

DEPARTMENT OF EDUCATION
250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data,
Repeal of
Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d)) 14 DE Admin.
Code 250

FINAL

REGULATORY IMPLEMENTING ORDER

250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to repeal 14 **DE Admin. Code** 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Regulation 251 is intended to govern access to, confidentiality of, and the amendment of educational records in a manner consistent with the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR part 99, and the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. and its implementing regulations. Regulation 252 defines important terms, describes the education records that schools are required to maintain, describes the conditions for the transfer of records from school to school and provides for the proper maintenance and destruction of student records in connection with the requirements of the Delaware Public Archives.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on November 24, 2004 in the form hereto attached as *Exhibit “A”*. Comments were received from Governor’s Advisory Council for Exceptional Children and the State Council for Persons with Disabilities.

As per the Councils’ recommendation, the Department has added phrases to 4.0 of Regulation 251 to clarify that the U.S. Department of Education’s Family Policy Compliance Office enforcement powers extend only to those agencies covered under federal law and language has been added to the reference to the “career area competence list” for better clarity.

In response to the concern about the Department holding hearings, the Department response is as follows; the Department concludes that hearings to challenge the content of an educational record are best conducted at the local level; adding a hearing requirement at the state level adds unnecessary complexity to record maintenance without appreciable additional benefit to students or their families. Finally, the Department recognizes that the Individuals with Disabilities Education Act may impose additional requirements concerning the educational records of children with disabilities. 14 **DE Admin Code** 925 reflects those requirements.

II. Findings of Facts

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. The new regulations add clarity and more accurately reflect the federal statute.

III. Decision to Repeal the Regulation and Replace It with Two Separate Regulations

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 250, and replace it with 14 **DE Admin. Code** 251 Family Education Rights and Privacy Act (FERPA) and 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 250 is hereby repealed and regulations 251 and 252 attached hereto as *Exhibit “B”* are hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 251 and 252 hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 251 and 252 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulations shall be cited as 14 **DE Admin. Code** 251 and 14 **DE Admin. Code** 252 in the *Administrative Code of Regulations* for the Department of Education. In addition 14 **DE Admin. Code** 250 shall be removed from the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on January 10, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 10th day of January 2005.

DEPARTMENT OF EDUCATION

Valarie A. Woodruff, Secretary of Education

~~250 – Procedures Related to the Collection, Maintenance and Disclosure of Student Data~~

~~1.0 Authority:~~

~~Under the provisions of Section 122, Title 14, of the *Delaware Code*, the Department of Education has been given authority to establish rules and regulations for the schools in Delaware. This document reflects Federal regulations and procedures as required by Code of Federal Regulations. Part 99 Family Education Rights and Privacy, Revised 2/19/88 and Public Law 105-17 Individuals with Disabilities Education Act effective June 4, 1997, and their respective regulations.~~

~~2.0 Applicability~~

~~2.1 These regulations apply to an education agency or institution to which funds have been available under any program for which the U. S. Secretary of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.~~

~~2.2 These regulations do not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in 1.0, if no funds under those programs are made available to the agency or institution.~~

~~2.3 For the purposes of these regulations, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in 1.0, are provided to the agency or institution by grant, contract, sub-grant, or subcontract, or are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended.)~~

~~2.4 Except as otherwise specifically provided, these procedures apply to education records of students who are, have been, or will be in attendance at the educational institution that collects, maintains, or discloses the records.~~

~~3.0 Purpose:~~

~~The purpose of these procedures is to set forth the conditions governing the protection of privacy of parents and students as it relates to the collection, maintenance, and disclosure of education records by covered agencies and institutions.~~

~~4.0 Definitions:~~ as used in these procedures:

~~“**Attendance**” at an agency or institution includes, but is not limited to: attendance in person having homebound or correspondence instruction, and the period during which a person is working under a work-study program.~~

~~“**Consent**” means that the parent or eligible student has been fully informed of the information set out in this~~

document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; the parent or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and the parent or eligible student understands that the granting of consent is voluntary.

