

# **Confidentiality of Records: Professional Development for Educators Serving Students with Disabilities**

**Pulaski County Schools  
Southeast/SouthCentral Educational Cooperative**

# Applicable Laws

- Family Educational Rights and Privacy Act of 1976, amended in 1994 (FERPA)
- Individuals with Disabilities Act of 1991, amended in 1997 (IDEA)
- Kentucky Safe Schools Legislation of 1998 (HB 330)

# Importance of Confidentiality

- If violations are found, federal funds may be withheld
- Parents may proceed in a private civil action against the school district seeking redress for violations
- It's the right thing to do!

# Definitions

- Confidentiality

- Protecting all personally identifiable data, information and records used, or kept by the school district about a student
- Applies to discussions about a student and the student's record

# Definitions

- Disclosure

- Permitting access to, the release, transfer, and other communication of educational records of a child or youth
- This includes disclosure made:
  - orally
  - in writing
  - by any other means, including electronic transfer of information

# Definitions

- **Educational Record**

- Documents and other written information directly related to a child or youth which may include:

- personal and family data
- evaluation and test data
- medical, psychological, and progress reports
- written accounts of conferences
- any other information used in working with the child

# Definitions

- **Eligible Student**

- A youth who has reached 18 or is attending a post secondary education institution
- If a court has established limited or full guardianship, the youth is **not** an eligible student

# Definitions

- **Personally Identifiable**
  - Data or information that include any of the following:
    - name or address of child/youth, parent, or other family member
    - personally identifiable number such a Social Security number
    - list of personal characteristics/traits or other information which make identification easy

# Notice

- Must be published annually and before any major identification, location and evaluation activity
- Must be published in the local paper
- Must be published in all languages deemed necessary

# Access Rights

- Parents have the right to review and inspect their child's educational record
- Eligible students have the right to review and inspect their educational records

# Access Rights

- Both parents are allowed access to their child's educational record
- Access must be denied if a legal decree specifically revokes parental rights
- Legal guardians and surrogate parents have access rights
- Foster parents have access rights

# Access Rights (09.14)

Authorized District personnel also may disclose personally identifiable information to the following without written parental consent:

(Revised Policy 09.14; July 2013)

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- Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll or is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer;
- Authorized representatives of a KY state child welfare agency if such agency presents to the District an official court order placing the student whose records are requested under the care and protection of said agency. The state welfare agency representative receiving such records must be authorized to access the child's case plan.

**09.14**

# Access Rights

- An explanation or interpretation of records must be provided upon the request of a parent or eligible student
- A parent or eligible student may authorize a representative to review and inspect records

# Access Rights

- Access should be granted
  - as soon as possible
  - within 45 calendar days from the time the school personnel receives the request
  - before any ARC meeting or due process hearing takes place
  - at a time and place mutually acceptable to the parent and LEA representative

# Access Rights

- Translation must be provided in the parent's mode of communication
- A free copy of the records shall be provided to the parent or eligible student upon request

# Access Rights

- Test protocols and private notes are considered educational records if communicated or revealed to others
- As such, they may be accessed by parents

# Record of Access

- Each folder should properly document a record of access
  - This documentation includes:
    - Name of person who accessed
    - Date access given
    - Purpose for which request was made
- Persons accessing confidential information must have a legitimate educational interest

# Record of Access

- Everyone with a legitimate educational interest signs record of access
  - except parents, eligible youth, and employees of the district
- A current list, by names and positions, of those who have access to records must be maintained for public inspection

# Record of Access

- The local school district must maintain a list of the types and locations of educational records
- If information is given on records of more than one child/youth, information about other children shall be protected

# Record Amendment

- A parent may request that information be amended, if the parent believes that information in the child's records
  - is inaccurate
  - is misleading
  - violates the privacy of the child

# Record Amendment

- The local school district must decide whether to amend the information
  - within 14 days of receipt of request
- The district must notify the parent or eligible student whether the information has been amended as requested

