

PROCEDURES FOR THE MANAGEMENT OF PUPIL RECORDS AT WISCONSIN EDUCATIONAL SERVICES PROGRAM DEAF AND HARD OF HEARING

These procedures apply to the management of pupil records at the Wisconsin Educational Services Program Deaf and Hard of Hearing (“Program”). The Program includes the Wisconsin School for the Deaf (“School”) and the Deaf and Hard of Hearing Outreach Team (“Outreach”). The Wisconsin Educational Services Program for the Deaf and Hard of Hearing is administered by the Wisconsin Department of Public Instruction (“DPI”). These procedures govern pupil records in the Program; for students attending the School and students who are supported by the Outreach team.

The purpose of these procedures is to provide all Program staff with information about student records. It is important for staff to recognize when something is a pupil record and know how pupil records must be classified, maintained, transferred, disclosed, and destroyed. All pupil records must be kept confidential unless one of the exceptions in Section C applies. In addition, these procedures describe the rights parents, guardians, and adult pupils have to pupil records.

A. **CONTENT OF RECORDS** – Pupil records include all records relating to an individual student. Pupil records do not include: notes or records maintained for personal use by teachers or other DPI-licensed staff which are not available to others; records necessary for and available only to persons involved in the psychological treatment of a pupil; records created or received by the Program after an individual is no longer a pupil in attendance at the School or actively utilizing Outreach services; and records that are not directly related to the individual’s attendance as a pupil.

B. PUPIL RECORD DEFINITIONS

1. **Progress records** maintained by the Program include a statement of courses taken by the pupil, the pupil's grades, the pupil’s immunization records, the pupil's extracurricular activities, and the pupil's attendance record.
2. **Behavioral records** maintained by the Program include psychological tests, personality evaluations, records of conversations, written statements relating specifically to an individual pupil's behavior, tests relating specifically to achievement or measurement of ability, the pupil’s physical health records other than his/her immunization records, law enforcement agency records and any other pupil records that are not progress records.
 - i. **"Law enforcement agency records"** include those records and other information obtained from a law enforcement agency relating to: (1) the use, possession or distribution of alcohol or a controlled substance by a pupil enrolled in the Program; (2) the illegal possession of a dangerous weapon by a child; (3) an act for which a Program pupil was taken into custody based on the law enforcement officer's belief that he/she violated or was violating any state or federal criminal laws; and (4) an act for which a juvenile enrolled in the Program was adjudged

delinquent. The law enforcement agency may provide such records information to the Program on its own initiative or on the request of the School Administrator or designee, subject to the agency's official policy. The Program may also enter into an interagency agreement with law enforcement and other appropriate agencies to provide for the routine disclosure of records information in accordance with state law provisions. If a law enforcement agency denies access to any of the aforementioned records, the Program may file a petition with a court to seek access to the records based on legitimate educational or safety interests in the records.

- ii. **"Court records"** include those records received from a court clerk concerning a juvenile enrolled in the Program who: (1) has had a petition filed with a court alleging that he/she has committed a delinquent act that would be a felony if committed by an adult; (2) has been adjudged delinquent; (3) has school attendance as a condition of his/her court dispositional order; or (4) has been found to have committed a delinquent act at the request of or for the benefit of a criminal gang that would be a felony if committed by an adult, and has been adjudged delinquent on that basis.
 - iii. **"Pupil physical health records"** include basic health information about a pupil, including the immunization records, emergency medical card(s), a log of first aid and medicine administered to the pupil, an athletic permit card, a record concerning the pupil's ability to participate in an education program, an ocular or audiology report for special education eligibility, the results of any routine screening test such as for hearing, vision or scoliosis, and any follow-up to such test, and any other basic health information as determined by the State Superintendent of Public Instruction.
 - iv. **"Patient health care records"** include all records relating to the health of a pupil prepared by or under the supervision of a health care provider which are not included in the "pupil physical health records" definition above. Any record that is required to be treated as a patient health care record is subject to different disclosure and confidentiality requirements than other records. For record keeping purposes, patient health care records shall be maintained separately from other behavioral records and in conformity with Wisconsin Statutes sections 146.81-146.84.
3. **Directory data** are those pupil records that include the pupil's name, home town, grade level, date of birth, photographs, major field of study, participation in officially recognized activities and sports, weight and height of members of

athletic teams, dates of attendance, and degrees/honors/awards received, and school district of residence.