“Directory information” means information in an educational record the disclosure of which would not generally be considered harmful or an invasion of privacy. It includes, but is not limited to, a student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, and other similar information.

“Disclosure” means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

“Educational institution” or “educational agency or institution” means any public or private agency or institution that is the recipient of the funds under any Federal program referenced in 2.0. The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

“Education records” means those records that are directly related to a student, and are maintained by an educational agency or institution or by a party acting for the agency or institution, the term does not include:

- Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

- Are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a “substitute” means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

- Records of a law enforcement unit of an educational agency or institution that are:

- Maintained apart from the records described above.
- Maintained solely for law enforcement purposes, and:
- Not disclosed to individuals other than law enforcement officials of the same jurisdiction: provided,

that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

- Records relating to an individual who is employed by an educational agency or institution which are made and maintained in the normal course of business; relate exclusively to the individual available for use for any other purpose.

- This paragraph does not apply to records relating to an individual in attendance at the agency or institution that is employed as a result of his or her status as a student.

- Records relating to an eligible student that are:

- Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity.

- Created, maintained, or used only in connection with the provision of treatment to the student, and

- Disclosed only to individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student’s choice. For the purpose of this definition, “treatment” does not include remedial educational activities, diagnostic and evaluative data, or other activities used in the development of the student’s instructional program.

- Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

“Eligible Student” means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

“Financial Aid” means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual’s attendance at an educational agency or institution.

“Student with Disability” means a person in the chronological age group ranging from infancy, 3 or 4 (depending upon the disability) through 20 years, inclusive, who because of mental, physical, emotional or learning disability problems as defined by the Department of Education, requires special educational services in order to develop his or her capabilities.

“Institution of post-secondary education” means an institution which provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which

secondary education is provided, as determined under state law.

“**Parent**” includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights of access and consent unless the agency or institution has been provided with evidence that there is a court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

“**Party**” means an individual, agency, institution, or organization.

“**Personally identifiable**” means that the data or information includes the name of the child, the child's parent, or other family member, the address of the child, a personal identifier, such as the child's social security number or student number, or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. 34 CFR 300.500 (e) (1) through (4).

“**Records**” means any information or data recorded in any medium including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

“**Secretary**” means the Secretary of the U. S. Department of Education.

“**Student**” includes any individual with respect to whom an education agency or institution maintains educational records.

5.0 Student Rights

5.1 For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student, except in the case of a student who is legally determined to be incompetent to make such decisions for himself/herself, and for whom legal guardianship is required beyond the age of majority. In these instances, the legally established guardian shall maintain the rights to privacy as outlined in this document.

5.2 The status of an eligible student as a dependent of his or her parents does not otherwise affect the rights accorded to and the consent required of the eligible student by 5.1.

5.3 Nothing in these regulations shall be construed to limit the ability of a pupil who has reached the age of 14 to request the release of records as provided in 14 Del.C. §4111.

5.4 These procedures shall not be construed to preclude educational agencies or institutions from according students rights in addition to those accorded to parents of students.

6.0 Formulation of Institutional Policies and Procedures

6.1 Each educational agency or institution shall formulate and adopt a policy of:

6.1.1 informing parents of students or eligible students of their rights under 7.0;

6.1.2 permitting parents of students or eligible students to inspect and review the education records of the student in accordance with 10.0 including at least:

6.1.2.1 a statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

6.1.2.2 An understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

6.1.2.3 A schedule of fees for copies; and

6.1.2.4 A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records.

6.1.3 Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by 17.0 and 23.0, including, at least:

6.1.3.1 A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under 17.1 and, if so, a specification of the criteria for determining which parties are “school officials” and what the educational agency or institution considers to be a “legitimate educational interest” and

6.1.3.2 A specification of the personally identifiable information to be designated as “directory information” under 23.0.

6.1.4 Maintaining the records of disclosures of personally identifiable information from the education

records of a student required to be maintained by 18.0 and permitting a parent or an eligible student to inspect that record.

