CONFIDENTIALITY

Whitley County School District Mandatory Training

Why is Confidentiality so Important?

- 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.
- We want a culture of integrity and trustworthiness;
 confidentiality is a big part of establishing that culture.

Which Laws Apply?

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

What is Confidentiality?

Confidentiality means protecting all personally identifiable data, information, and records collected, used, or kept by the school district about a student. Confidentiality requirements also apply to any event, conversation, or records that you might see or overhear someone discussing.

What is personally identifiable data or information?

Personally identifiable information includes:

- Child or family names and address
- Child's social security or student number
- Descriptions that would make it easy to identify a child
- Anything else that would make it easy to identify a child

What is a School Record?

A school record, which is sometimes called an "educational record" or a "permanent record," is anything that the district collects, uses, or keeps about a child. This includes grades, health information, attendance reports, work papers, school photos, test results, etc. Data or information may be handwritten, drawn, or typed. It may also be a photograph, on audio or video tape, or on computer disk.

Disclosure

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.

- 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.
- 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.
- Approved directory information includes: name, major field of study, participation in officially recognized activities and sports, photograph/picture, grade level, weight and height of members of athletic teams, anticipated date of graduation, degrees, honors and awards received, and most recent educational institute attended.
- Examples of disclosure of directory information: college recruiters, Armed Forces recruiters, etc.

Disclosure...

- The school district must maintain records of all requests for access to, and disclosure of, personally identifiable information.
- A school district cannot release information from the educational records of another school district or agency, unless the district gets parental consent for 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.

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.
- 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.

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.

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.

 Surrogate parent appointees have the right to review and inspect any educational records.

- 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.
- 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 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.
- 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.
- 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.

*Test protocols and other copyrighted materials cannot be copied due to copyright restrictions.

Confidentiality Concerns in Special Education

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 known languages and means of communication of the population within the school district.

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.

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

- ➤ 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.
- > 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.

Rights of the Student

- The school district must notify the parent at least one year prior to a student's 18th 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.
- 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.

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.
- 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.
- 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.

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 the teacher to whom the child is assigned for instruction.
- 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.

- 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.

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.

Confidentiality Safeguards

- Confidentiality must be ensured at all stages 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.
- 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.
- 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.

Interactions Among Colleagues

What you SEE...and/or HEAR...in a school, classroom, hallway, bathroom, cafeteria, or at any site or activity the school participates in, should be considered **confidential**.

When discussing a student with a colleague, four W's should be applied to your conversation:

- Who?
- What?
- Where?
- Why?

Who?

- Who is listening to your conversation?
 - If you are discussing a student with a colleague who has a legitimate educational interest in an appropriate location, confidentiality has not been violated.
 - If others are listening and they do not have a legitimate educational interest, you are violating confidentiality.

What?

- What is being discussed?
 - If personally identifiable information is being discussed, it must be for a legitimate educational purpose with someone who has a legitimate educational interest.

Where?

- Where is conversation taking place?
 - Any discussion should take place in private and not in a public place where other staff members without legitimate educational interest or where students could overhear.

Why?

- Why is the conversation occurring?
 - The conversation should have a legitimate educational interest.
 - If the discussion involves sharing rumors, opinions, or hearsay, the speech has moved from professional to gossip.

Scenarios

Scenario #1

 You have additional access rights to Infinite Campus and look up your neighbor's child to compare their progress (grades, attendance, behavior) with your own child's progress.

Is this appropriate?

Answer:

• No. Curiosity is not a legitimate educational interest.

Scenario #2

 During a disciplinary conference regarding a physical altercation, a parent requests that you disclose the consequences given to the other student involved in the incident. You tell the parents that you are unable to disclose that information due to confidentiality laws.

Was this the correct action to take?

Answer:

 Yes. If an education record includes information on more than one child, the parents shall have the right to inspect and review only the information relating to their child.

Scenario #3

 Juanita and Jim are the natural parents of Maryann, a student on your due process caseload. Juanita and Jim are separated and are in the process of getting a divorce. Juanita sends a note to school stating Jim is not allowed access to Maryann's records.

Can the school honor Juanita's request?

Answer:

 No. Unless the school has on record a court order or other legal action that states otherwise, both natural parents have the right to access Maryann's records.

Scenario #4

 While shopping at the grocery store, you run into a coworker and begin discussing a student you both work with who is having difficulties with reading.

Is this appropriate?

Answer:

• No. Although you both have a legitimate educational interest, the place of the discussion is not private. Therefore, you are violating confidentiality.



Adapted from presentations by Central Kentucky Educational Cooperative and Green River Regional Cooperative.