



# NONREGULATORY GUIDANCE: CONFIDENTIALITY OF STUDENT INFORMATION

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The Office of the State Superintendent of Education (OSSE), Division of Specialized Education (DSE), issued the “Confidentiality of Student Information Policy” on January 27, 2014. The Policy is effective as of March 3, 2014. All local education agencies (LEAs) and applicable public agencies are responsible for ensuring the confidentiality of personally identifiable information in the education records of students with disabilities. The purpose of this guidance document is to provide additional clarification to assist LEAs in implementing the Policy in a manner consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 *et seq.*; the Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. §1232g; and regulations implementing FERPA at 34 C.F.R. Part 99.

## FREQUENTLY ASKED QUESTIONS (FAQs)

### **I. Education Records and Personally Identifiable Information**

#### **1. What is the Family Educational Rights and Privacy Act (FERPA)?**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the rights of parents and students with respect to the student’s education records. FERPA applies to all schools that receive federal funds under any program administered by the United States Department of Education. FERPA gives certain rights to parents with respect to their child’s education records, such as the right to non-disclosure of personally identifiable information within their child’s education records unless the parent consents, the right to inspect and review their child’s education records, and the right to seek to amend their child’s education records.

#### **2. What are *education records*?**

*Education records* are records “that are directly related to a student and maintained by an education agency or institution or party acting for the agency or institution.”<sup>1</sup> The regulations do not specify a required way of maintaining records; possible formats include handwritten records, computer media, video or audiotape recordings, microfilm, film, or print.

#### **3. What information is considered *personally identifiable information*?**

*Personally identifiable information* is any information that can be used to identify a specific student. This can include a student’s name, social security number, address of the student or student’s family, or a list of personal characteristics that would allow a reasonable person who does not have personal knowledge of the relevant circumstances to identify the student.

#### **4. How does FERPA relate to the Individuals with Disabilities Education Act (IDEA)?**

In general, FERPA and the IDEA work collectively with one another. FERPA provisions apply to all students receiving special education services and related services under the IDEA, and the IDEA and its implementing regulations provide additional privacy protections, above FERPA, for students with disabilities.

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<sup>1</sup> 34 C.F.R. §99.3



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## II. Consent for Disclosure of Personally Identifiable Information

### 1. **When is parental consent required for the disclosure of a student's personally identifiable information?**

Generally, LEAs and other applicable public agencies must obtain a parent's written consent prior to disclosing personally identifiable information, unless the information is contained in the student's education records and the disclosure is authorized without parental consent under FERPA regulations. Parental consent may not be required, however, in certain circumstances involving disclosure of personally identifiable information by officials of participating agencies.

### 2. **Does an LEA need to obtain parental consent before requesting and obtaining an educational record, such as a student's Individualized Education Program (IEP), from a school or LEA that the student previously attended?**

No. FERPA allows an educational agency or institution to disclose those records, without parental consent, to officials of another school or school system where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.<sup>2</sup> An LEA that forwards education records to other agencies or institutions related to a student's enrollment without obtaining parental consent shall: make a reasonable attempt to notify the parent of the disclosure unless the disclosure is initiated by the parent or notice of records transfer is included in the LEA's annual notice to parents;<sup>3</sup> give the parent or eligible student, upon request, a copy of the record that was disclosed;<sup>4</sup> and give the parent or eligible student, upon request, an opportunity for a hearing.<sup>5</sup>

### 3. **Under what circumstances is parental consent required before personally identifiable information is released to officials of participating agencies?**

Parental consent is required for a release of personally identifiable information to participating agencies providing or paying for transition services, even if the disclosure is for the purpose of meeting requirements of IDEA. Additionally, if a student is attending or going to attend a private school that is not located in the District of Columbia, parental consent is required before any personally identifiable information about a student is released between officials of the LEA or applicable public agency where the private school is located and the District of Columbia Public Schools (DCPS).

### 4. **What is required in order to satisfy the written consent requirements in FERPA?**

Written consent must (1) specify the records to be disclosed; (2) state the purpose of the disclosure; and (3) identify the party or class of parties to whom the disclosure may be made.<sup>6</sup> In addition, written consent can be made in electronic format.