6.1.5 Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing and permitting a parent of a student or an eligible student to place a statement in the education records of the student as provided in 14.3.

6.2 The policy adopted by the educational agency or institution shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

7.0 Annual Notification of Rights

7.1 Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

7.1.1 Their rights under these procedures adopted under 6.0; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained, and

7.1.2 The right to file complaints under 24.0 concerning alleged failure by the educational agency or institution to comply with the requirements of these policies.

7.2 Agencies and institutions shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

8.0 Limitations on Waivers

8.1 Subject to the limitations in 8.0 and 11.0, a parent of a student or an eligible student may waive any of his or her rights under these procedures. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

8.2 An educational agency or institution may not require that a parent of a student or an eligible student waive his or her rights under these procedures. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

8.3 An individual who is an applicant for admission to a post-secondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation.

8.4 All waivers must be executed by the individual, regardless of age, rather than by the parent of the individual.

8.5 A waiver under this section may be made with respect to specified classes of education records, and persons or institutions.

8.5.1 A waiver under this section may be revoked with respect to any actions occurring after the revocation.

8.5.2 A revocation under this paragraph must be in writing.

8.5.3 If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

9.0 Fees

9.1 An educational agency or institution may charge a fee for copies of educational records which are made for the parent of students or an eligible student, provided that the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records. 34 CFR 300.566(a)

9.2 An educational agency or institution may not charge a fee to search for or retrieve the education records of a student. 34 CFR 300.566(b) and 34 CFR 99.11.

10.0 Right to Inspect and Review Educational Records

10.1 Each participating agency shall 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 shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child, and in no case more than 45 days after the request has been made. 34 CFR 300.562(a)

10.2 The right to inspect and review education records under 10.1 include:

10.2.1 The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

10.2.2 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 34 CFR 300.562(b)(2)

10.2.3 The right to have a representative of the parent inspect and review the records. 34 CFR

300.562(b)(3)

10.3 An education agency or institution may presume that either parent of student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

11.0 Limitations on the Right to Inspect and Review Records

11.1 If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information that pertains to that student.

12.0 Destruction of Educational Records

12.1 An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

12.1.1 The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them as in 10.0.

12.1.2 Explanations placed in the education record under 14.0 shall be maintained as provided in 14.4.

12.1.3 The record of access required under 18.0 shall be maintained for as long as the education record to which it pertains is maintained.

12.1.4 Records of children with disabilities shall not be destroyed without parental consent, or the consent of an eligible student. Prior to any destruction of such data parents must be informed and give consent for that destruction. They shall be informed that records may be needed for other purposes, such as social security benefits, etc. If the parents or eligible student requests that the information be destroyed, that information shall be destroyed. However, a record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed and year completed shall be maintained. (See School District General Records Retention Schedule)

12.2 The following shall apply to the length of time and special consideration for the maintaining of all student records:

12.2.1 Directory information shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.2 Academic grades and attendance records shall be maintained in accordance with the retention for the student files. (See School District General Records Retention Scheduled)

12.2.3 Other personally identifiable data which is no longer needed to provide educational services for the child shall be purged and destroyed in accordance with the Delaware Public Archives (29 Del.C. §504(b)).

12.2.4 Student records shall be reviewed and screened at each level of school transition: i.e., elementary to middle school or junior high school to senior high school or between other agencies providing educational programming;

12.2.5 Records of students who are no longer in school shall be transferred to the Delaware Public Archives for storage.

13.0 Request to amend Educational Records

13.1 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.

