



# Confidentiality of Records

## Professional Development for Educators Serving Children and Youth with Disabilities

Sponsored by  
Central Kentucky Special Education Cooperative

# Applicable Laws

- **Family Educational Rights and Privacy Act (FERPA or the Buckley Amendment)**
- **Individuals with Disabilities Education Act (IDEA)**
- **Kentucky Safe Schools Legislation (HB 330)**

# Importance of Confidentiality

- **District may have federal funds withheld if violations are found.**
- **Parents may proceed in a private civil action against the school district seeking redress for violations.**
- **As professionals, it's the right thing to do!**

# Definition of Confidentiality

- **Confidentiality requirements apply to all personally identifiable data, information, and records used, or kept, by the school district about a student.**
- **Confidentiality requirements also apply to discussions about a student.**

# Definition of Disclosure

- **Disclosure refers to permitting access to or the release, transfer, and other communication of educational records of a student.**
- **Disclosure can be oral, in writing, or by any other method, including phone or email.**

# Definition of Educational Records

- **Educational records are documents and other written information directly related to a student including:**
  - **Personal and family data;**
  - **Evaluation and test data;**
  - **Medical, psychological, and progress monitoring;**
  - **Written accounts of conferences; or**
  - **School-related discipline reports.**

# Definition of Eligible Student

- **An eligible student is a student who:**
  - **Has reached the age of 18, or**
  - **Is attending a postsecondary education institution.**
  
- **If a court has established limited or full guardianship, a student at the age of 18 is not an eligible student.**

# Definition of Personally Identifiable

- **Personally identifiable information is data or information that includes:**
  - **Names/addresses of the student/parents/family members;**
  - **Student's social security number/student number; or**
  - **Personal characteristics/traits/other information which make identification easy.**



# Public Notice

- **Must be provided at least once each year.**
- **Must be provided before any major identification, location, or evaluation activity.**
- **Must be published in the local paper.**
- **Must be published in all know languages and means of communication of the population within the school district.**

# Access Rights

- **Parents have the right to review and inspect any educational record.**
- **Eligible students have the right to review and inspect any educational records.**
- **Guardians and persons appointed to act as surrogate parents have the right to review and inspect any educational records.**

# Access Rights

- **Both parents are allowed access to educational records, unless the district is presented with a court order or other legally binding document that specifically revokes parental rights.**
- **If a child is under foster care, the foster parents have the right to review and inspect the school records of the child.**

# Access Rights

- **The school district must provide an explanation/interpretation of records if the parent makes a request.**
- **A parent may authorize a representative to inspect or review the educational records.**

# Access Rights

- **Access should be granted:**
  - **As soon as possible, but no later than 45 calendar days from the time the school personnel receives the request;**
  - **Before any ARC meeting or due process hearing; and**
  - **At a time and place mutually acceptable to the parent and school personnel.**

# Access Rights

- **Translation must be provided in the parent's native language/mode of communication.**
- **A free copy of the records must be provided to the parent upon request.**
- **Depending on school district policy, a fee may be charged for additional copies.**

# Access Rights

- **Test protocols, raw data, and private notes are considered educational records if communicated or revealed to others.**
- **Oral communication from private notes or documents makes the documents accessible to parents for inspection and review, even if these are maintained in the sole possession of the creator.**

# Record of Access

- **Each folder should properly document a record of access including:**
  - **Name of person given access;**
  - **Date access was given; and**
  - **Purpose for which access was given.**
- **The school district must ensure the person accessing the record has a legitimate educational interest.**



# Record of Access

- **Everyone with a legitimate educational interest must sign record of access, except parents, eligible students, and district employees.**
- **The school district must maintain a current list by names and positions of those who have access to educational records.**

# Record of Access

- **The school district must maintain a list of the types and locations of educational records.**
- **If a record contains information about more than one student, information about other students must be removed before disclosure is provided.**

# Amendment of Records

- **Record amendment refers to changing, deleting, or destroying information.**
- **If a parent believes information in the record is inaccurate, misleading, or violates privacy, he/she may request that information be amended.**

# Amendment of Records

- **The school district must:**
  - **Decide whether to amend the information in accordance with the request, and**
  - **Notify the parent whether the information has been amended as requested.**

