Confidentiality and Student Record Privacy
Confidentiality

This PowerPoint on confidentiality is designed to meet federal requirements for staff training while increasing staff awareness of their responsibilities regarding privacy of student records.
Overview of Confidentiality Training

Staff will be provided with information on:

- Federal Laws
- Definitions of:
  - Education (Student) Records
  - Personally Identifiable Information
  - Directory Information
- Parental Rights
- Disclosure Procedures
- Scenarios
Rationale For Annual Confidentiality Training

All persons collecting or using student records must receive instruction regarding the state’s policies and procedures under IDEA and FERPA.

As per Special Education Standards, Standard II: The Special Education teacher applies knowledge of professional roles and responsibilities and adheres to legal and ethical requirements of the profession.

It’s the LAW!
Federal Laws

The Family Educational Rights and Privacy Act (FERPA)
(20 U.S.C. § 1232g; 34 CFR Part 99)

Protection of Pupil Rights Amendments (PPRA)
(20 U.S.C. § 1232h; 34 CFR Part 98)

Individuals with Disability Education Act of 2004 (IDEA)
(§§300.560-300.577)

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The Family Educational Rights and Privacy Act (FERPA)

Federal law that was passed in 1974

Applies to all schools that receive money from the U. S. Dept of Education

Provides parents certain rights with respect to their child’s educational records
Protection of Pupil Rights Amendments

Applies to programs that receive funding from the U.S. Department of Education (ED).

Protects the rights of parents and students in two ways:

Ensures that schools and contractors make instructional materials available to parents for inspection if they will be used in an ED funded survey, analysis or evaluation in which the student will participate in.

Ensures that the schools and contractors obtain parental consent before minor students participate in those Ed funded surveys, analysis or evaluations that reveal information in 8 areas.
Individuals with Disabilities Education Act (2004)

Federal law that went into effect in 1975 under a different name (Education for All Handicapped Children Act).

Applies to programs that receive funding from the U.S. Department of Education (ED).

Ensures equity, accountability and excellence in education for children with disabilities.

Outlines special education procedures and specifies special education files as confidential and protected, in addition to FERPA.
Confidentiality, Special Education and the Law

A Guide to the Admission, Review, and Dismissal Process

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Definition Of Education Records

Records, files, documents and other materials which contain information directly related to a student and are maintained by an educational agency or institution, or by a person acting for such agency or institution.

Everything in institutional records maintained for each student...used in making decisions (including placement in Special Education) that affect the life of the student.

All confidential.
Common Exceptions

Records kept in the sole possession of the maker (teacher notes) not revealed or accessible to any other person

Used as a personal memory aid

Records maintained by a law enforcement unit of the district
Are these Education Records?

IEP’s? (Individualized Education Plans)
   Yes

Emails?
   Yes, if:
   They contain personally identifiable information
   Are maintained by the district, either in hard copy or electronic format
Are these Education Records?

Test Protocols?
Yes

Sp. Ed. instruments, question booklets and answer sheets that identify a student and are maintained by the district are education records and protected by FERPA as well IDEA
Definition of Personally Identifiable Information

“…. information that alone or in combination… identifies the student with reasonable certainty (34 C.F.R. §99.3)
Activity

• Gather staff into groups of 4.
• Each group obtains a packet of characteristics.
• After reading all descriptors, select 7 that would identify a student with reasonable certainty.
• Join the table to your left and compare your selections.
Characteristics/Descriptors

- Favorite Song
- ID Number
- Name
- Favorite Color
- Shoe Size
- Parent’s Name
- Favorite Movie

- Social Security Number
- Age
- Address
- Hair color
- Visually Impaired
- Class Schedule
- Family Size

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Directory Information

Student’s name
Address
Telephone
E-mail address
Date and place of birth
Enrollment status
Honors and awards
Dates of attendance
Directory Information may be Disclosed If:

Parents and eligible students are given annual notice of the types of information designated as directory information AND

Are given an opportunity to opt out
Procedural Safeguards

Written notification provided to parents or eligible students under FERPA/IDEA

Provided in primary language

Can identify directory information

Includes information of its criteria of “school official” and “legitimate educational interest”

That it forwards educational records to other schools in which the student seeks to enroll
The Right To Review Records

Who has the right to review?

Parents of minor students,
Students (18 years or older)
The Right To Review Records

You have the right to.....

to inspect and review the student's education records maintained by the school.

to inspect and review records related to their child
to review within a reasonable period of time
  - Within 45 days
  - Before an IEP meeting
  - Before a hearing

to have a representative view records
(Difference between FERPA and IDEA)
The Right to Review Records

You have the right to.....

a response to a request for reasonable explanations or interpretations of records

have both parents view unless otherwise prohibited by law

request correction(amendment) of a record

consent to disclosure of personally identifiable information
Consent for Disclosures

Annual written notification of right to consent to disclosures

Written consent signed and dated, including

- specification of records disclosed
- purpose of disclosure
- parties to whom disclosure is made
Consent For Disclosure

Copy of disclosed records provided to parent upon request

Third party disclosure prohibited without written consent of parent
Disclosure without Consent

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Directory Information

- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies;
- State and local authorities, within a juvenile justice system, pursuant to specific State law.
Disclosure in situations of school safety

- Significant and articulable threat has been made
- Consider the totality of the circumstances
- Document in the student’s record the reason it believes a health or emergency exists and to whom it was disclosed
- Allows release to parties whose knowledge is necessary to protect the health and safety of individuals
Record of Access

Each folder should properly document a record of access. This documentation includes:

- Name of person who accessed
- Date access given
- Purpose for which request was made

Persons accessing confidential information must have a legitimate educational interest.
Record of Access

Everyone with a legitimate educational interest signs record of access except

- parents,
- eligible youth, and
- employees of the district

A current list by names and positions of those who have access to records must be maintained for public inspection

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Record of Access

The local school district must maintain a list of the types and locations of educational records.