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

13.3 If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing. 34 CFR 300.567

14.0 Right to a Hearing

14.1 A local educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with 15.0.

14.2 If, as a result of the hearing, the local educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

14.3 If, as a result of the hearing, the local education agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

14.4 Any explanation placed in the education records of the student under 14.3 shall:

14.4.1 Be maintained by the local educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

14.4.2 If the education records of the student or the contested portion thereof is disclosed by the local educational agency or institution to any party, the explanation shall also be disclosed to that party. 34 CFR 300.569

15.0 Conduct of a Hearing

15.1 The hearing required to be held by 14.1 shall be conducted according to procedures that shall include at least the following elements:

15.1.1 The hearing shall be held within a reasonable period of time after the local educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

15.1.2 The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

15.1.3 The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under 14.0, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

15.1.4 The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

15.1.5 The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.

16.0 Prior Consent for Disclosure Required

16.1 An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in 17.0.

16.1.1 Consent is not required under this section where the disclosure is to the parent of a student who is not an eligible student, or the student himself or herself.

16.2 Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

16.3 The written consent must be signed and dated by the parent of the student or the eligible student giving the consent and shall include: a specification of the records to be disclosed; the purpose of the disclosure; and the party or class of parties to whom the disclosure may be made.

16.4 When a disclosure is made pursuant to 16.1, the educational agency or institution shall, upon request, provide a copy of the record that is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

17.0 Prior Consent

17.1 An educational agency or institution may disclose personally identifiable information from the education record of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

17.1.1 To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interest;

17.1.2 To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements set forth in 20.0.

17.1.3 Subject to the conditions set forth in 21.0, to authorized representatives of the Comptroller of the United States, the Secretary of Education and state and local educational authorities.

17.1.4 In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the students may be disclosed only as may be necessary for such purposes as: to determine the eligibility of the student for financial aid, to determine the amount of the financial aid, to determine the conditions which will be imposed regarding the financial aid, or to enforce the terms and conditions of the financial aid.

17.1.5 To state and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to state statute adopted prior to November 19, 1974.

17.1.6 To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of administering predictive tests, administering student aid programs, and improving instruction; provided that the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

17.1.7 To accrediting organizations in order to carry out their accrediting functions.

17.1.8 To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1954.

17.1.9 To comply with a judicial order or lawfully issued subpoena: provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith;

17.1.10 The appropriate parties in health or safety emergency subject to the conditions set forth in 22.0.

18.0 Records of Requests and Disclosure Required to be Maintained

18.1 An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

18.1.1 The parties who have requested or obtained personally identifiable information from the education records of the student, and

18.1.2 The legitimate interests these parties had in requesting or obtaining the information.

18.1.3 18.1 does not apply: to requests by or disclosures to a parent of a student or an eligible student, to requests by or disclosures to school officials under 34 CFR §99.31(a)(1); if there is written consent of a parent of a student or an eligible student; or to requests for or disclosure of directory information under 34 CFR §99.37.

18.1.4 The record of requests and disclosures may be inspected:

18.1.4.1 By the parent of the student or the eligible student.

18.1.4.2 By the school official and his or her assistants who are responsible for the custody of the records, and

18.1.4.3 For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in 34 CFR §99.31(a)(1) and (3).

19.0 Limitation on Redisclosure

19.1 An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees, and agents, but only for the purposes for which disclosure was made.

19.2 Section 19.1 does not preclude an agency or institution from disclosing personally identifiable information under 17.0, with the understanding that the information will be redisclosed to other parties under that section; provided, that the recordkeeping requirements of 18.0 are met with respect to each of those parties.

19.3 An educational agency or institution shall, except for the disclosure of directory information under 23.0, inform the party to whom a disclosure is made of the requirements set forth in 19.1.

20.0 Conditions for Disclosure to Officials of Other Schools and School Systems

20.1 An educational agency or institution transferring the education records of a student pursuant to 17.1.2 shall:

20.1.1 Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, except

20.1.1.1 When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

20.1.1.2 When the agency or institution includes a notice on its policies and procedures formulated under 6.0, that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer.

20.1.2 Provide the parent of the student or the eligible student, upon request with an opportunity for a hearing under these procedures.

20.2 If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of 20.1.

21.0 Disclosure to Certain Federal and State Officials for Federal Program

21.1 Nothing in these policies shall preclude authorized representatives of officials listed in 17.1.3 from having access to student and other records which may be necessary in connection with the audit and evaluation of federally supported education programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.