# Record Amendment

- If the local school district decides not to amend information, within seven (7) calendar days of the decision they must
  - provide a written explanation to the parents
  - advise them of the right to a records amendment hearing
  - advise them of amendment hearing procedures used by the school district

# Record Amendment

- If the parents request a hearing
  - it must be held in accordance with the local school district's policies and procedures
- If the hearing decision is to amend the records
  - the district amends the record and notifies the parents or eligible student in writing

# Record Amendment

- If the decision is to not amend the record
  - the parents are notified of the decision and the right to place in the records a statement commenting on the information and stating any reasons for disagreeing with the decision
  - any explanation must be maintained and disclosed as part of the educational record in the future

# Informed Consent

- Parental consent is needed to disclose records to individuals or agencies
- Parental consent is not required for
  - directory information
  - disclosure to individuals on the consent list

# Informed Consent

- **School officials must have**
  - a written, signed and dated consent to release personally identifiable information from educational records
- **Does not apply to parties authorized by law to receive such information**

# Informed Consent

- The district may request a due process hearing
  - if a parent refuses to give consent for the disclosure of educational records needed to provide a free and appropriate education and
  - the district disagrees with the parent's refusal

# Disclosure

- The local school district may disclose personally identifiable information without parental consent
  - to a school in which the child seeks or intends to enroll
  - if the district receives a judicial order or lawfully issued subpoena

# Disclosure

- The local school district may disclose personally identifiable information without parental consent
  - when the request is for directory information
  - in an emergency situation when it is necessary to protect the health and safety of a child/youth or other individuals

# Disclosure

- Local school districts must maintain records of all requests
  - as outlined in local policies and procedures
  - for access to, and disclosure of, personally identifiable information
- Exceptions are outlined in local school districts' policies and procedures

# Disclosure

- Information from the educational records of another local school district cannot be disclosed until the district gets parental consent for disclosure

# Safeguards

- Confidentiality must be ensured at all stage of dealing with records
  - collection, storage, disclosure, and destruction
- An official from the local school district must be responsible for ensuring the confidentiality of special education records

# Safeguards

- All staff who have access to educational records must receive training regarding policies and procedures related to confidentiality
- Local school district must maintain, and update each year, a current listing of employees who may have access to personally identifiable information

# Safeguards

- Local school districts must
  - ensure computer files containing educational records are secure
  - act in a responsible manner when sending and receiving faxes containing confidential information

# **Destruction of Records**

- Parents must be informed when educational records are no longer needed to provide educational services to the student
- When a parent requests the destruction of records, information is destroyed that is no longer needed

# **Destruction of Records**

- Personally identifiable information may be retained as required by the Kentucky Department of Education student record requirements
- The local school district must notify parents of records that may be needed for Social Security eligibility determination

# **Destruction of Records**

- **When a parent requests destruction of records, the district does not destroy any records**
  - if there is an outstanding request to inspect or review the records
  - if records are needed for compliance with applicable state and federal requirements

# Rights of the Child or Youth

- Parents must be notified at least one year prior to a youth's 18th birthday
- - that parental rights will transfer to the youth at age 18
    - unless the district is provided with evidence that proves the parent is the guardian or youth's representative in educational matters

# Rights of the Child or Youth

- The local school district does not disclose educational records of a youth over 18 to parents without
  - the youth's written consent
  - a court order, or
  - proof the youth is a dependent as defined in section 152 of the Internal Revenue Code of 1954

# Juvenile Court Records

- Courts may release certain juvenile court records to a principal
  - these records must be kept confidential
  - the principal may release them to
    - counseling staff and
    - teachers to whom the child is assigned for instruction

# Juvenile Court Records

- If the child transfers to another school, the principal should contact juvenile court so they may send the records to the new principal
- Juvenile court information may not be revealed to any other person
  - Legal action may result if confidentiality is not applied to these records

# Juvenile Court Records

- Safe school legislation addresses additional juvenile court record issues
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- For further information, refer to the local school districts' policies and procedures

# Exercise 1:

## Children's Corner Daycare

The Children's Corner Daycare calls a local school district and requests that Sue's school records are forwarded to them. It is a small community and the person receiving the call is familiar with the caller. Can the records be sent under these conditions?

