

CONFIDENTIALITY OF STUDENT'S RECORDS

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

The purpose of this policy is to set out the requirements of the protection and privacy of parents and students in the confidentiality of any personally identifiable data collected and/or maintained pursuant to the identification and evaluation of students for the purposes of determining eligibility for and possible placement in special education and pursuant to the provision of special education and related services for such students. The Sedgwick County Area Educational Services Interlocal Cooperative, the Kansas State Board of Education, and all State and local agencies participating in the identification, location, evaluation, and provision of the special education and related services for exceptional students shall be responsible for ensuring confidentiality.

The Sedgwick County Area Educational Services Interlocal Cooperative hereinafter referred to as the Cooperative, adopts this policy in accordance with applicable Federal and State laws and regulations to protect the right of privacy of any student and his or her lawful custodians regarding personally identifiable records, files, and data directly related to such students as required under K.S.A. 72-6214.

Appropriate procedures and safeguards shall be established and followed to govern disclosure of student records and information to persons, agencies, and organizations within and outside the Cooperative. Such procedures and safeguards shall be consistent with and pursuant to the Code of Federal Regulations (CFR), Part 99-Family Educational Rights and Privacy Act, and Part 300-Education of the Handicapped; Article 9 of Chapter 72 of Kansas Statutes Annotated (KSA); and Article 12 of the Kansas Administrative Regulations (KAR).

Definitions: The following definitions apply to this policy:

1. "**Authorized employee**" means persons within the Cooperative and its member districts who have a legitimate educational interest in the individual child.
2. "**Confidentiality**" means the protection of personally identifiable information at all stages including the collection, use, and maintenance of educational records.
3. "**Directory information**" means information contained in the educational records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone number, 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 attended.
4. "**Educational records**" means those records, files, documents, and other materials which:
 - a. are maintained by the Cooperative or by a person acting for the Cooperative;
 - b. contain information directly related to a student; and
 - c. the term does not include:
 1. records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. For the purpose of this definition, "substitute" means an individual who is carrying out the responsibilities of the person who made the record on a short-term basis. It does not refer to an individual who permanently succeeds the maker of the record in his/her position.
5. "**Disclosure**" means to permit access to or the release, transfer, or other communication of educational records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.
6. "**Parent**" means a parent of a student and includes a natural parent, or guardian, or an individual acting as a parent in the absence of a parent or a guardian.

For the purposes of this policy, an individual acting as a parent in the absence of a parent or a guardian shall be referred to as an "educational advocate". An educational advocate shall be assigned to a child pursuant to K.A.R. 91-12-72.
7. "**Eligible student**" means a student who has:
 - a. reached 18 years of age and has not been legally adjudicated to be an incapacitated person; or
 - b. is married or declared emancipated by the court.

Throughout this policy whenever reference is made to parents and or legal guardian, it is understood that this phraseology also includes any eligible student and the permission required of and the rights accorded to parents or legal guardians of the student shall be required of and accorded to only the student provided the child has not been adjudicated to be incompetent by a court of competent jurisdiction.

8. **"Inspect and review"** means the right of parents or eligible students to gain an understanding of information contained in the educational records.
9. **"Records"** means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.
10. **"Legitimate educational interest"** means having an educational reason for access to records. Persons who do not have direct or indirect special education and related services or regular education contact with the child shall not have access to his/her records.
11. **"Notify"** means to provide information in writing or in the primary mode of communication of the individual for whom the notice is intended.
12. **"Personally identifiable"** means that the data or information in the educational records include:
 - a. the name of the student, the student's parents, or other family member;
 - b. the address of the student or student's family;
 - c. a person identifier, such as the student's social security number or a student number;
 - d. a list of personal characteristics which would make the student's identity easily traceable; or
 - e. other information which would make the student's identity easily traceable.
13. **"Destruction"** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Parent's Rights - The cooperative shall give full rights under this policy to either parent, unless the Cooperative has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as guardianship, divorce, separation, or custody that specifically revokes these rights.

Student's Rights - When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this policy transfer from the parents to the student.