21.2 Except when the consent of the parent of a student or an eligible student has been obtained under 16.0, or when the collection of personally identifiable information is specifically authorized by federal or state law, any data collected by officials listed in 17.1.3 shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

22.0 Conditions for Disclosure in Health and Safety Emergencies

22.1 An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2 The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following: the seriousness of the threat to the health or safety of the student or other individuals; the need for the information to meet the emergency; whether the parties to whom the information is disclosed are in a position to deal with the emergency; and the extent to which time is of the essence in dealing with the emergency.

22.3 22.1 shall be strictly construed.

23.0 Conditions for Disclosure of Directory Information

23.1 An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information under 23.3.

23.2 An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under 23.3.0

23.3 An educational agency or institution that wishes to designate directory information shall give public notice of the following:

23.3.1 The categories of personally identifiable information which the institution has designated as directory information;

23.3.2 The right of the parent of the student or the eligible student to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

23.3.3 The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

24.0 Safeguards

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

24.2 One official at each participating agency shall assume responsibility for ensuring the confidentiality of

any personally identifiable information.

24.3 All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.129 and part 99 of this title.

24.4 Each participating agency shall 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. 34 CFR 300.572

25.0 Destruction of Information

25.1 The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

25.2 The information must be destroyed at the request of the parents. However, 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 the time limitation. 34 CFR 300.573

NOTE: Under §300.573, the personally identifiable information on a child with a disability may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in 25.2.

26.0 Education Records Required in Delaware Schools:

26.1 Directory information for each student as defined in 4.3.

26.2 A cumulative record for each student which may include identifying data, academic work completed, level of achievement, attendance data, grades, scores on group or individualized intelligence, achievement, aptitude psychological, sociometric, or interest inventory tests, health data, family background information, teacher, counselor, or other school personnel ratings and observations, and verified reports of serious or recurrent behavior patterns.

26.3 Although they may be collected and maintained separately from the cumulative record file, the following education records shall be considered part of the total cumulative record:

26.3.1 A School Health Record Card and Emergency Treatment Data Card for each student.

26.3.2 A file including documents related to the identification, evaluation, placement, and provision of a free appropriate public education for each student with disabilities.

26.3.3 The records of students with disabilities shall be maintained in accordance with 12.1.4.

26.3.4 The total cumulative record shall be disclosed only in accordance with 16.0 to 22.0.

26.4 Maintenance for 100 years is required of certain education records and the following information shall be maintained for each student ever registered and/or in attendance:

26.4.1 Names, addresses and telephone numbers of parents or guardians.

26.4.2 Birthdate, sex and other identifying data of the student.

26.4.3 Academic work completed.

26.4.4 Level of achievement such as grades and standardized achievement test score, including approval for certificate of attendance, early college admission, or alternative/option education.

26.4.5 Attendance data.

26.4.6 Transportation data.

26.4.7 The reason for leaving school—graduated, transferred or dropped out.

26.5 Contracts for storage of student records of graduates, withdrawals and special education students for district storage, shall be initiated between the school district and the Delaware Public Archives. Two or more copies in separate sites are recommended to provide fire safe storage.

26.6 The cumulative records folders for students who have graduated from or who left school prior to graduation from high school are to be stored at the school of last attendance. In those cases where schools have been closed, razed or reorganized a central storage file should be developed and maintained. All clerical staff of the district, especially those typically handling student record requests, should have as a part of an operations manual information about stored records, including site and acquisition procedures.

(NOTE: Records of students graduated from the William C. Jason Comprehensive High School during the years 1951 through 1967 may be obtained by writing directly to the Department of Education.)

