




January 27, 2014

(X) ACTION REQUIRED

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TO: Local Educational Agencies
Public Agencies (providing educational services to children with disabilities)

CC: Public Charter School Board
Deputy Mayor of Education

FROM: Jesús Aguirre, Acting State Superintendent of Education 

RE: Confidentiality of Student Information Policy

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INTRODUCTION

The purpose of this Policy is to establish state-level procedures governing the confidentiality of personally identifiable information in the education records of students with disabilities. It is the expectation of the Office of the State Superintendent of Education (OSSE) that all local educational agencies (LEAs) and applicable public agencies adhere to this Policy with respect to information collected, used, or maintained under Part B of the Individuals with Disabilities Education Act (IDEA).¹ This Policy is effective as of March 3, 2014.

MONITORING AND COMPLIANCE

The U.S. Department of Education's Office of Special Education Programs (OSEP) requires that every state education agency (SEA) monitor local educational agencies (LEAs) to ensure compliance with Part B of the IDEA. A finding of LEA noncompliance by the Office of the State Superintendent of Education (OSSE) will result in corrective actions for each area of noncompliance and may result in the requirement to submit an improvement plan. OSSE may also recommend or require training and technical assistance for LEA staff when crafting corrective actions. All items of noncompliance shall, by federal law, be corrected within one year of the finding; sustained noncompliance by an LEA may result in sanctions that include potential withholding of Part B grant funding.² Consistent with the IDEA and its regulatory framework, all LEAs shall comply with monitoring requirements established annually by OSSE, which include the collection and submission of both quantitative and qualitative data that support monitoring for regulatory compliance and programmatic quality. Additionally, a subset of LEAs will be selected for OSSE's annual monitoring process. OSSE, in its role as SEA, ensures access to a free appropriate public education (FAPE) by meeting with other public agencies providing education services to children with disabilities to review and discuss the delivery of special education services. If any noncompliance is identified during OSSE's review, the public agency will be asked to take corrective action, as appropriate.

¹ 34 C.F.R. §300.123

² 34 C.F.R. §300.600(a)(3)





RULES REGARDING THE DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

LEAs and applicable public agencies must ensure the confidentiality of personally identifiable information, including but not limited to personally identifiable information contained in education records, in accordance with the Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. 1232g and regulations implementing FERPA at 34 CFR Part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1417(c) and regulations at 34 CFR §§300.610 through 300.627.³

Personally identifiable information refers to any information that would enable the identification of a student. This information includes but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; the student's social security number, student number, biometric record or other personal identifier; other indirect identifiers such as the student's date of birth, place of birth, or mother's maiden name; other information that alone or in combination is linked or linkable to a specific student that would allow someone to identify the student; and information requested by a person that the LEA or applicable public agency believes knows the identity of the student.⁴

Consent for the Disclosure of Personally Identifiable Information. Generally, LEAs and other applicable agencies must obtain the parent's written consent before disclosing personally identifiable information, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA.⁵ Personally identifiable information, however, may be disclosed without parental consent to officials of *participating agencies* where the disclosure is for the purpose of meeting a requirement of IDEA except in the following two circumstances:

- A parent's consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.⁶
- If a student is attending or going to attend a private school that is not located in the District of Columbia, the LEA or applicable public agency must obtain the parent's consent before any personally identifiable information about the student is released between officials in the LEA or applicable public agency where the private school is located and the District of Columbia Public Schools (DCPS).⁷

The term *participating agencies* means any other public agency or educational institution that collects, maintains, or uses personally identifiable information under Part B of the IDEA or from which such information is obtained.⁸ When consent is required, the written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made.⁹

PROCEDURES GOVERNING ACCESS TO EDUCATION RECORDS

Definition of Education Records. Generally, the term *education records* refers to those records that are directly related to a student and maintained by an educational or applicable public agency or institution or by a party acting on behalf of the agency or institution.¹⁰ The term education record does not include the following: (i) records in the sole possession of the maker that are used only as a personal memory and are not accessible to

³ 5-E DCMR §3021.2

⁴ 34 C.F.R. §99.3

⁵ 34 C.F.R. 300.622(a); 34 C.F.R. 99.31

⁶ 34 C.F.R. §300.622(b)(2)

⁷ 34 C.F.R. §300.622(b)(3)

⁸ 34 C.F.R. §300.611(c)

⁹ 34 C.F.R. §99.30(b)

¹⁰ 34 C.F.R. §99.3



others; (ii) records of the law enforcement unit of the LEA or applicable public agency, subject to the provisions of 34 C.F.R. §99.8; (iii) records relating exclusively to an individual who is employed by the LEA or applicable public agency and made and maintained in the normal course of business; (iv) records of a student who is 18 years of age or older and made or maintained by a physician, psychiatrist, psychologist, or other recognized professional and used only in connection with the treatment of the student and disclosed only to individuals providing the treatment; (v) records created or received by an LEA or applicable public agency after the student no longer attends the LEA or applicable public agency that are not related to the prior student's attendance; and (vi) grades or peer-graded papers before they are collected and recorded by a teacher.¹¹

Parental Right to Inspect and Review. LEAs and applicable public agencies must permit parents 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.¹² LEAs and applicable public agencies must comply with a parent's request to inspect and review any education records on the parent's child without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after the request is made.¹³ A parent's right to inspect their child's education records pertains to information relating only to the parent's child. If any education record includes information on more than one child, the parent may only inspect, review, and be informed of the information relating to the parent's child.¹⁴ LEAs and applicable public agencies may presume that a parent has authority to inspect and review records relating to their child unless the LEA or applicable public agency has been advised that the parent does not have authority under applicable District of Columbia law governing such matters as guardianship, separation and/or divorce.