C. **CONFIDENTIALITY AND DISCLOSURE OF RECORDS**– The general rule is that all pupil records are confidential, but there are a number of exceptions that are discussed below.

1. **Release of pupil records to Pupils and Parents/Guardians**

- i. A pupil or the parent/guardian of a minor student shall, upon request, be shown and provided with a copy of the pupil's progress records.
- ii. To the extent authorized by state and federal law, an adult pupil or the parent/guardian of a minor pupil shall, upon request, be shown the pupil's behavioral records in the presence of a person qualified to explain and interpret the records. Such a pupil or parent/guardian shall, upon request, be provided with a copy of the behavioral records.
- iii. To the extent authorized by state and federal law, a parent shall have access to a pupil's pupil records regardless of whether the parent has legal custody of the child, unless the parent has been denied periods of physical placement with the child or there is a legally binding document that specifically revokes the parent's rights to review pupil records.
- iv. Personally identifiable information from an adult pupil's records may be disclosed to the student's parent(s)/guardian(s), without the adult pupil's written consent, if the adult pupil is a dependent of his/her parent(s)/guardian(s) under the Internal Revenue Code. An exception shall be made when an adult pupil has informed the Program, in writing, that the information may not be disclosed.

2. **Access to Pupil records (Other than Patient Health Care Records) by Program Officials**

- i. School officials shall have access to a pupil's records only if they have a legitimate educational interest, including safety interest, in the record.
 1. **“School official”**: A school official is a person who is required by DPI to have a license and is employed by the Program as an administrator, supervisor, instructor, or support staff member (including health or medical staff). A school official also may include a volunteer or contractor outside of the Program who performs an institutional service or function for which the Program would otherwise use its own employees and who is under the direct control of the Program with respect to the use and maintenance of personally identifiable information from pupil

records, such as an attorney, auditor, medical consultant, or therapist.

2. **“Legitimate educational interest”**: A school official has a legitimate educational interest if the official needs to review a pupil record in order to fulfill his or her professional responsibility.
 - ii. Law enforcement agency record information received by the Program may be made available to those school officials with legitimate educational interests, including safety interests, in the information. If law enforcement agency record information obtained by the Program relates to a Program pupil, the information may also be disclosed to those Program employees who have been designated by the DPI to receive that information for the purpose of providing treatment programs for Program pupils. The information may not be used by the resident school district as the sole basis for recommending suspension or expulsion of a pupil from the Program, or as the sole basis for taking any other disciplinary action against a pupil, except action under the School's athletic/activity code.
 - iii. Court records obtained by the Program must be disclosed to Program employees who work directly with the juvenile named in the records or who have been determined by the DPI to have legitimate educational interests, including safety interests, in the information. An employee may not further disclose the information, and the information may not be used as the sole basis for recommending suspension or expulsion of a pupil from the Program, or as the sole basis for taking any other disciplinary action against a pupil, except action under the School's athletic/activity code.
 - iv. Notwithstanding their confidential status, pupil records may be used in suspension and expulsion proceedings and by individualized education program teams under state and federal special education laws.
3. **Release of Pupil Progress and Behavioral Records (Other than Patient Health Care Records) to Others**
 - i. The Program may disclose personally identifiable information from a pupil record under three circumstances:
 1. written consent from a parent, guardian or adult pupil,
 2. receipt of a court order, or
 3. as authorized by law.
4. **Release of and Access to Patient Health Care Records**
 - i. All patient health care records shall remain confidential. They may be released only to persons specifically designated in state law or to other persons with the informed consent of the patient or a person authorized

by the patient. Student patient health care records maintained by the Program may only be accessed without informed consent by a Program employee or agent if any of the following apply:

1. The re-disclosure is to Program staff and is for the same purposes as the original disclosure.
 2. The employee or agent has responsibility for the preparation or storage of patient health care records.
 3. Access to patient health care records is necessary to comply with a requirement in federal or state law.
- ii. Any record that concerns the results of a test for the presence of HIV or antibody to HIV (the virus which causes acquired immunodeficiency syndrome - AIDS) shall be confidential and may be disclosed only with the informed written consent of the test subject.