The permission or consent required of and the rights accorded to the parents of the student shall be required of and accorded to only the student provided that he/she;

- a. is married or declared emancipated by the court, or
- b. has attained 18 years of age and has not been legally adjudicated to be an incapacitated person.

The Cooperative shall inform parents of students whom they believe to be an incapacitated person to have themselves declared the students' legal guardians before the student turns eighteen years of age in order that the parents may continue to have access to the students' records.

Notification

The Cooperative shall annually inform parents of students currently enrolled and in attendance in a Cooperative program or attending school in one of the districts of the Cooperative of:

- a. their confidentiality rights under the Family Educational Rights and Privacy Act and Part B of the Education of the Handicapped Act; and
- b. the confidentiality policies and procedures of the Cooperative.

The notice must include a statement that the parents or eligible student has a right to:

- a. inspect and review the student's records;
- b. request the amendment of the student's educational records;
- c. refuse to consent to disclosures of personally identifiable information, except to the extent that Federal laws authorize disclosure without consent;
- d. file a complaint with the Kansas State Board of Education or the U.S. Department of Education concerning alleged failures by the Cooperative to comply with State and Federal confidentiality policies and procedures.

The notification shall include information about where copies of the Cooperatives policies and procedures may be obtained.

The notice shall be given in the native language(s) of the community population(s) and shall be given by such means as are reasonably likely to inform parents and eligible students of their rights. Means of notification may be by

individual notification, publication in the community newspaper or publication in student or parent handbook, student newspaper, cooperative newsletter, Superintendent's newsletter, or school newsletters.

Prior to September 15 of each school year, the Confidentiality of student Records Policy will be published in the major area newspaper which circulation covers all nine districts in the Cooperative. The notice shall be written in the dominant language of the population groups.

Copies of the Cooperative's policy on the Confidentiality of Student Records are available to the public upon request at the Special Education Office, 620 Industrial, P.O. Box 760, Goddard, Kansas, 67052.

Access Rights

The Cooperative shall permit parents to inspect and review any educational records relating to their children which are collected, maintained, or used by the Cooperative under this policy. The Cooperative shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

Each parent or eligible student requesting to inspect and review educational records shall have the right to:

- a. a response from the Cooperative to reasonable requests for explanations and interpretations of the records and this explanation or interpretation shall be provided by a qualified professional in the parent's native language.
- b. to request that the Cooperative provide copies of the records containing the information if failure to provide copies would effectively prevent the parent or eligible student from exercising the right to inspect and review the records; and
- c. to have a representative of the parent or eligible student inspect and review the records.

The Cooperative shall 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 such as guardianship, separation, and divorce.

The Cooperative shall not destroy any educational records if there is an outstanding request to inspect and review the records under this policy

If any educational 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.

Record of Access

The Cooperative shall keep a record of parties obtaining access to educational records collected, maintained, or used under this policy, (except access by parents and authorized employees of the Cooperative or of the participating nine districts), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Types and Locations of the Information

The Cooperative shall keep a list of the types and locations of educational records collected, maintained, or used by the Cooperative or its participating nine districts, and shall provide that list to parents or eligible students upon request.

Fees

The Cooperative may charge a fee for copies of records which are made for or at the request of parents under this policy as long as the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Such fee is construed as reproduction cost.

The Cooperative shall not charge a fee to search for or to retrieve a student's records.

Copies of records, files, documents, and other materials including summary results of testing, evaluation, or observations of the student shall be made available to parents. Materials protected by copyright, (such as individual test protocols), and those for which dissemination will destroy their value, shall NOT be copied or transmitted in whole or in part. If a parent requests to examine the answers to test questions, he/she may be allowed to read the questions and the answers given by the student if this is done in the presence of a representative of the Cooperative that administered the test. Copies of such material shall not be provided.

Amendment of Records

A parent or eligible student who believes that information in a student's educational records collected, maintained, or used under this policy is inaccurate, misleading, or in violation of the privacy or other rights of the student, may request amendments to those records.