# Amendment of Records

- **The parent must be advised of the right to a records amendment hearing along with the amendment hearing procedures used by the school district.**

# Amendment of Records

- **If a hearing is requested, it must be held in accordance with the school district's policies and procedures.**
- **If the results of the hearing are that records will be amended then the request is granted and the parent or eligible student is given a copy of the amended records.**

# Amendment of Records

- **If the decision is made to not amend the records, the parent is notified of that decision.**
- **The school district must allow a statement commenting on any reasons for disagreeing with the decision to be added to the records. This explanation must be maintained and disclosed as part of the record from that point on.**

# Parental Consent

- **Parental consent is needed to disclose records to individuals/agencies other than those indicated on the disclosure without consent list.**
- **Parental consent is not needed to discuss directory information.**



# Parental Consent

- **School officials must have a written, signed, and dated consent to release personally identifiable information from educational records, except to parties authorized by law to receive such information.**

# Parental Consent

- **If a parent refuses to give consent for the disclosure of educational records needed to provide a free and appropriate education, the school district can request a due process hearing.**

# Disclosure

- **The school district may disclose personally identifiable information without written consent as outlined in local policies and procedures.**
- **This includes to a school in which the child seeks or intends to enroll, or authorized government representatives.**

# Disclosure

- **If the district receives a judicial order/subpoena, it is recommended the district inform the parent that the records will be released.**
- **Directory information may be released without parental consent unless the parent provides the district with written directions not to release such information.**

# Disclosure

- **In an emergency situation when it is necessary to protect the health and safety of a student/other individuals, school personnel may disclose personally identifiable information to the appropriate parties connected to the emergency.**

# Disclosure

- **The school district must maintain records of all requests for access to, and disclosure of, personally identifiable information.**

# Disclosure

- **A school district cannot release information from the educational records of another school district or agency, unless the district gets parental consent for disclosure.**

# Safeguards

- **Confidentiality must be ensured at all stage of dealing with records: collection, storage, disclosure, and destruction.**
- **The school district official is responsible for ensuring the confidentiality of all educational records at all times.**



# Safeguards

- **All school staff who have access to educational records must receive training regarding policies/procedures related to confidentiality.**
- **The school district must maintain, and update each year, a current list of the names and positions of district employees who may access personally identifiable information.**

# Safeguards

- **The school district must ensure computer files containing educational records are secure.**
- **The district must act in a responsible manner when sending and receiving faxes containing confidential information.**

# Records Retention

- **The school district must ensure staff are familiar with, and follow, Kentucky record keeping requirements specified in the Kentucky Department of Archives Retention and Disposal Schedule.**

# **Destruction of Records**

- **The parent must be informed when educational records are no longer needed to provide educational services to the student.**
- **If a parent requests the destruction of records, only the information that is no longer needed is destroyed.**

# **Destruction of Records**

- **Personally identifiable information are retained as required by Kentucky record keeping requirements.**
  - **A record of the student's name, contact information, his/her grades, attendance record, classes attended, grade level completed and year completed are maintained indefinitely.**
- **The district must notify the parent 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 records if:**
  - **There is an outstanding request to inspect or review the records, or**
  - **They are needed for compliance with applicable state and federal requirements.**

# Rights of the Student

- **The school district must notify the parent at least one year prior to a student's 18<sup>th</sup> birthday that access rights will transfer to the student at age 18.**
- **Transfer occurs unless the district is provided with evidence that a court order/legal document proves the parent is the student's guardian/representative in educational matters.**

# Rights of the Students

- **The school district cannot disclose educational records of a student over 18 to the parent 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 the principal.**
- **These records must be kept confidential in a locked file.**
- **The principal may release them only to counseling staff and teacher to whom the child is assigned for instruction.**

# Juvenile Court Records

- **If the student transfers to another school, the principal contacts the juvenile court so the court may send the records to the new principal.**
- **Juvenile court information may not be revealed to any other person.**
- **Juvenile court proceedings disclosed to school officials are not educational records.**

# Juvenile Court Records

- **Legal action may result if confidentiality is not applied to these records.**
- **KY Safe School legislation addresses additional juvenile Court record issues.**
- **Please refer to local policies and procedures for specific questions/issues.**

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[www.classmarker.com](http://www.classmarker.com)