

Confidentiality Laws

1. **FERPA**-Family Education Rights and Privacy Act
2. **IDEA**-Individuals With Disabilities Education Act
3. **HIPAA** - Health Insurance Portability & Accountability Act



FERPA

- ❖ Passed in 1974, amended in 2009
- ❖ Applies to all schools that receive money from the U.S. Department of Education
- ❖ Also called the “Buckley Amendment”
- ❖ Under FERPA, parents and students over 18 are granted very specific and extensive rights regarding confidential information contained in education records. Parents are given the right to inspect, control to a degree and challenge information maintained on their child.

IDEA

- ❖ Passed in 1975, reauthorized in 2004
- ❖ Applies to all schools that receive money to serve students with disabilities
- ❖ Formerly the Education of the Handicapped Act
- ❖ IDEA addresses services to students with disabilities in public schools. One section of this law deals with confidentiality of student records and incorporates the provisions of FERPA. Together, the two laws interface to protect the rights of all parents and students in public education institutions.

HIPAA

- ❖ August 21, 1996.
- ❖ To establish basic privacy and security protection of health information.
- ❖ To guarantee individuals the right to access their health information and learn how it is used and disclosed.
- ❖ Applies when a school employs a health care provider that bills Medicaid electronically for services provided to a student.

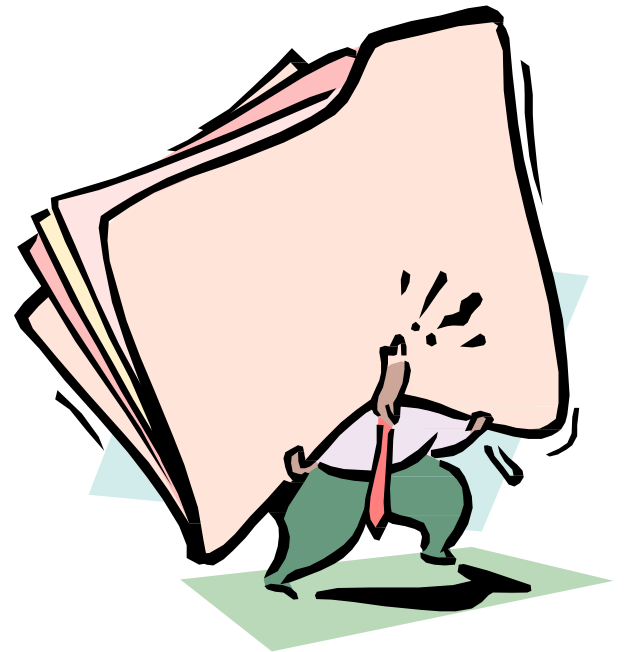
Personally Identifiable Information

The key to confidentiality!

- ❖ Name of student, student's parents or other family member
- ❖ Address of the student
- ❖ Any personal identifier (SS #)
- ❖ A list of personal characteristics that would make it possible to identify the student

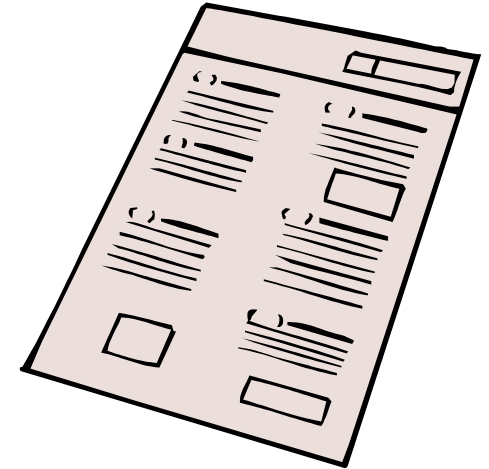
Definition of Education Records

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.



Directory Information - information contained in an education record which would not generally be considered harmful if disclosed.

- ❖ Student's name
- ❖ Student's address
- ❖ Student's telephone number
- ❖ Student's date and place of birth
- ❖ Student's major field of study
- ❖ Participation in officially recognized sports and activities
- ❖ Student's weight, height if member of athletic team
- ❖ Dates of attendance
- ❖ Degree, awards received
- ❖ Most recent previous educational institution or agency attended



Directory Information May Be Disclosed If:

- ❖ Parents are annually given public notice of the types of information designated as directory information

AND

- ❖ Given opportunity to refuse
- ❖ The public notice may be included in or attached to the annual notification of rights. The Annual Notification of Rights is included in the Student Handbook.

Parent Right To Inspect And Review Records

- ❖ Right to review records within a reasonable period of time of written request
- ❖ Right to have representative review records
- ❖ Right to request for explanation and interpretation of records
- ❖ Right to inspect only information related to own child
- ❖ Rights extend to both parents unless otherwise indicated by law
- ❖ Right to obtain copies of records



Sole Possession Records

Sole Possession Records are exempt from parent access if they meet the following:

- Must be a private note created solely by the individual possessing the note
- Must be a personal memory aid

AND/OR

- The information in the note must not be accessible or revealed to any other person
- It is important for teachers and counselors to understand the concept of sole possession records and that once a note is revealed to anyone, it becomes subject to parental access and challenge. The implication is that teachers and other staff should be careful with what they put in writing and with whom they share it.



Amendment of Records

- ❖ Annual notification of right to request amendment of records
- ❖ Right to request amendment of records if information is inaccurate, misleading or in violation of privacy rights
 - If agency decides to amend, parents must be notified in writing
 - If agency refuses to amend, parents must be notified in writing and informed of their right to a hearing
 - Results of hearing are communicated to parents in writing
- ❖ Any parent explanation of disagreement with records
 - Must be maintained with record as long as the agency maintains the record
 - Disclosed with the record

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
- ❖ Copy of disclosed records provided to parent upon request
- ❖ Third party disclosure prohibited without written consent of parent
- ❖ Also reviewing PowerSchool and PowerTeacher will provide parental/guardian information.

Conditions Where Prior Consent Not Required

- ❖ Disclosure within agency with legitimate education interest
- ❖ Transfer records
- ❖ Directory information
- ❖ Audit purposes
- ❖ Subpoenas or court order
- ❖ Financial aid
- ❖ Health and safety emergencies



Confidentiality In Practice

- ❖ It is important that all staff members are aware of confidentiality laws and requirements
- ❖ Compliance with mandatory laws about disclosure of information essential
- ❖ Be sensitive to violations of confidentiality in verbal exchanges with others

Confidentiality May Be Violated

- ❖ When staff discusses a child in inappropriate places or situations
- ❖ When staff repeats gossip or rumors about a child or his family

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.



Four Tests

1. **What** is discussed
2. **Where** the discussion takes place
3. **Who** is listening
4. **Why** the discussion took place

What Is Discussed

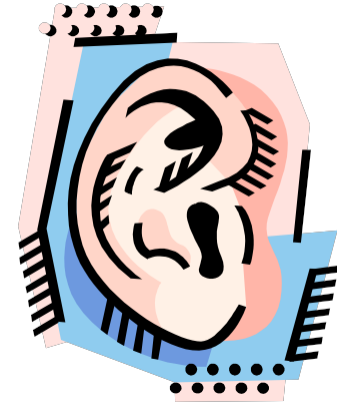
- If the discussion involves directory information (name, address, etc.) there is no problem unless the parent has refused to have this information released
- If the discussion involves other personally identifiable information that is confidential (disability, family data, etc.), the parties should be sure that legitimate educational interest is involved
- If the discussion involves information that is rumor, opinion, or hearsay, chances are that confidentiality will be in question, and the parties have moved from professionalism to gossip.



Where The Discussion Takes Place

- If the discussion occurs in a private place (such as a teacher's empty room, **empty** teachers' lounge), there is no problem with confidentiality.
- If the discussion occurs in a public place (such as the playground, the halls, a busy teachers' lounge, the supermarket), there is a good chance that confidentiality could be violated.

Who Is Listening



1. If the parties to the discussion are school officials with legitimate educational interest there is no problem with confidentiality.
2. If others are listening who have no legitimate educational interest (such as a teacher who is eavesdropping, a nosy child on the playground, children in the hall, etc.) confidentiality may be violated.

Why The Discussion Took Place

- If the parties have legitimate educational interest in a student and are sharing information that will help them work with the child, then there is no problem with confidentiality.
- If the parties are gossiping to pass time, carrying tales about a student or his family, or for other non-educational reasons, there is probably a problem with confidentiality.

***Should you have any questions you
may contact the Human Resource
Office at 426-5741.***

Thank you!