Within 10 days after the receipt of a request to amend records is received, a decision shall be made whether to amend the information in accordance with the request. The parents or eligible student shall be advised in writing or by their normal mode of communication of the Cooperative's decision on the request.

If the Cooperative's decision is to refuse the requested amendment, the Cooperative shall also inform the parents of their right to a hearing in order to challenge the data and to receive a copy of this policy. If the Cooperative agrees to amend the records, the amendments shall be completed within 30 days of the original request.

Hearing to Challenge Content of Records

The Cooperative shall, on request, provide an opportunity for a hearing to challenge information in educational records. The following shall apply to a hearing to challenge content of educational records:

1. The hearing shall be conducted within thirty days after the request;
2. At least five days prior to the hearing, parents shall be notified in writing of the date, time and place of the hearing, which shall be at a time and place reasonably convenient to the parents;
3. The hearing shall be impartial, that is, conducted by any party, including an official of the Cooperative or school, who does not have a direct interest in the outcomes of the hearing;
4. The parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;
5. Parents or the eligible student shall be notified in writing of the hearing decision within ten days following the hearing;
6. The decision shall be based solely upon the evidence presented at the hearing; and
7. The notice shall include a summary of the evidence presented at the hearing and the reasons for the decision.

Actions Following the Hearing

If, as a result of the hearing, the Cooperative decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the records shall be amended and the parents or eligible student shall be notified in writing of such amendment.

If, as a result of the hearing, the Cooperative decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the cooperative shall, within ten days, notify the parents or eligible student in writing or in their normal mode of communication of their right to enter into the records, a statement about the challenged data which comments on or gives the parents or eligible student's reasons for disagreeing with the decision of the Cooperative or both.

Any statement placed in the records under this section shall be maintained in, and treated as part of, the student's records as long as the records or the contested portion therefor is maintained by the Cooperative. If the educational records of the student or the contested portion is released, transferred, or otherwise disclosed by the Cooperative to any party, the parent's statement shall also be released, transferred, or disclosed.

Consent for Disclosure

- A. The Cooperative shall obtain the signed and dated written consent of the parent or eligible student before personally identifiable information is:
 1. Disclosed to anyone other than officials of participating agencies collecting or using the information under 34 C.F.R. Part 300, subject to B of this section, or
 2. Used for any purpose other than meeting a requirement under 34 C.F.R. Part 300.
- B. The Cooperative shall not release information from educational records to participating agencies without parental consent except as noted below:
 1. The Cooperative may disclose personally identifiable information from the educational records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:
 - a. To other school officials, including teachers, within the Cooperative or the participating nine districts who have been determined by the Cooperative to have legitimate educational interests; and

- b. To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in (2) below.
 - 2. The Cooperative in transferring the educational records of a student pursuant to (1) above shall make a reasonable attempt to notify the parents of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:
 - a. When the transfer of the records is initiated by the parent or eligible student at the Cooperative; or
 - b. When the Cooperative includes in its annual notice of parent's rights that it is the policy of the Cooperative to forward educational records on request to a school in which the student seeks to enroll, then the Cooperative does not have to provide any further notice of transfer of records.
- C. The Cooperative, when receiving personally identifiable information from another educational agency or institution, may make further disclosures of the information on behalf of the educational agency or institutions without the prior written consent of the parent or eligible student if the conditions of B(1) and B(2) noted above are met, and if the Cooperative informs the party to whom disclosure is made of these requirements.
- D. If the parents of the student or the eligible student refuse consent for the release of personally identifiable information to a third party, the information shall not be disclosed.

PRESERVATION OF CONFIDENTIALITY

In order to protect the confidentiality of personally identifiable information, all educational records shall be kept in a safe and secure place at all times. The official custodian or his designated representative is responsible for maintaining and preserving the confidentiality of educational records. The official custodian or his designated representative is responsible for classifying records and maintaining them so that such record can clearly be identified by classification. He is responsible for reviewing the files and deleting supplementary and tentative records when necessary or as otherwise provided for herein.

The Director or his designated representative shall develop a system of student personnel records in conformity with these policies. The Director is designated as the official custodian of all student records on file in the Central Office.