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<sup>2</sup> 34 C.F.R. §99.31(a)(2)

<sup>3</sup> 34 C.F.R. §99.34(a)(1)(ii)

<sup>4</sup> 34 C.F.R. §99.34(a)(2)

<sup>5</sup> 34 C.F.R. §99.34(a)(3); Under 34 C.F.R. §99.21, an educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the educational records is inaccurate, misleading, or in violation of the privacy rights of the student.

<sup>6</sup> 34 C.F.R. §99.30(b)



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## III. Procedures Governing Access to Education Records

### 1. **What kind of education records must be accessible for parents to inspect and review?**

Parents must be allowed to inspect and review any education records relating to the parent's child that are collected, maintained, or used by the LEA or applicable public agency under Part B of the IDEA. In addition, each participating agency must provide parents, upon request, a list of the types of education records collected, maintained, or used by the agency.

### 2. **What if a parent wishes to review an education record that includes information on more than one child?**

If an education record includes information on more than one child, the parent may only inspect, review, and be informed of the information relating to their child's information.

### 3. **When may an LEA or applicable public agency question the authority of a parent to inspect or review education records?**

An LEA or applicable public agency may question the authority of a parent to inspect or review education records when the LEA or applicable public agency has been advised that the parent does not have authority under District of Columbia law governing such matters as guardianship, separation, and/or divorce, and under circumstances in which educational rights have already transferred to the adult student.

### 4. **What specific rights does a parent have when he or she is inspecting or reviewing records?**

When a parent is reviewing or inspecting records, he or she has (1) the right to a response from the LEA or applicable public agency to the parent's reasonable request for explanations and interpretations of the records; (2) the right to obtain copies at a no cost;<sup>7</sup> and (3) the right to have their legal representative inspect and review the records.<sup>8</sup>

### 5. **How quickly must an LEA or applicable public agency comply with a parent's request to inspect or review records?**

An LEA or applicable public agency must comply with a parent's request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), and in no case more than forty-five (45) calendar days after the request was made by the parent.<sup>9</sup>

### 6. **Can an LEA or applicable public agency charge a fee in association with the inspection or review of records by parents?**

No. Under District of Columbia regulations, the parent of a child with a disability shall be given the opportunity to inspect, review, and to copy at no cost to the parent, all student records relating to the identification, evaluation, and educational placement, and the provision of FAPE.<sup>10</sup> LEAs and applicable public agencies may not charge a fee to search for or to retrieve information under Part B of IDEA.<sup>11</sup>

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<sup>7</sup> 5-E DCMR §3021.1

<sup>8</sup> 34 C.F.R. §300.613(b)

<sup>9</sup> 34 C.F.R. §300.613(a)

<sup>10</sup> 5-E DCMR §3021.1

<sup>11</sup> 34 C.F.R. §300.617



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### **7. Is an LEA or applicable public agency required to keep a record of who has requested and obtained access to an education record?**

Yes. An LEA or applicable public agency must keep a record of each party who has requested and obtained access to an education record except for access by parents and authorized employees of the participating agency.

### **8. What specific information must a record of access include?**

A record of access must include the name of the party the record was accessed by, the date access was given, and the purpose for which the party is authorized to access the records.

## **IV. Amendments to Records and Safeguards**

### **1. Under what circumstances can a parent challenge the accuracy of a student's education record?**

A parent can challenge the accuracy of a student's record if the parent believes that the information collected, maintained, or used under Part B is inaccurate, misleading, or violates the privacy or other rights of the child.

### **2. Can a student's education record be amended at a parent's request?**

Yes. A student's record can be amended at a parent's request if the LEA or applicable public agency decides, after reviewing the record, that it is appropriate to change the information.

### **3. Can an LEA or applicable public agency determine that it is not appropriate to amend the information in a student's education record in accordance with a parent's request?**

Yes. An LEA or public agency can determine that it is not appropriate to amend the information in a student's education record in accordance with a parent's request if the agency makes the decision within a reasonable period of time. If the LEA or applicable public agency decides not to change the information the LEA must inform the parent of the decision and advise the parent of the right to a hearing.