If information is given on records of more than one child/youth, information about other children shall be protected.
Consultants

3rd parties such as contractors, consultants, or volunteers who have contracted with school/agency to perform instructional services may have access, provided they are under control of school/agency and agree to be governed by FERPA regulations.
FERPA in the Digital Age: What You Need To Know

We do not change our policies simply because our educational delivery methods have changed.

Students who study online via videoconference, internet, satellite or other electronic information and telecommunications technology not present in classroom are covered.

Allows for electronic personal identifiers to be directory information.
Gossip vs. Professional Sharing of Information

When talking to a colleague about a student or his family, apply these four tests to see if the discussion may be violating the student’s confidentiality rights.

1. **What** is discussed

2. **Where** the discussion takes place

3. **Who** is listening

4. **Why** the discussion took place
Destruction Of Records

Parents must be informed when educational records are no longer needed to provide educational services to the student.

When a parent requests the destruction of records, information is destroyed that is no longer needed.

When a parent requests destruction of records, the district does not destroy any records:

- if there is an outstanding request to inspect or review the records
- if records are needed for compliance with applicable state and federal requirements.
Scenarios

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Two teachers in the lounge talking about a child, another walks in, they keep talking, the third listens in, adds to discussion

1. What are they discussing
2. Does the third teacher have a legitimate educational interest in the child
3. Is the location inappropriate
4. Why are they discussing the child
Two teachers see each other in the grocery store, start talking about a student at school. (“I hear the father drinks and beats the mother. No wonder the student has so many problems.”)
You know you violated confidentiality/privacy when you...

1. spoke in an inappropriate place
2. discussed where others were listening
3. discussed inappropriate content about a student
What Do You Think?
What Do You Think?

When asked if her confidential files were secured, the teacher replied, “Yes. I keep them in my desk drawer, and when I leave the room, I lock the door to my room.”

Was she correct?
No

Her files are not secure because anyone with a key has access. It is better to have a file cabinet or desk with a lock.
What Do You Think?

When the TEA monitor visited the school, he asked to see the education records of 5 students selected at random. He was given the students’ folders, which he examined for required documentation. Later, he was asked to sign a form stating that he had had access to the students’ folders and listing the names of the students.

Was confidentiality violated?
Yes

The monitor should have signed a separate record of access for each folder he examined, and the records should be kept with the folders.
What Do You Think?

The teacher keeps a folder in which she records notes about her students. These notes have to do with the student’s personality, behavior, achievement level, likes and dislikes, attitudes and the like. As the teacher is making notes in the folder after school, a parent comes in and, noticing the folder, asks to see notes relating to her child. The teacher refuses on the grounds that her notes are not educational records and, therefore, not accessible by the parent.

Is the teacher correct in her position?
Yes

If she does not show or reveal the contents of the notes to anyone, if she uses them as a memory aid, and if they remain her private notes in her sole possession. However, if she shares the information with anyone, it becomes an educational record.
The school district had given public notice of the types of information that would be considered directory information, and the parents were duly notified of their rights of refusal. Three months later, the school published a directory containing the specified information on its students. One parent became very upset, saying the district had no right to publish this information.

Was the parent correct in his statement?
No

The district had followed FERPA requirements regarding directory information (given public notice, notified parents of rights to refuse). Three months could be considered more than enough time to refuse.
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A parent wanted to inspect her child’s achievement test results. She was given her child’s test booklet, his individual scoring summary and the class scoring summary to review. She was also shown the district profile for comparison.

Were confidentiality procedures violated?
Yes

if the class scoring summary contained other children’s names. A parent has the right to view only that information that relates to her child. If the district profile contained a graph or something similar (with no names), there would be no problem in showing the parent.
What Do You Think?

The secretary in the office has constant access to student information as she files records of all students, acts as attendance clerk and assists with the PEIMS reports which is sent to TEA.

What advice can you offer the secretary concerning information she might access?
Suggest that the information is confidential and since all agencies must protect the confidentiality of personally identifiable information, it is important that all staff having access to such information receive training.
What Do You Think?

A school diagnostician has a habit of leaving students' files out on her desk during the day. She uses them in planning evaluations and writing reports.

Is there a violation of confidentiality?
There is no clear-cut answer.

Leaving confidential files on the desk could be a cause for concern if the office is in a high access area of the campus. The diagnostician should be encouraged to close the files or remove them from her desk when she leaves. The same applies to teachers who have copies of IEPs. It is acceptable to keep them open on a desk while teaching, but they should be put away at the end of the teaching period.
Confidentiality In Practice

Awareness of confidentiality laws and requirements

Complying with procedures regarding written educational records

Being sensitive to violations of confidentiality in verbal exchanges with others
Confidentiality Breached

When staff discusses a child in inappropriate places or situations.

When staff repeats gossip or rumors about a child or his family.
One Last Thought

We all came in on different ships, but we’re all in the same boat now.

Martin Luther King Jr.