

ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
16.00 CONFIDENTIALITY
July 2008

16.01 ACCESS RIGHTS

16.01.1 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 Part B of the IDEA and these regulations. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to 34 CFR 300.507 and 300.530 - 300.532 or §10.00 of these regulations, or resolution session pursuant to 34 CFR 300.510, and in no case more than 45 days after the request has been made.

16.01.2 The right to inspect and review education records under this section includes-

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

16.01.2.2 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

16.01.2.3 The right to have a representative of the parent inspect and review the records.

16.01.3 An agency may presume that the parent has authority to inspect and review records relating to his or her 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.

16.02 EDUCATION RECORDS

16.02.1 Education records are broadly defined as -

16.02.1.1 Those records, files, documents, and other materials, which-

- A. Contain information directly related to the student; and
- B. Are maintained by an educational agency or institution or by a person acting for such agency or institution.

16.02.2 Educational records are 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 (FERPA)]. According to interpretation provided by the Family Policy Compliance Office (FPCO) which administers FERPA -

16.02.2.1 Any record, such as a permanent record, report card, a student’s work, or a teacher’s grade book, is an “education record” under FERPA if it is maintained by a school and directly related to the student.

16.02.2.2 A psychological evaluation or assessment, as well as test protocol(s), would be education records under FERPA if they contain information that is “directly related” to the student.

16.02.2.3 Any test protocols or test question booklets which do not contain information directly related to the student are not education records under FERPA.

16.02.3 Records maintained by an agency or institution that are not “directly related” to the student are not “educational records” under FERPA, and parents do not have a right to inspect and review such records under FERPA.

16.02.4 FERPA requires that an educational agency or institution respond to reasonable requests for explanations and interpretations of education records, such as test answer sheets not accompanied by the question booklets.

16.02.4.1 A school district should, upon request -

- A. Provide an opportunity for a parent to review the education records; and
- B. Provide any explanations and interpretations necessary, which may include -

1. The interpretation of standardized test scores, such as reviewing the test questions with the parent.

16.03 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 and these regulations (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.

16.04 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.

16.05 LIST OF TYPES AND LOCATION 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.

16.06 FEES

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

16.06.2 A participating agency may not charge a fee to search for or to retrieve information under this part.

16.07 AMENDMENT OF RECORDS AT PARENT'S REQUEST

16.07.1 A parent who believes that information in the education records collected, maintained, or used under this part 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.

16.07.2 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.

16.07.3 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 34 CFR 300.619 (Opportunity for a hearing) and § 16.08 of these regulations.

16.08 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.

16.09 RESULT OF HEARING

16.09.1 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.

16.09.2 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 right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

16.09.3 Any explanation placed in the records of the child under this section must -

16.09.3.1 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

16.09.3.2 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.

16.10 HEARING PROCEDURES

A hearing held under § 16.08 of these regulations and 34 CFR 300.619 must be conducted according to the procedures under 34 CFR part 99.22, the Family Educational Rights and Privacy Act (FERPA).

16.11 CONSENT

16.11.1 Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with §§16.11.1.2 and 16.11.1.3, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

16.11.1.1

Except as provided in §§16.11.1.2 and 16.11.1.3, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

16.11.1.2

Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 34 CFR 300.321(b)(3).

16.11.1.3

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

16.12 SAFEGUARDS

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

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

16.12.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures pertaining to confidentiality of personally

identifiable information under 34 CFR 300.123 and 34 CFR part 99.

- 16.12.4 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.

16.13 DESTRUCTION OF INFORMATION

- 16.13.1 The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
- 16.13.2 The information must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

16.14 CHILDREN'S RIGHTS

- 16.14.1 Under the regulations of the Family Educational Rights and Privacy Act (FERPA) in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.
- 16.14.2 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 34 CFR 300.520 and §9.07 of these regulations (transfer of parental rights at age of majority), the rights regarding educational records in 34 CFR 300.613 - 300.624 and this section must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the IDEA to the student and the parents.

16.15 DISCIPLINARY INFORMATION

- 16.15.1 Each public agency must 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 in accordance with State policy.

- 16.15.2 The statement may include a description of any behavior engaged in by the child with a disability that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child, to the extent that such information is required to be included in the records of nondisabled children.
- 16.15.3 To the extent that State policy requires inclusion of disciplinary information in the records of a child, should the child transfer from one school to another, the transmission of any of the child's records must include both the child's current individualized education program (IEP) and any statement of current or previous disciplinary action that has been taken against the child.