### **4. What does it mean for a parent to be provided with an opportunity for a hearing?**

A hearing provides the parent with an opportunity to challenge information in his or her child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

### **5. What are the requirements for a hearing?**

A hearing must meet the following requirements:

- (1) The LEA or public agency must hold the hearing in a reasonable amount of time after it has received the hearing request from the parent;
- (2) The parent must be given notice of the date, time, and place of the hearing in a reasonable time in advance of the hearing;
- (3) The hearing may be conducted by an individual, including an official of the LEA or applicable public agency, who does not have a direct interest in the outcome;
- (4) The LEA or applicable public agency must give the parent a full and fair opportunity to present evidence relevant to the issues raised, and the parent may be assisted by one or more individuals, including an attorney, at the parent's own expense;



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- (5) The LEA or applicable public agency must make its decision in writing in a reasonable amount of time after the hearing; and
- (6) The written decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and reasons for the decision.<sup>12</sup>

**6. What are the parent's rights if, as a result of the hearing, the LEA or applicable public agency determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student?**

If as a result of the hearing, the LEA or applicable public agency determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the LEA or applicable public agency must inform the parent of their right to place in the records a statement commenting on the information or providing any reasons the parent disagrees with the LEA or applicable public agency's decision not to amend the record. Such a statement must be maintained by the LEA or applicable public agency as part of the child's records as long as the record or contested portion is maintained by the LEA, and the statement must be disclosed to a party if the LEA or applicable public agency discloses the records of the child.

### **V. Safeguards and Destruction of Information**

**1. How can a parent locate the person at an LEA or applicable public agency who is responsible for ensuring the confidentiality of personally identifiable information?**

LEAs and applicable public agencies are required to protect the confidentiality of personally identifiable information by assigning one official at each agency to assume responsibility for personally identifiable information.<sup>13</sup> A list of the names and positions of employees who may have had access to personally identifiable information must be maintained for public inspection.<sup>14</sup> In addition, all persons responsible for collecting or utilizing personally identifiable information must be trained or receive instruction from their public agency regarding the District of Columbia's policies surrounding confidentiality of information under FERPA and Part B of the IDEA.<sup>15</sup>

**2. Under what circumstances is it permissible for an LEA or applicable public agency to destroy a student's education record?**

An LEA or applicable public agency may destroy a student's education record after an official from the public agency informs the student's parent that the personally identifiable information collected, maintained, or used under Part B is no longer needed to provide education services to the student.<sup>16</sup> Under these circumstances, the information can be destroyed at the parent's request.

**3. What parts of an education record may be kept on a permanent basis?**

A permanent record of a child's name, address, phone number, grades, attendance record, classes attended, grade level completed, and exit year may be kept on a permanent basis.<sup>17</sup>

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<sup>12</sup> 34 C.F.R. §99.22

<sup>13</sup> 34 C.F.R. §300.623(b)

<sup>14</sup> 34 C.F.R. §300.623(d)

<sup>15</sup> 34 C.F.R. §300.623(c)

<sup>16</sup> 34 C.F.R. §300.624(a)

<sup>17</sup> 34 C.F.R. §300.624(b)



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## **VI. Transfer of Rights Regarding Education Records**

### **1. At what age do educational rights transfer to a student under the local law?**

Educational rights, including all rights afforded under FERPA, transfer from the parent to the student when the student reaches the age of majority, unless the student has been determined to be incompetent under District law.<sup>18</sup>

### **2. May a parent review or inspect their child's education records if the parental rights have already transferred to the student?**

No. A parent may not review or inspect their child's education records if parental rights have transferred unless the parent receives consent from the adult student.

## **ADDITIONAL GUIDANCE**

For additional guidance, please reference the "Confidentiality of Student Information Policy" available online at the OSSE website. Please direct any questions regarding the content of this document to OSSE, Division of Specialized Education at [OSSE.DSEPolicy@dc.gov](mailto:OSSE.DSEPolicy@dc.gov). OSSE has the authority as the state educational agency (SEA) to issue additional guidance regarding LEA policy and related practice.

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<sup>18</sup> 5-E DCMR §3023