The following are answers to frequently asked questions about requirements related to educational records of students with disabilities. It does not address all requirements.

GENERAL INFORMATION

What laws apply to records of students with disabilities? Two federal laws, the *Family Education Rights and Privacy Act* (FERPA) and the *Individuals with Disabilities Education Act* (IDEA), as amended, as well as the *Kentucky Family Education Rights and Privacy Act* apply to educational records of students with disabilities.

Are all schools required to comply with the laws and regulations? Yes. Any school that receives federal or state education funds must comply with all privacy acts.

Must school districts have written policies and procedures? Yes. Under both state and federal requirements, districts are required to establish and implement written policies and procedures.

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 discussions about a student and the student's record.

What is personally identifiable data or information? Personally identifiable information includes:

- child or family names and address,
- student social security or student number,
- descriptions that would make it easy to identify the student, and
- anything else that would make it easy to identify the student.

What is an educational record? An educational record, which is sometimes called a "school record" or "permanent record", is anything that the district collects, uses, or maintains relating to individual students. 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 videotape, or on computer disk.

Does all the information in an educational record have to be kept in one place?
No, but school staff must be able to tell parents the locations of all information about their child.

How does the school district make sure a student's record is kept private? Each school district has someone responsible for student record confidentiality. Also, school staff who collect, use, or maintain school records receive training in confidentiality, including making sure that parents see only information about their child.

ACCESS TO STUDENT RECORDS

Who may look at a student's school records? Only parents and certain others have the right to look at or obtain a copy of a student's record without parental consent. The others include:

- School staff listed on the district's current list of persons allowed access to student information, including student teachers, classroom aides, and teacher assistants;
- Staff from US and State Department of Education on official business; and
- Another school district's staff when the student transfers.

Do guardians, divorced or separated parents, foster parents, and surrogate parents have the right to review and inspect a student's record? Both parents have the legal right to see their child's record unless the school has received documentation such as a court order prohibiting the release. Guardians and persons appointed to act as surrogate parents also have the same rights as parents. If a child with a disability is under foster care, the foster parents have the right to review and inspect the school records of the child.

May a student review and inspect his or her own record? A student is eligible to obtain access to his or her own records upon reaching the 18th birthday. The school district notifies parents before the student's 18th birthday that the rights they have as a parent will transfer to their child on the child's 18th birthday, unless the school district receives evidence that a court order or legal document proves the parent is the child's guardian or representative in educational matters.

May employees of special education cooperatives and Early Childhood Regional Training Centers providing services to students with disabilities have access to student record information without prior parental consent? Yes. Personnel employed or under contract to an educational cooperative who are working directly with students are considered authorized school personnel and may obtain access to the records of the students with whom they work.

May an individual (e. g., occupational, physical, or speech therapist) or employees of an agency with whom the district contracts obtain access to student record information without parental consent? Yes. Professionals or employees of agencies under contract to the district who work with a student may obtain access the same as school employees.

What kinds of information may be reviewed or inspected by parents? Parents may see the following kinds of information that a school district might keep:

- personal and family information;
- testing information;
- medical, psychological, and anecdotal reports;
- achievement and progress reports;
- records of conferences with a student or parent;
- copies of correspondence about the student; and
- other information that is helpful to the school in working with the student.

Is there any information the school does not have to disclose to parents? The school does not have to disclose:

- teacher or counselor personal notes;
- school security police records, or
- personnel records of school employees.

Are test protocols considered part of a student record? Test protocols include standardized test scoring forms; student answers, drawings, and verbal responses noted by the examiner; and an examiner's written observations of student behavior. When a protocol individually identifies the student, and is accessible to school staff or third parties, then it is considered part of the record.

Does a staff member have to accompany a parent who is inspecting a student's record? *No. School staff accompany a parent only if the parent requests someone to explain or interpret information in the student record.*

Must a school give the parent original records? A parent is entitled only to a copy of the student record.