Each building principal is designated as the official custodian of student personnel record files in his/her attendance center.

Each school psychologist is designated as the official custodian of student records developed and maintained by the school psychologist.

Each speech therapist is designated as the official custodian of student records developed and maintained by the speech therapist.

Section 1. Prior Consent to Release Records.

- (a). Except as provided in **Section 2** below, the Cooperative shall obtain a signed and dated written consent of a parent of an eligible student before it discloses personally identifiable information from the student's educational records.
- (b). The written consent must:
 - (1). Specify the records that may be disclosed;
 - (2). State the purpose of the disclosure; and
 - (3). Identify the party or class of parties to whom the disclosure may be made.
- (c). When disclosure is made under paragraph (a) of this section:
 - (1). If a parent or eligible student so requests, the Cooperative shall provide him or her with a copy of the records disclosed; and
 - (2). If the parent of a student who is not an eligible student so requests, the Cooperative shall provide the student with a copy of the records disclosed.

Section 2. Consent Not Required to Disclose Information.

- (a). The Cooperative may disclose personally identifiable information from an educational record of a student without the consent required by **Section 1** above if the disclosure meets one or more of the following conditions:
 - (1). The disclosure is to other school officials, including teachers, within the Cooperative or the nine participating districts whom the Cooperative has determined to have legitimate educational interests.

- (2). The disclosure is, subject to the requirements of **Section 5**, to officials of another school, school system, or institution of post-secondary education where the student seeks or intends to enroll.
- (3). The disclosure is, subject to the requirements of **Section 6**, to an authorized representative of:
 - (i). The Comptroller General of the United States;
 - (ii). The Secretary; or
 - (iii). State and local educational authorities.
- (4). (i). The disclosure is to State and local officials or authorities.
- (5). (i). The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
 - (A). Develop, validate, or administer predictive tests;
 - (B). Administer student aid programs; or
 - (C). Improve instruction.
- (ii). The Cooperative may disclose information under paragraph (a)(5)(i) of this section only if:
 - (A). The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and
 - (B). The information is destroyed when no longer needed for the purposes for which the study was conducted.
- (iii). For the purposes of paragraph (a)(5) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.
- (6). The disclosure is to accrediting organizations to carry out their accrediting functions.
- (7). The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.
- (8). (i). The disclosure is to comply with a judicial order or lawfully issued subpoena.
- (ii). The Cooperative may disclose information under paragraph (a)(8)(i) of this section only if the Cooperative makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.
- (9). The disclosure is in connection with a health or safety emergency, under the conditions described in **Section 7**.
- (10). The disclosure is information the Cooperative has designated as "directory information," under the conditions described in **Section 8**.
- (11). The disclosure is to the parent of a student who is not an eligible student or to the student.

Section 3. Record Keeping Requirements for Disclosures.

- (a). (1). The Cooperative shall maintain a record of each request for access to and each disclosure of personally identifiable information from the educational records of each student.
- (2). The Cooperative shall maintain the record with the educational records of the student as long as the records are maintained.
- (3). For each request or disclosure the record must include:
 - (i). The parties who have requested or received personally identifiable information from the educational records; and
 - (ii). The legitimate interests the parties had in requesting or obtaining the information.
- (b). If the Cooperative discloses personally identifiable information from an educational record with the understanding authorized under **Section 4** (b), the record of the disclosure required under this section must include:
 - (1). The names of the additional parties to which the receiving party may disclose the information on behalf of the Cooperative; and
 - (2). The legitimate interests under **Section 2** which each of the additional parties has in requesting or obtaining the information.
- (c). The following parties may inspect the record relating to each student:
 - (1). The parent or eligible student.
 - (2). The school official or his or her assistants who are responsible for the custody of the records.
 - (3). Those parties authorized in **Section 2** (a)(1) and (3) for the purposes of auditing the record keeping procedures of the Cooperative.
- (d). Paragraph (a) of this section does not apply if the request was from, or the disclosure was to:
 - (1). The parent or eligible student;
 - (2). A school official under **Section 2** (a)(1);
 - (3). A party with written consent from the parent or eligible student; or
 - (4). A party seeking directory information.

