

# XXII. Confidentiality

IDEA Regulations: Confidentiality	Nebraska Rule 51: Confidentiality
<p><b>300.611 Definitions</b></p> <p>As used in §§300.611 through 300.625—</p> <p><b>(a)</b> Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.</p> <p><b>(b)</b> 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)).</p> <p><b>(c)</b> Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.</p> <p><b>Section 300.613 Access rights</b></p> <p><b>(a)</b> 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 this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.</p> <p><b>(b)</b> The right to inspect and review education records under this section includes—</p> <ol style="list-style-type: none"><li>1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;</li></ol>	<p>(Procedural safeguards regarding Confidentiality)</p> <p><b>92 NAC 51-009.03 Opportunity to Examine Records</b></p> <p><b>009.03A.</b> 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.</p> <p><b>009.03B.</b> 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.</p> <p><b>009.03B1.</b> 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.</p> <p><b>009.03B2.</b> The right to inspect and review education records includes:</p> <p><b>009.03B2a.</b> The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; and</p>

## IDEA Regulations: Confidentiality

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 guardianship, separation, and divorce.

### **300.614 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 Act (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.

### **Section 300.615 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.

## Nebraska Rule 51: Confidentiality

**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.

## IDEA Regulations: Confidentiality

### Section 300.616 List of types and locations 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.

### Section 300.617 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.

### Section 300.618 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 inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.

## Nebraska Rule 51: Confidentiality

### 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.

## IDEA Regulations: Confidentiality

### Section 300.619 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.

### Section 300.620 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 amend the information accordingly and 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 parent's right to place in the records the agency maintains on the child a statement commenting on the information or 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.

## Nebraska Rule 51: Confidentiality

### 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

## IDEA Regulations: Confidentiality

### Section 300.622 Consent

**(a)** Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b) (1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

#### **(b)**

1. Except as provided in paragraphs (b) (2) and (b)(3) 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.
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 §300.321(b)(3).
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.

## Nebraska Rule 51: Confidentiality

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.

## IDEA Regulations: Confidentiality

### Section 300.623 Safeguards

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

**(b)** One 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 under §300.123 and 34 CFR part 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.

### Section 300.624 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)** The information 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.

## Nebraska Rule 51: Confidentiality

### 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.

## IDEA Regulations: Confidentiality

## Nebraska Rule 51: Confidentiality

### Section 300.625 Children's rights

**(a)** The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

**(b)** Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

**(c)** If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with §300.520, the rights regarding educational records in §§300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

# District Considerations for Policy and Procedure Development

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## Sample district policy statement

[Xyz school district] will protect the confidentiality of personally identifiable information in the education records of students with disabilities. The district shall maintain a system of safeguards to protect the confidentiality of students' educational records and personally identifiable information when collecting, retaining, disclosing, and destroying student special education records, in accordance with Board policy, state requirements, and Federal and state law and regulations.

## Procedural considerations

- What steps should staff follow when a parent requests access to their child's records?
  - » What are the timelines associated with these steps?
- What steps should staff follow when a parent requests an amendment to their child's records?
  - » What are the timelines associated with these steps?
- How will the district keep records of parties who obtain access to education records collected, maintained, or used under Part B of the IDEA? How will this information be stored?
- What procedures are needed for amendments to records and hearings?
- How is parental consent for release of records obtained when needed?
- How will the district protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages? What procedures are needed for each stage?
  - » Who is the district-level person responsible for ensuring the confidentiality of any personally identifiable information? What types of procedures does that individual need to have in place?
- How will training for persons collecting or using personally identifiable information regarding the state's policies and procedures be documented and stored?
- What is needed to document and maintain a current listing of the names and positions of those employees within the participating agency who may have access to personally identifiable information? What process will the district follow if this information is requested?
- What procedures are needed for the destruction of records?

## Guidance resources

- [IDEA and FERPA Confidentiality Provisions \(PDF\) \(ed.gov\)](#)
- [Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs - Frequently Asked Questions \(FAQs\) \(PDF\)](#)
- [Confidentiality and Access to Student Records | Center for Parent Information and Resources \(parentcenterhub.org\)](#)
- [Office of Special Education Programs Policy Letters Regarding Confidentiality of Education Records](#)