

**SCHOOL  
CONFIDENTIALITY  
and  
SPECIAL EDUCATION SERVICES**

*Any school that receives federal or state education funds must comply with all privacy acts.*

*The laws that govern confidentiality:*

CFR – Code of Federal Regulations

TAC – Texas Administrative Code

TEC – Texas Education Code

Family Educational Rights and Privacy Act

FERPA – 20 U.S.C. § 1232g; 34 CFR **Part 99**

Individuals with Disabilities Educational Act

IDEA -34 CFR **Part 300**

# What is Confidentiality?

- Confidentiality is the act of 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.
- Personally identifiable data includes:
  - Child or family names and address
  - Student social security or student number
  - Descriptions that would easily identify the student

## **Students are Afforded the Right of Privacy**

The Family Education Rights and Privacy Act of 1974, commonly known as FERPA (34 CFR Part 99), is a federal law that protects the privacy of student education records. Students have specific, protected rights regarding the release of such records and FERPA requires that institutions adhere strictly to these guidelines. Therefore, it is imperative that the faculty and staff have a working knowledge of FERPA guidelines before releasing educational records.

## **Educational Records**

FERPA gives parents/students the following rights regarding educational records:

*The right to access educational records kept by the school;*

*The right to demand educational records be disclosed only with student consent (for*

*students who have attained the age of majority;*

*The right to **amend educational records**;*

*The right to file complaints against the school for disclosing educational records in*

*violation of FERPA.*

Parents and students have a right to know about the purpose, content, and location of information kept as a part of their educational records. They also have a right to expect that information in their educational records will be kept confidential unless they give permission to the school to disclose such information. Therefore, it is important to understand how educational records are defined under FERPA. Educational records are defined by FERPA as:

***Records, files, documents and other materials which contain information directly***

***related to a student and are maintained by an educational agency or institution, or by a person acting for such agency or institution.***

Such records may include:

- ▣ Written documents; (including student advising folders)
- ▣ Computer media;
- ▣ Microfilm and microfiche;
- ▣ Video or audio tapes or CDs;
- ▣ Film;
- ▣ Photographs.
- ▣ Any record that contains personally identifiable information that is directly related to the student is an educational record under FERPA. This information can also include records kept by the school in the form of student files, student system databases kept in storage devices such as servers, or recordings or broadcasts which may include student projects.

## Records not considered as educational records:

- Private notes of individual staff or faculty;  
(**NOT** kept in student advising folders)
- Campus police records;
- Medical records;
- Statistical data compilations that contain no mention of personally identifiable information about any specific student.
- Faculty notes, data compilation, and administrative records kept **exclusively** by the maker of the records that are **not accessible or revealed to anyone else** are not considered educational records and, therefore, fall outside of the FERPA disclosure guidelines. However, these records may be protected under other state or federal laws such as the doctor/patient privilege. It is recommended that you check to make sure that you fully comply with these disclosure guidelines before disseminating any of this

# Provision for Providing Copies of Student Records

- ▣ Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- ▣ Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.



## Hearings (re: Amending of Student Records Parent's Request)

- ▣ The participating agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child.
- ▣ If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform the parent in writing.
- ▣ If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the agency must inform the parent of the right to place in the records a statement commenting on the information setting forth reasons for disagreeing with the decision of the agency. Any explanation placed in the records must be maintained as part of the records as long as the records or contested portion of the records is maintained by the agency.
- ▣ If the records of the child or the contested portion are disclosed by the participating agency to any party, the explanation must also be disclosed to the party.
- ▣ The hearing must be conducted according to the procedures set forth in FERPA.

# Confidentiality under IDEA (34 CFR Part 300)

## **Sec. 300.610 Confidentiality.**

- ▣ The Secretary takes appropriate action, in accordance with section 444 of GEPA (general education provisions act), to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with Sec. Sec. 300.611 through 300.627.
- ▣ (Authority: 20 U.S.C. 1417(c) )

# Confidentiality under IDEA (34 CFR Part 300)

## **Sec. 300.611 Definitions.**

- ▣ As used in Sec. Sec. 300.611 through 300.625--
- ▣ (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- ▣ (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- ▣ (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.
- ▣ (Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c) )

# Confidentiality under IDEA (34 CFR Part 300)

## **Sec. 300.623 Safeguards.**

- ▣ (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- ▣ (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- ▣ (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.123 and 34 CFR part 99.
- ▣ (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
- ▣ (Authority: 20 U.S.C. 1412(a)(8); 1417(c) )

# Access Rights

- ❖ **A current listing of names and positions of employees who have access to student information is required. This list should be updated and maintained at the school level annually.**
- ❖ **This list will be posted for public inspection at the location of special education records.**

# Who can access student records?

- **Parents have the legal right to review** their child's record **unless** the school has received legal documentation that the court has terminated parental rights regarding educational decisions.
- **Foster parents have the right to review** and inspect the school records of a child in their physical custody.
- **Surrogate parents appointed by the school system**  
have the right to review and inspect the records of the assigned child.
- Contract employees (PT, OT, vision teacher, homebound teacher) 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.
- General education teachers and special education teachers who work directly with the student, licensed specialists in school psychology, diagnosticians, school administrators, and the director of special education have access to student records.

# Protected Information

The school does not have to disclose to parents

- **Teacher or counselor personal notes**
- **School security, police records**
- **Personnel records of school employees**

# Obtaining Parental Consent

## Release of Information

After written permission (release of information authorization) is granted from the parent, a representative (student's advocate, medical, mental health, social security etc.) may review the child's educational records.



# “Record of Access to Student Records” Form(s)

- A record of access form is placed in each student’s special education records and signed by all who review the records.
- The name of the party, date, and purpose of the review is recorded.
- (Authority: 20 U.S.C. 1412(a)(8); 1417(c) )

# “Access to IEP Documentation” form

- The case manager is responsible for informing all general education teachers and related service personnel (PT, OT, SLI) of their responsibilities regarding the education of the identified student.

- Records on More than One Student
  - If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
  - (Authority: 20 U.S.C. 1412(a)(8); 1417(c) )

- Records on More than One Student
  - Warning: During the disciplinary process this becomes very critical. Do not discuss other student's actions or consequences.
  - Information on other students that cannot be isolated will require that a designee from the school district verbally inform the parent of what is written in the form.

# Safeguards

## Section 300.623

- ▣ (a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- ▣ (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- ▣ (c) **All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.123 and 34 CFR part 99.**
- ▣ (d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.
- ▣ (Authority: 20 U.S.C. 1412(a)(8); 1417(c) )

## Retention and Destruction of Special Education Student Records/Information

- The public agency must retain a copy of the education records containing personally identifiable information for a period of five (5) years after cessation of services.
- At the end of the five-year retention period, the public agency must inform the parents when personally identifiable information collected, maintained, or used is no longer needed.
- Information must be destroyed in a manner whereby confidentiality of the information is maintained.
- Please refer to:  
<https://www.tsl.state.tx.us/slr/recordspubs/sd.html>

# Summary

- **All students have a right to their privacy.**
- **As professionals it is our responsibility to protect that right.**
- **Treat all students as if they are your own.**
- **Avoid “ball park talk” and community conversations – *It’s the law!***