on summary conclusions contained only in final or official reports, including a student’s IEP.*

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**MYTH:** The LEA must maintain raw data collection records including data charts and notes for a minimum of three years from the date the student no longer receives special education and related services.

**FACT:** Raw IEP goal data collection records serve the same purpose as a teacher’s grade book for supporting the determination of the student’s progress toward the annual IEP goals. The Public School Records Retention Schedule published by the Missouri Secretary of State’s Office at <https://www.sos.mo.gov/CMSImages/LocalRecords/PublicSchool.pdf> indicates that teachers’ grade books must be maintained for a period of two years and can then be destroyed following appropriate procedures.

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**MYTH:** The LEA must maintain test protocols completed during evaluations for special education for a minimum of two years because these are considered data collection records.

**FACT:** The State Plan indicates that test instruments or protocols/score sheets and a record of the results are considered educational records in Regulation II. According to the Public School Records Retention Schedule published by the Missouri Secretary of State’s Office at <https://www.sos.mo.gov/CMSImages/LocalRecords/PublicSchool.pdf>, test protocols must be maintained for a period of three years after the last service and can then be destroyed following appropriate procedures.

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**MYTH:** With parent permission, the LEA can destroy records prior to the retention requirements and Missouri Secretary of State’s Office schedule.

**FACT:** Under federal requirements, IDEA demands that destruction of records will not take place until 3 years past the time the child no longer receives IDEA services which is in most cases 3 years past graduation. Parents cannot waive this requirement. In addition, the LEA does not need written consent but must attempt to notify the parents or eligible student of the plan to destroy these records after the 3 year minimum guideline.