

Title 6. Education

Chapter I. Division of Elementary and Secondary Education

Subchapter E. Special Education

Part 130. Procedural Requirements and Program Standards

Subpart 16. Confidentiality

6 CAR § 130-1601. Access rights.

(a)(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 Individuals with Disabilities Education Act and this part.

(2) The agency must comply with a request:

(A) Without unnecessary delay;

(B) Before any:

(i) Meeting regarding an IEP;

(ii) Hearing pursuant to 34 C.F.R. §§ 300.507 and 300.530 – 300.532

or 6 CAR § 130-1001 et seq.; or

(iii) Resolution session pursuant to 34 C.F.R. § 300.510; and

(C) In no case more than forty-five (45) days after the request has been made.

(b) The right to inspect and review education records under this section includes:

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

(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

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

(c) 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:

- (1) Guardianship;
- (2) Separation; and
- (3) Divorce.

6 CAR § 130-1602. Education records.

(a) Education records are broadly defined as those records, files, documents, and other materials that:

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

(b)(1) Educational records are the type of records covered under the definition of "education records" in 34 C.F.R. pt. 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g).

(2) According to interpretation provided by the Family Policy Compliance Office, which administers the Family Educational Rights and Privacy Act of 1974:

(A) Any record, such as a permanent record, report card, a student's work, or a teacher's grade book, is an "education record" under the Family Educational Rights and Privacy Act of 1974 if it is maintained by a school and directly related to the student;

(B) A psychological evaluation or assessment, as well as test protocols, would be education records under the Family Educational Rights and Privacy Act of 1974 if they contain information that is directly related to the student; and

(C) Any test protocols or test question booklets that do not contain information directly related to the student are not education records under the Family Educational Rights and Privacy Act of 1974.

(c) Records maintained by an agency or institution that are not directly related to the student are not "educational records" under the Family Educational Rights and Privacy Act of 1974, and parents do not have a right to inspect and review such records under the Family Educational Rights and Privacy Act of 1974.

(d)(1) Family Educational Rights and Privacy Act of 1974 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.

(2) A school district should, upon request, provide:

(A) An opportunity for a parent to review the education records; and

(B) Any explanations and interpretations necessary, which may include the interpretation of standardized test scores, such as reviewing the test questions with the parent.

6 CAR § 130-1603. 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 Individuals with Disabilities Education Act and this part (except access by parents and authorized employees of the participating agency), including the:

(1) Name of the party;

(2) Date access was given; and

(3) Purpose for which the party is authorized to use the records.

6 CAR § 130-1604. Records on more than one child.

If any education record includes information on more than one (1) 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.

6 CAR § 130-1605. 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.

6 CAR § 130-1606. Fees.

(a) 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.

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

6 CAR § 130-1607. Amendment of records at parent's request.

(a) 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.

(b) 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.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must:

- (1) Inform the parent of the refusal; and
- (2) Advise the parent of the right to a hearing under 34 C.F.R. § 300.619 (opportunity for a hearing) and 6 CAR § 130-1608.

6 CAR § 130-1608. 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:

- (1) Inaccurate;
- (2) Misleading; or
- (3) Otherwise in violation of the privacy or other rights of the child.

6 CAR § 130-1609. Result of hearing.

(a) 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:

- (1) Amend the information accordingly; and
- (2) So inform the parent in writing.

(b) 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:

- (1) Commenting on the information; or
- (2) Setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(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

(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.

6 CAR § 130-1610. Hearing procedures.

A hearing held under 6 CAR § 130-1608 and 34 C.F.R. § 300.619 must be conducted according to the procedures under 34 C.F.R. § 99.22 and the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

6 CAR § 130-1611. Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsections (c) and (d) of this section, unless the:

- (1) Information is contained in education records; and
- (2) Disclosure is authorized without parental consent under 34 C.F.R. pt. 99.

(b) Except as provided in subsections (c) and (d) of this section, 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.

(c) 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 C.F.R. § 300.321(b)(3).

(d) 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.

6 CAR § 130-1612. Safeguards.

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

(b) One (1) 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 pertaining to confidentiality of personally identifiable information under 34 C.F.R. § 300.123 and 34 C.F.R. pt. 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.

6 CAR § 130-1613. Destruction of information.

(a) 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.

(b)(1) The information must be destroyed at the request of the parents.

(2) 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.

6 CAR § 130-1614. Children’s rights.

(a) Under the regulations of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, in 34 C.F.R. § 99.5(a), the rights of parents regarding education records are transferred to the student at age eighteen (18).

(b)(1) If the rights accorded to parents under Part B of the Individuals with Disabilities Education Act are transferred to a student who reaches the age of majority, consistent with 34 C.F.R. § 300.520 and 6 CAR § 130-907, Transfer of parental rights at age of majority, the rights regarding educational records in 34 C.F.R. §§ 300.613 – 300.624 and this section must also be transferred to the student.

(2) However, the public agency must provide any notice required under Section 615 of the Individuals with Disabilities Education Act to the student and the parents.

6 CAR § 130-1615. Disciplinary information.

(a) 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.

(b) 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.

(c) 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:

- (1) The child’s current individualized education program; and
- (2) Any statement of current or previous disciplinary action that has been taken against the child.