



# *Special Education Law*

*Reed Martin, J.D.*

## **Access To Records Under The Idea**

Have you been denied access to your child's records?

Have you been told you have to pay staff time to retrieve the information?

Have you been told you cannot have the records amended?

Have you been told "we don't have to give you the types and locations of your child's records?"

(The highlighted areas have been highlighted by us. This represents the problematic areas reported to us from parents in getting access to their child's records)

## **Confidentiality Of Information**

### **§300.560 Definitions.**

As used in §§300.560-300.577—

- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (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).
- (c) 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.

### **§300.561 Notice to parents.**

- (a) The SEA shall give notice that is adequate to fully inform parents about the requirements of §300.127, including—
  - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
  - (2) 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;

(3) 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

**(4) 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 of 1974 and implementing regulations in 34 CFR part 99.**

(b) Before any major identification, location, or evaluation activity, 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.

### **§300.562 Access rights.**

**(a) 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 pursuant to §§300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.**

(b) The right to inspect and review education records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(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.

### **§300.563 Record of access.**

**Each participating agency shall 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.**

### **§300.564 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.

### **§300.565 List of types and locations of information.**

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

### **§300.566 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.

### **§300.567 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 shall 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 shall inform the parent of the refusal and advise the parent of the right to a hearing under §300.568.

### **§300.568 Opportunity for a hearing.**

The agency shall, 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.

### **§300.569 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 shall 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 shall inform the parent of the right to place in the records it 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.

### **§300.570 Hearing procedures.**

A hearing held under §300.568 must be conducted according to the procedures under 34 CFR 99.22.

### **§300.571 Consent.**

(a) Except as to disclosures addressed in §300.529(b) for which parental consent is not required by Part 99, **parental consent must be obtained before personally identifiable information is -**

**(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or**

**(2) Used for any purpose other than meeting a requirement of this part.**

**(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.**

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

### **§300.572 Safeguards.**

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

(b) One official at each participating agency shall 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 §300.127 and 34 CFR part 99.

**(d) 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.**

### **§300.573 Destruction of information.**

(a) 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.

(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.

### **§300.574 Children's rights.**

(a) The SEA shall provide 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 the Family Educational Rights and Privacy Act of 1974 (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 §300.517, the rights regarding educational records in §§300.562-300.573 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.

### **§300.575 Enforcement.**

The SEA shall provide the policies and procedures, including sanctions that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

**ASK IN WRITING FOR THIS INFORMATION!**