~~Otherwise, the Delaware Public Archives should be contacted immediately to facilitate the transfer and continuing maintenance of the student records in those cases described above. In those cases where records are no longer being handled by the original comprehensive high school, it will be impossible to obtain character references on former students. Employers or others requesting character references on former students should be instructed to contact these students for information concerning persons who served as administrators or teachers during the period of time they were in school. They should then contact these individuals directly for the needed information.~~

~~26.7 Transfer is required of certain education records. — A file consisting of the complete up-to-date cumulative record including the school health record card shall follow each student transferred from one school to another. The file for each student with disabilities transferring from one school to another shall also be included. This transfer of education records from one school to another is subject to the requirements set forth in 16.0 through 22.0. Records of students graduated from or who left school prior to graduation from Wilmington High School, may be obtained by contacting the Delaware Public Archives.~~

~~26.8 Transfer of Student Records in the Case of Placement for Adoption and Change of Name~~

~~26.8.1 In the case of either placement for adoption, or adoption of a student, it is legally necessary to change the name of that student to modify his or her identity on official records. Delaware law provides that adoption records of this sort are to be held in confidence in the appropriate state agency or court. The Department of Services for Children, Youth, and Their Families, Division of Child Protective Services, is the agency authorized by 13 ~~Del.C.~~ Ch. 9, to undertake the appropriate transactions in the case of placement for adoption, and change of name. This agency is also authorized under Section 901 of that chapter to license or to otherwise authorize adoption procedures by other public or private agencies in the State of Delaware or in other states. When a written request for records of a child being placed for adoption is addressed to the superintendent of a Delaware school district from the Adoption Coordinator, Division of Child Protective Services; the Director, Catholic Social Services, Inc.; or the Director, Children's Bureau of Delaware, the superintendent shall release all pertinent and transferable records relating to that student to that requesting agency. Following any such release, no information concerning the student named is to be released to any other person or agency except for further endorsement from the adoption coordinator. — It is recommended that any records considered not appropriate to transfer to any other school be destroyed, and that the permanent record system of the school show that the named student has transferred to the social service agency named. The official agency receiving the records will modify the name wherever it appears and forward the file to the new school. The agency will identify itself as the contact point for further information.~~

~~26.9 Transfer of Students~~

~~26.9.1 When a student transfers from a public school to any other school in or out of Delaware, a Delaware Student Transfer Form shall be made available to the transferring student or the student's parent or guardian for presentation to the receiving school or district. The principal of the school from which the student is transferring shall hold all cumulative records pending a request for them from the receiving school. A student assigned or admitted to an educational program operated by the Department of Services for Children Youth and Their Families shall be transferred as above. A student on supportive instruction (homebound or hospital) shall continue as an enrollee in the public school attended before being assigned to such a program.~~

~~26.9.2 When a student transfers to a Delaware school, the receiving school shall immediately request all student records, including the cumulative record, from the sending school district. All transferred students shall be enrolled and assigned temporarily to classes upon arrival in the receiving school.~~

~~26.9.3 In order for a transfer unit of credit to be valid in the school to which transfer is made, it shall have been completed in the school from which pupil transferred. In no case shall work not satisfactorily completed (failed or left incomplete) in one school be accepted as passed and completed work in another school. Incomplete or failed work shall be repeated if credit is to be granted for that work.~~

~~26.9.4 Principals of secondary schools should be constantly alert to the transfer rules as prescribed by the *Delaware Code* and the regulations of the Department of Education.~~

~~26.9.5 In the case of students who transfer to a Delaware school from a foreign country, the local school district or school is responsible for having the transcripts evaluated.~~

27.0 State and Federal Review

~~27.1 The Secretary of the U.S. Department of Education is required to establish or designate an office and a review board. — The office will investigate, process, and review violations, and complaints that may be filed concerning the Privacy Rights of Parents and Students. The review board will adjudicate cases referred to it by the office under the procedures set forth in §99.65–§99.67 of the Privacy Rights of Parents and Students. The following is the address of the office: The Family Policy Compliance Office, Federal Building No. 6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.~~

~~27.2 In the case of students with disabilities the reviewing, investigating, and acting on any allegation of~~

~~substance which may be filed concerning the violation of provisions of this policy by educational agencies or institutions will be processed by the Director, Exceptional Children and Early Childhood Education, Department of Education, Townsend Building, Box 1402, Dover, DE—~~

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