YES

NO

# **Feedback 1: Children's Corner Daycare**

The records cannot be sent without written parental consent. FERPA and IDEA do not allow a school district to send personally identifiable information to another agency without written parental authorization.

## Exercise 2: Amber

Amber's family moved to the neighboring county. The neighboring school district sent a request for the transfer of records. Can this information be forwarded without parental permission?

YES

NO

# Feedback 2: Amber

The records can be sent to the neighboring school. FERPA requirements allow the school district to forward educational records on request to a school in which a student seeks to enroll.

## Exercise 3: Jane

Jane is a teacher assistant at Brownsville Elementary School. Jane's close friend asked Jane to check on the progress of the friend's nephew who also attends Brownsville. Can Jane obtain this information?

YES

NO

## Feedback 3: Jane

Jane has no legitimate educational interest in the progress of someone's nephew; therefore, she has no right to review his progress. In order for Jane to review the progress of the nephew, she would have to be working directly with the child, but she still could not share the information with her friend.

# Exercise 4: Sandy

Sandy lives with her grandparents. Sandy's parents have legal custody of Sandy, but they have a very limited role in the care of Sandy. Sandy's teacher would like to initiate a referral due to a suspected learning disability. Who has the right to give written permission to evaluate Sandy for the suspected learning disability?

**GRANDPARENTS**

**PARENTS**

# Feedback 4: Sandy

The ARC chairperson can determine that a person is "acting as a parent", and as such has all the rights of a parent until the parent reappears to reclaim his or her rights.

Therefore, Sandy's grandparents are "acting as a parent" and have the rights of a parent in making educational decisions concerning Sandy. Parents must provide permission in writing (notarized) for educational representation in our district.

# Exercise 5: Matthew

Matthew's natural father arrives at Matthew's school. He requests to see Matthew's school records. A review of Matthew's school records indicates that Matthew's parents are divorced and that Matthew lives with his mother. Can the school allow access of educational records to Matthew's father?

YES

NO

# Feedback 5: Matthew

Both natural parents are allowed access to the educational records of a child, unless the school has been informed that a parent is not allowed due to some legal action. The fact that Matthew's parents are divorced does not automatically take away his parental rights.

## Exercise 6: Mary

Mary is a parent member of a Site Based Decision-Making Council. Mary would like to have a look at the recent state test scores of all the students in Mrs. Reed's class. Does Mary have access to these records?

YES

NO

# Feedback 6: Mary

Mary does not have the right to access the students' educational records. A Site Based Decision-Making member does not have access to personally identifiable information.

Parent consent would have to be obtained from each parent to allow Mary access to the students' educational records.

# Exercise 7: Bonnie

Bonnie has recently separated from Fred. Bonnie and Fred are the natural parents of a student in your classroom. Bonnie sends you a note that Fred is not to have any access to any of their child's educational records. Can the school honor Bonnie's request?

YES

NO

# Feedback 7: Bonnie

Both natural parents are allowed access to the educational records of a child, unless the school has been informed that a parent is not allowed access due to some legal action. The fact that the parents are separated, and the mother has requested that the father not have access does not constitute a legal action.

# Exercise 8: Kroger

While shopping at Kroger, an adult in the community asks you, "How is that new guy in your class doing? I heard that the police came to school this week to interview him." What information can you release concerning this student?

YES

NO

# Feedback 8: Kroger

No information may be released to the community member concerning this student. This community member has no legitimate educational interest and is not accessible to personally identifiable information concerning any student without written consent from a parent.