The parent's right to inspect and review education records includes:

- The right to a response from the LEA or applicable public agency to a parent's reasonable requests for explanations and interpretations of the records;
- The right to inspect and review their child's education records, including the right to obtain copies of the information at a reasonable cost as described below; and
- The right to have the parent's legal representative inspect and review the records.

A record of each party who has requested and obtained access to education records must be kept by the LEA or applicable public agency (except access by parents and authorized employees of the participating agency). The record of access must include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.¹⁵

Lists of Types and Location of Information. Upon request, each participating agency must provide a parent with a list of the types and locations of education records collected, maintained, or used by the agency.¹⁶

¹¹ See 34 C.F.R. §99.3 for the complete definition of *education record* and records that are excluded from the definition.

¹² 34 C.F.R. §300.613(a); 5-E DCMR §3021.1

¹³ 34 C.F.R. §300.613(a)

¹⁴ 34 C.F.R. §300.615

¹⁵ 34 C.F.R. §300.614

¹⁶ 34 C.F.R. §300.616



Fees. 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.¹⁷ LEAs and applicable public agencies may not charge a fee to search for or to retrieve information under Part B of the IDEA.¹⁸

AMENDMENT OF EDUCATIONAL RECORDS AT PARENTS' REQUEST AND RELATED HEARING RIGHTS

If a parent believes that information in the education records collected, maintained, or used under Part B of the IDEA regarding the parent's child is inaccurate, misleading, or violates the privacy or other rights of the parent's child, the parent has a right to request that the LEA or applicable public agency change the information.¹⁹ The LEA or applicable public agency must decide whether to change the information in accordance with the parent's request within a reasonable period of time of receipt of the parent's request.²⁰ If the LEA or applicable public agency determines that it will not change the information in accordance with the parent's request, the LEA must inform the parent of the refusal and advise the parent of the right to a hearing.²¹

Opportunity for a Hearing. LEAs and applicable public agencies must, upon request, provide a parent with an opportunity to challenge information in education records regarding their child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of their child.²²

Hearing Procedures. A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA. The hearing must meet, at a minimum, the following requirements:

- The LEA or applicable public agency must hold the hearing within a reasonable time after it has received the hearing request from the parent;
- The LEA or applicable public agency must give the parent notice of the date, time, and place, reasonably in advance of the hearing;
- The hearing may be conducted by any individual, including an official of the LEA or applicable public agency, who does not have a direct interest in the outcome of the hearing;
- The LEA or applicable public agency must give the parent a full and fair opportunity to present evidence relevant to the issues raised. The parent may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including any attorney;
- The LEA or applicable public agency must make its decision in writing within a reasonable period of time after the hearing; and
- The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.²³

Result of Hearing. If, as a result of the hearing, the LEA or applicable public agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the

¹⁷ 5-E DCMR §3021.1

¹⁸ 34 C.F.R. §300.617

¹⁹ 34 C.F.R. §300.618(a)

²⁰ 34 C.F.R. §300.618(b)

²¹ 34 C.F.R. §300.618(c)

²² 34 C.F.R. §300.619

²³ 34 C.F.R. §99.22



information accordingly and inform the parent in writing.²⁴ If, as a result of the hearing, the LEA or applicable public agency decides 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 decision of the LEA or applicable public agency.²⁵ Such a statement must:

- Be maintained by the LEA or applicable public agency as part of the records of the child as long as the record or contested portion is maintained by the LEA or applicable public agency; and
- If the LEA or applicable public agency discloses the records of the child or the challenged information to any party, the parent's statement must also be disclosed to that party.²⁶

SAFEGUARDS AND DESTRUCTION OF INFORMATION

LEAs and applicable public agencies must protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.²⁷ One official at each LEA and applicable public agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.²⁸ In addition, all persons collecting or utilizing personally identifiable information must receive training or instruction from the LEA or applicable public agency regarding the District of Columbia's policies and procedures regarding confidentiality under Part B of the IDEA and FERPA.²⁹ LEAs and applicable public agencies must maintain, for public inspection, a current listing of the names and positions of its employees who may have access to personally identifiable information.³⁰

LEAs and applicable public agencies must inform a parent when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to their child. Under these circumstances, the information must be destroyed at the request of the parent.³¹ Destruction means the physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.³² However, a permanent record of a child's name, address, and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.³³

TRANSFER OF RIGHTS REGARDING EDUCATION RECORDS

If the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of majority under District of Columbia (the age of majority in the District of Columbia is 18), the rights regarding education records as specified in the IDEA, FERPA, and in this Policy must also transfer to the student.³⁴ In the District of Columbia, parental rights transfer to a student at the age of 18 unless the student has been determined to be incompetent under District law.³⁵

²⁴ 34 C.F.R. §300.620(a)

²⁵ 34 C.F.R. §300.620(b)

²⁶ 34 C.F.R. §300.620(c)

²⁷ 34 C.F.R. §300.623(a)

²⁸ 34 C.F.R. §300.623(b)

²⁹ 34 C.F.R. §300.623(c)

³⁰ 34 C.F.R. §300.623(d)

³¹ 34 C.F.R. §300.624

³² 34 C.F.R. §300.611(a)

³³ 34 C.F.R. §300.624(b)

³⁴ 34 C.F.R. §300.625(b)

³⁵ 5-E DCMR §3023

**ADDITIONAL GUIDANCE**

This memorandum supersedes all previous policy, memoranda, and guidance issued by the state educational agency (SEA) regarding this topic. Please direct any questions regarding the content of this document to OSSE, Division of Specialized Education at OSSE.DSEPolicy@dc.gov.