What fees may a school charge for providing copies of student records to parents? Schools may charge a reasonable fee, such as ten cents per page. However, a district may not charge a fee if charging a fee would prevent the parent from exercising the right to inspect and review the record. The fee may not include the cost of locating and filing a record.

Does the school district have to keep a list of who accesses a student's school record? Yes. Each district keeps a record of access with each student's file, which includes the name of the party accessing the record, the

date the information was disclosed, and why the person was allowed to look at the record.

ACCESS OF THIRD PARTIES

What "directory" information may a school release to third parties without prior parental consent? A district may release the following information without prior consent: student name, address, telephone number, date and place of birth, major field of study, dates of attendance, class, participation in officially recognized activities and sports, degrees, honors, and awards, and post- high school plans. However, before the district releases this types of information it must give public notice that it releases these types of information and it must inform parents that they have the right to request that this information not be released without prior consent. This may be included in the district's annual public notice about confidentially.

May a school board's attorney have access to student records? Yes, if the board's attorney is acting as an authorized agent of the district in connection with the enforcement of federal and state education laws (e.g., in relation to legal proceedings such as a due process hearing).

May a district release student record information to the Department of Social Services (DSS) in cases of suspected child abuse? Yes. School personnel are required to report cases of suspected abuse to DSS and to disclose any information relevant to an investigation of suspected abuse or neglect.

What should school personnel do when student records are subpoenaed? School personnel must make a reasonable effort to notify the parent before complying with a lawfully issued subpoena or court order.

RELEASE OF RECORDS

What happens when a record is sent to another place? When information is sent to others, the school district must list the people and agencies who receive the information and tell why the record was requested. In the case of student transfer, parent consent is not necessary when releasing student records to another school or school district.

AMENDING THE STUDENT RECORD

May a parent change a student's educational record? When a parent believes that information in the child's record is inaccurate or misleading, the parent may ask the school district to change the record. The school district then follows its policy regarding timeline for responding and notifying the parent of its decision.

What can the parent do if the district decides not to change the record? The parent may request a record amendment hearing. If a parent requests such a hearing on the child's record, the district will hold one. The hearing is conducted by someone who does not have an interest in the outcome of the hearing.

If the decision is that the district does not have to change the record, then the parent has the right to put a statement in the record telling why s/he thinks the information is not right. This statement is kept as long as the disagreed upon part is kept. If that part of the record is shown or sent to anyone, the statement is also included.

DESTRUCTION OF STUDENT RECORDS

What happens when the school district no longer needs a student's record? The district notifies the parent when the student's record is no longer needed to provide educational services. The district may choose to destroy the records at this time, if they are no longer needed for administrative purposes. The parent may have a copy of the child's record before it is destroyed. However, the district may keep basic information about the student as long as it is needed. This information includes student's name, address, telephone number, attendance record, classes attended, grade level completed, and year completed.

Also, after a student's record is no longer needed to provide educational services to the student and if the parent requests, the school will destroy the student's record. But, the district must remind the parent that this information may be needed later for social security benefits or other reasons.

How long should a school district keep the records of students who have graduated or otherwise left the district's jurisdiction? Each district will have a policy/procedures about destruction of records. The district may maintain records indefinitely. They may be destroyed five years after they are no longer needed to provide an education to a student or to document compliance with state and federal program requirements. Parents or eligible students must be notified in writing before records are destroyed.

For additional information about student educational records, see your district's policies and procedures for implementing the Family Education Rights and Privacy Act. (Buckley Amendment), the Individuals with Disabilities Education Act confidentially requirements, 707 KAR 1:240, and KRS 160.700-990 (Kentucky Family Education Rights and Privacy Act).

Printed with federal funds.
Kentucky Department of Education
Exceptional Children Services
February 2004
jsr

CONFIDENTIALITY

and the Educational Records of Students with Disabilities



Questions and Answers for School Staff