ACADEMY OF EDUCATIONAL EXCELLENCE
SCHOOL POLICY ON CONFIDENTIALITY AND DIRECTORY RELEASE

2020-2021

SCHOOL POLICY ON CONFIDENTIALITY AND DIRECTORY RELEASE

Reviewed and Approved by the Governing Authority: 02-17--2021

Confidentiality

(A) Each school district, county board developmental disabilities (county board of DD), and other educational agency shall adopt and implement written policies and procedures, approved by the Ohio department of education, office for exceptional children, that afford parents the opportunity to examine records in accordance with the procedures of 34 C.F.R. 300.610 to 300.628 (October 13, 2006) and ensure protection of the confidentiality of any personally identifiable information in regard to the collection, use, storage, disclosure, retention, and destruction of that information.

(B) Definitions

The following terms are defined as they are used in this rule:

(1) "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(2) "Education records" means the type of records covered under the definition of education records in 34 C.F.R. Part 99 (January 14, 2013) (the regulations implementing the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA)).

(3) "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 Individuals with Disabilities Education Act, as amended and specified in the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA).

(C) Notice to parents

(1) The school district, county board of DD, and other educational agency must give notice that is adequate to fully inform parents about the requirements to ensure that the school district, county board of DD, and other educational agency comply with this rule related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA. The notice shall include:

(a) A description of the extent that the notice is given in the native languages of the various population groups in the school district, county, or other area served;

(b) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(c) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(d) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. Part 99 (January 14, 2013).

(2) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the school district, county board of DD, or other area served of the activity.

(D) Access rights

(1) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this rule. The agency must comply with a request without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any hearing pursuant to rule 3301-51-05 of the Administrative Code or resolution session pursuant to rule 3301-51-05 of the Administrative Code, and in no case more than forty-five days after the request has been made.

(2) The right to inspect and review education records under this rule includes:

(a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent inspect and review the records.

(3) An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(E) Record of access

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(F) Records on more than one child

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.

(G) List of types and locations of information

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(H) Fees

(1) Each participating agency may charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(2) A participating agency shall not charge a fee to search for or to retrieve information under this rule.

(I) Amendment of records at parent's request

(1) A parent who believes that information in the education records collected, maintained, or used under this rule is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(2) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under this rule.

(J) Opportunity for a hearing

The 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.

(K) Result of hearing

(1) If, as a result of the hearing, the 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 so inform the parent in writing.

(2) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(3) Any explanation placed in the records of the child under this rule must:

(a) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(b) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(L) Hearing procedures

A hearing held under this rule must be conducted according to the procedures in 34 C.F.R. 99.22 (January 14, 2013). The records hearing shall be held within a reasonable period of time after the school district, county board of DD or other educational agency has received the request.

(1) The parents shall be given notice of the date, time, and place reasonably in advance of the hearing.

(2) The records hearing shall be conducted by any individual, including an official of the school district, county board of DD or other educational agency who does not have a direct interest in the outcome of the hearing.

(3) The parents shall be afforded a full and fair opportunity to present evidence relevant to the content of the child's education records and the information the parent believes is inaccurate or misleading or violates the privacy or other rights of the child.

(4) The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including an attorney.

(5) The school district, county board of DD or other educational agency shall make its decision in writing within a reasonable period of time after the hearing.

(6) The decision of the school district, county board of DD or other educational agency shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(M) Consent

(1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with this rule, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99 (January 14, 2013).

The parent's consent must be in writing, signed, and dated and must:

(a) Specify the records to be disclosed;

(b) State the purpose of the disclosure; and

(c) Identify the party or class of parties to whom the disclosure may be made.

(2) Except as provided in paragraphs (M)(2)(a) and (M)(2)(b) of this rule, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this rule and 34 C.F.R. Part 300 (October 13, 2006).

(a) Parental consent, or the consent of an eligible child who has reached the age of majority under Ohio law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with rule 3301-51-07 of the Administrative Code.

(b) If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent's residence.

(N) Safeguards

(1) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures of the school district, county board of DD, and other educational agency under 34 C.F.R. Part 99 (January 14, 2013).

(4) 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.

(O) Destruction of information

(1) The public agency must inform parents when personally identifiable information collected, maintained, or used under this rule is no longer needed to provide educational services to the child.

(2) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

(P) Children's rights

(1) The school district, county board of DD, and other educational agency must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents,

taking into consideration the age of the child and type or severity of disability.

(2) Under the regulations for FERPA in 34 C.F.R. 99.5(a) (January 14, 2013), the rights of parents regarding education records are transferred to the student at age eighteen.

(3) If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority, consistent with rule 3301-51-05 of the Administrative Code, the rights regarding education records under this rule must also be transferred to the student. However, the school district must provide any notice required under rule 3301-51-05 of the Administrative Code to the student and the parents.

(Q) Disciplinary information

(1) A school district, county board of DD, and other educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(2) When a child transfers from one school, county board of DD, or other educational agency to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

(3) The statement required in paragraphs (Q)(1) and (Q)(2) of this rule:

(a) Shall specify the circumstances that resulted in the disciplinary action and provide a description of the disciplinary action taken if the disciplinary action was taken because the child:

(i) Carried a weapon to or possessed a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district, county board of DD, and other educational agency;

(ii) Knowingly possessed or used illegal drugs, or sold or solicited the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district, county board of DD, and other educational agency; or

(iii) Inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district, county board of DD, and other educational agency.

(b) Shall include any information that is relevant to the safety of the child and other individuals involved with the child; and

(c) May include a description of any other behavior engaged in by the child that required disciplinary action, and a description of the disciplinary action taken.

(R) Referral to and action by law enforcement and judicial authorities

(1) Rule of construction

Nothing in this rule prohibits a school district, county board of DD, and other educational agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

(2) Transmittal of records

(a) A school district, county board of DD, and other educational agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(b) A school district, county board of DD, and other educational agency reporting a crime under this rule shall transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA).