



SPECIAL EDUCATION LAW

Confidentiality of Information

Procedural Safeguards

The sections of this document that refer to Procedural Safeguards contain the language from the 2018 revised document entitled, “*IDEA Part B Parents' Rights in Special Education (Age 3-21) Procedural Safeguards Notice.*” The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and the federal regulations. A copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request.

Confidentiality of Information

DEFINITIONS

As used under the heading Confidentiality of Information:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means 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, 20 U.S.C. 1232g (FERPA)).
- *Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

PERSONALLY IDENTIFIABLE

Personally identifiable means information that has:

- (a) Your child’s name, your name as the parent, or the name of another family member;
- (b) Your child’s address;
- (c) A personal identifier, such as your child’s social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

NOTICE TO PARENTS

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

- A description of the extent to which the notice is given in the native languages of the various population groups in the State;
- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
- A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity to locate, identify, and evaluate children in need of special education and related services.

ACCESS RIGHTS

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of the IDEA. The participating agency must comply with your request to inspect and review any education records on your 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 you have made a request.

Your right to inspect and review education records includes:

- Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
- Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
- Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, or separation and divorce.

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 (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.

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.

LIST OF TYPES AND LOCATIONS OF INFORMATION

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

FEEES

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of the IDEA.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading *Opportunity For a Hearing*.

OPPORTUNITY FOR A HEARING

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

HEARING PROCEDURES

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

RESULT OF HEARING

If, as a result of the hearing, the participating 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 information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

- Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
- If the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or 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.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

SAFEGUARDS

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

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

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

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.

DESTRUCTION OF INFORMATION

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child'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.

Nebraska Rule 51

The sections of this document that refer to Nebraska Rule 51 contain the language from the 2017 revised document entitled, “*Nebraska Department of Education Rule 51: Regulations and Standards for Special Education Programs. Title 92, Nebraska Administrative Code, Chapter 51.*”

003.17 **Education records** means those records that are directly related to a child which are maintained by an educational agency or institution or by a party acting for the agency or institution. This term parallels the definition contained in the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

009.03 Opportunity to Examine Records

009.03A The parents of a child with a disability must be afforded, in accordance with the procedures of 92 NAC 51-009.03, an opportunity to inspect and review all education records with respect to: the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

009.03B Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained or used by the participating agency. The participating agency shall comply with such a request without unnecessary delay and before any meeting regarding an individualized education program or hearing pursuant to 92 NAC 55 or resolution session and in no case more than 45 days after the request has been made.

009.03B1 As used in 92 NAC 51-009.03B, participating agency means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained under this Chapter.

009.03B2 The right to inspect and review education records includes:

009.03B2a The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and

009.03B2b The right to request that the participating 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

009.03B2c The right to have a representative of the parent inspect and review the records.

009.03B3 A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the service agency has been advised that the parent does not have the authority under applicable Nebraska law governing such matters as guardianship, separation and divorce.

009.03C Record of Access

009.03C1 Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating service 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.

009.03D Records On More Than One Child

009.03D1 If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

009.03E List of Types and Locations of Information

009.03E1 Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the participating agency.

009.03F Fees

009.03F1 A participating agency may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

009.03F2 A participating agency may not charge a fee to search for or to retrieve information.

009.03G Amendment of Records at Parent's Request

009.03G1 A parent who believes that information in education records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child may request the participating agency which maintains the information to amend the information.

009.03G2 The participating agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

009.03G3 If the participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parent of the right to a local administrative review to be conducted in accordance with 34 CFR 99.22.

009.03H Opportunity for a Local Administrative Review

009.03H1 The participating agency shall, on request, provide an opportunity for a local administrative review 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.

009.03I Result of Local Administrative Review

009.03I1 If, as a result of the local administrative review, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

009.03I2 If, as a result of the local administrative review, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the records the participating agency maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency.

009.03I3 Any explanation placed in the records of the child must:

009.03I3a Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the participating agency; and

009.03I3b If the records of the child or the contested portion is disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

009.03J Consent for Release of Records

009.03J1 Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies in accordance with 92 NAC 51-009.03H1 unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

009.03J2 Except as provided in 92 NAC 51-009.03J3 and 009.03J4, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this Chapter.

009.03J3 Parental consent, or the consent of an eligible child who has reached the age of majority, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 92 NAC 51-007.03A10b.

009.03J4 If a child is enrolled, or is going to enroll in a nonpublic school that is not located in the school district of the parent’s residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the nonpublic school is located and officials in the school district of the parent’s residence.

009.03K Safeguards

009.03K1 Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

009.03K2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

009.03K3 All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures.

009.03K4 Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information.

009.03L Records Regarding Migratory Children with Disabilities

009.03L1 The school district or approved cooperative shall cooperate in the Federal Secretary of Education’s efforts under section 1413(a)(9) of the Individuals with Disabilities Education Act of 2004 (See Appendix A) to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging among the States, health and education information regarding such children.

009.03M Retention and Destruction of Information and Records

009.03M1 The school district or approved cooperative shall retain special education records for five (5) years after the completion of the activities for which special education funds were used.

009.03M2 The school district or approved cooperative shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child.

009.03M3 The information which is no longer necessary to provide educational services to the child, must be destroyed at the request of the parents. However, a permanent record of a 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.

For more information about confidentiality of information, contact your child’s special education teacher, a PTI Nebraska parent/professional at (800) 284-8520 and pti-nebraska.org, or the Nebraska Department of Education at (402) 471-2471 and education.ne.gov/sped/.

Additional information regarding student privacy can be found at <https://www.education.ne.gov/educational-technology/e-learning-days/student-data-privacy/>

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. See <https://sites.ed.gov/idea/> for more information on IDEA.

Rule 51 is the document that outlines regulations and standards for special education programs in Nebraska. Rule 51 can be found on the Nebraska Department of Education’s website: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule51_2017.pdf.

Rule 55 is the document that outlines rules of practice and procedure for due process hearing in special education contest cases. Rule 55 can be found on the Nebraska Department of Education’s website: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule55_2012.pdf

Rule 6 is the document that outlines regulations and standards for uniform sharing of student data, records, and information. Rule 6 can be found on the Nebraska Department of Education’s website: https://cdn.education.ne.gov/wp-content/uploads/2017/10/Rule6_2014.pdf