Section 4. **Redislosure of Information.**

- (a). (1). The Cooperative may disclose personally identifiable information from an educational record 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 consent of the parent or eligible student.
- (2). The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

- (b). Paragraph (a) of this section does not prevent the Cooperative from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the Cooperative if:
 - (1). The disclosures meet the requirements of **Section 2**; and
 - (2). The Cooperative has complied with the requirements of **Section 3** (b).

- (c). Paragraph (a) of this section does not apply to disclosures of directory information under **Section 2** (a)(10) or to disclosures to a parent or student under **Section 2** (a)(11).

- (d). Except for disclosures under **Section 2** (a)(10) and (11), the Cooperative shall inform a party to whom disclosure is made of the requirements of this section.

Section 5. **Disclosure of Information to Other Agencies.**

- (a). The Cooperative, when disclosing an educational record under **Section 2** (a)(2) shall:
 - (1). Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent of eligible student, unless:
 - (i). The disclosure is initiated by the parent or eligible student; or
 - (ii). The policy of the Cooperative includes a notice that the agency or institution forwards educational records to other agencies or institution that have requested the records and in which the student seeks or intends to enroll;
 - (2). Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
 - (3). Give the parent or eligible student, upon request, an opportunity for a hearing under this policy.

- (b). The Cooperative may disclose an educational record of a student in attendance to another educational agency or institution if:
 - (1). The student is enrolled in or receives services from the other agency or institution; and
 - (2). The disclosure meets the requirements of paragraph (a) of this section.

Section 6. **Disclosure of Information for Federal or State Program Purposes.**

- (a). The officials listed in **Section 2** (a)(3) may have access to educational records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

- (b). Information that is collected under paragraph (a) of this section must:
 - (1). Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and
 - (2). Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

- (c). Paragraph (b) of this section does not apply if:
 - (1). The parent or eligible student has given written consent for the disclosure under Section 1; or
 - (2). The collection of personally identifiable information is specifically authorized by Federal law.

Section 7. **Disclosure of Information in Health and Safety Emergencies.**

- (a). The Cooperative may disclose personally identifiable information from an educational record 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.

- (b). Paragraph (a) of this section shall be strictly construed.

Section 8. **Disclosure of Directory Information.**

- (a). The Cooperative may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the Cooperative or one of the nine participating districts of:

- (1). The types of personally identifiable information that the Cooperative has designated as directory information;
- (2). A parent's or eligible student's right to refuse to let the Cooperative designate any or all of the types of information about the student as directory information; and
- (3). The parent's or eligible student's right to have thirty (30) days following the date public notice is given that the Cooperative may disclose directory information in which to notify the Cooperative in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b). The Cooperative may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

Section 9. Filing of Complaints.

A person may file a written complaint with the Family Policy and Regulations Office regarding an alleged violation under the Family Educational Rights and Privacy Act, Subpart D - 34 C.F.R. Part 99 and this policy. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

DESTRUCTION OF DATA

The Cooperative shall inform parents of students or eligible students when personally identifiable information collected, maintained, or used under this policy is no longer needed to provide educational services to the student.

The information must be destroyed at the request of the parents of the student or the eligible student. 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 shall be maintained without time limitation.

Two years after graduating or leaving the Cooperative programs, the Cooperative shall notify parents of students or eligible students that a list of records has been accumulated on that individual student which includes personally identifiable information, and that the information is no longer needed to provide educational services to the student. Within the notice to the parents of students or eligible students, the Cooperative will remind the parents of students or the eligible student that the records may be needed by the student for social security benefits or other purposes.

In the event that the Cooperative is unable to contact the parents of a student or the eligible student at the last known address, the Cooperative will document its efforts to notify the parents of the student or eligible student of the rights under this policy. Records will be kept for a period of not less than five years prior to any attempt by the Cooperative to destroy records in the absence of consent to destroy the records.

**Adopted by the Board of Directors
Sedgwick County Area Educational Services Interlocal Cooperative #618
11/12/92.**