5. **Release of Directory Data**

- i. The Outreach Teams do not release directory data.
- ii. Except as otherwise provided, directory data may be disclosed to any person after the Program has:
 1. Notified the adult pupil or parent, legal guardian or guardian ad litem of a minor pupil of the categories of information which it has designated as directory data with respect to each pupil,
 2. Informed such persons that they have 14 days to notify the Program that all or any part of the directory data may not be released without their prior consent, and
 3. Allowed 14 days for such persons to notify the Program, in writing, of all the directory data items they refuse to permit the Program to release about that student without informed consent. The Program will not release directory data earlier than 14 days after the initial written notice to the adult pupil or parent/guardian or after the Program has been restricted from doing so by any of those parties (October 1 of each school year).
- iii. If the Program has followed the notification procedure outlined above, and the parent/guardian or adult pupil does not object to the directory data being released, the Center Director or designee shall, upon request, provide the name and address of each pupil expected to graduate from high school in the current school year to the technical college school board.
- iv. If the Program has followed the notification procedure outlined above, and the parent/guardian or adult pupil does not object to the directory data being released, the Center Director or designee shall, upon request, provide any representative of a law enforcement agency, city attorney,

School attorney or corporation counsel, county department under sections 46.215, 46.22 or 46.23 of the Wisconsin Statutes, a court of record or municipal court with such directory data information relating to any such pupil enrolled in the Program for the purpose of enforcing that pupil's school attendance, to respond to a health or safety emergency, or to aid in the investigation of alleged criminal or delinquent activity by a pupil enrolled in the Program.

- v. The Program shall provide, on a request made by military recruiters or institutions of higher education, access to secondary school pupil's names, addresses, and telephone listings. A secondary school pupil or the parent/guardian of a student may request that the pupil's name, address, and telephone listing not be released to military recruiters or institutions of higher education without prior written consent. The Program shall notify parents/guardians of the option to make a request and shall comply with any request. The Program shall provide military recruiters the same access to secondary school pupils and pupil directory data about such pupils as is provided to post-secondary schools or prospective employers.
- vi. When reviewing pupil directory data requests, as well as when implementing other provisions of these guidelines, consideration shall be given to applicable provisions of the public records law and the school's policy and procedures dealing with public records.

6. **Transfer of Records**

- i. The Program shall transfer to another school (including private schools and out-of-state schools) or school district all pupil records (including disciplinary and other behavioral records; and not including records treated as patient health care records that originate outside the Program or certain treatment records for which informed consent for disclosure has not been obtained) relating to the pupil if the Program has received written notice:
 - 1. from an adult pupil or the parent/guardian of a minor pupil that the pupil intends to enroll in the other school or school district;
 - 2. from the other school or school district that the pupil has enrolled;
 - or
 - 3. from a court that a pupil has been placed in a secured correctional facility, secured child caring institution or a secured group home.
- ii. The Program forwards pupil records as requested so long as the disclosure is for purposes related to the student's enrollment or

transfer. Pupil records shall be transferred within five working days of receiving the request.

D. MAINTENANCE, DISCLOSURE, AND DESTRUCTION OF PUPIL RECORDS

1. While pupils are attending Program, their records will be maintained by the Program. If the pupil will no longer attend or participates in the Program, the records shall be transferred to the school or school district the pupil will attend. Patient health care records, law enforcement agency records and applications for free and reduced priced meals shall be maintained separately from a student's other records.
2. The Center Director shall provide each building principal with procedural and other technical assistance for the purpose of ensuring the confidentiality of all pupil records kept at the Program. Except as otherwise provided, all requests for inspection or for transfer of records to another school or school district should be directed to the building principal who will determine whether inspection or transfer is permitted under state and federal law and these procedures. The building principal or his/her qualified designee shall be present to interpret behavioral records when such a request has been made by the parent, guardian, or adult pupil.
3. A record of each request for access to and each disclosure of personally identifiable information from the pupil records shall be maintained with such pupil's records, except when the request is from or the disclosure is to the following person/party:
 - i. the parent/guardian or adult pupil;
 - ii. a Program official;
 - iii. an employee of the DPI;
 - iv. a party with written consent from the parent/guardian or adult pupil;
 - v. a party seeking directory data; or
 - vi. a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information in response to the subpoena not be disclosed. Note: Wisconsin pupil records law limits the disclosure of pupil records in response to a subpoena to a court for in camera inspection solely for the purpose of impeachment of any witness who has testified in the action.
4. When the pupil ceases to be enrolled in the School/the Outreach team is no longer actively working with a pupil, his/her records will be transferred to the administrative office archives. Records that are transferred to the administrative office archives shall be maintained as follows:

- i. The Program may not destroy any pupil records if there is any outstanding request to inspect and review the records.
 - ii. Records of the student's extracurricular activities, degrees/awards, report cards, and high school transcripts, as well as school newspapers and yearbooks will be retained permanently.
 - iii. Behavioral records will be maintained for no longer than one year after the student leaves the Program unless the student or his/her parent/guardian, if the pupil is a minor, gives permission that the records may be maintained for a longer period of time.
 - iv. Pupil progress records, other than those specified in Section (ii), and patient health care records shall be maintained for five years after the student ceases to be enrolled in the Program.
 - v. Outreach will seek consent to maintain pupil records of students they work with through the year the child turns 21 years old for the purposes of future educational programming.
5. The Center Director or designee shall be responsible for reviewing records before they are destroyed. Parents/guardians and adult pupils shall be informed of information that is no longer needed to provide educational services and of their right to obtain a copy of such information before it is destroyed.

E. PARENT/PUPIL REQUESTS FOR AMENDMENTS TO PUPIL RECORDS

1. A parent/guardian or adult pupil who believes that information contained in the pupil's records is inaccurate, misleading, or otherwise in violation of the pupil's rights of privacy may request the Program to amend the records. Such request shall be addressed in writing to the school official having custody of the records. Within a reasonable time after receiving the request, the person having custody of the records shall decide whether to amend the records in accordance with the request and inform the parent/guardian or adult pupil of the decision.
2. If the person having custody of the records refuses to amend the records, he/she shall inform the parent/guardian or adult pupil of the refusal and advise him/her of the right to a hearing. The request for the hearing shall be filed in writing with the Center Director or designee. The parent/guardian or adult pupil shall be given notice of the date, place, and time of the hearing a reasonable time in advance of the hearing.
 - i. The hearing shall be conducted by the Center Director or designee, who must be someone without a direct interest in the outcome of the hearing.
 - ii. The parent/guardian or adult pupil shall be afforded the opportunity to present relevant evidence and may be assisted or represented by individuals of his/her choice at his/her own expense, including an attorney.

- iii. The decision of the hearing officer shall be based solely upon the evidence presented and shall include a summary of the evidence and the reason for the decision.
- iv. The hearing shall be held, and the parent(s)/guardian or adult pupil informed of the hearing officer's decision in writing within a reasonable period of time after the hearing.
- v. If the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the pupil's privacy rights, the pupil records shall be amended accordingly.
- vi. If the hearing officer decides that the information is not inaccurate, misleading, or otherwise in violation of the pupil's privacy rights, the Program shall inform the parent/guardian or adult student of the right to place a statement commenting upon the information in the education records and/or describing reasons for disagreeing with the decision of the hearing officer.

F. COMPLAINTS REGARDING ALLEGED NONCOMPLIANCE WITH FEDERAL REQUIREMENTS

- 1. Adult pupils or parents/guardians of minor students may file a complaint with the Family Policy Compliance Office of the U.S. Department of Education for alleged School noncompliance with requirements of the federal Family Educational Rights and Privacy Act (FERPA).

G. ANNUAL NOTICE

- 1. Parents/guardians and adult pupils shall be notified annually of the following: (1) their rights to inspect, review and obtain copies of pupil records; (2) their rights to request the amendment of the student's pupil record if they believe the records are inaccurate, misleading, or otherwise in violation of the pupil's rights of privacy; (3) their rights to consent to the disclosure of the pupil record, except to the extent state and federal law authorizes disclosure without consent; (4) the categories of pupil record information which have been designated as directory data and their right to deny the release of such information; and, (5) their right to file a complaint with the Family Policy Compliance Office of the U.S. Department of Education.
- 2. Parents/guardians of secondary school students shall also be notified of their option to request the School not to release the secondary school pupil's name, address, or telephone listing to military recruiters or institutions of higher education without prior written parental consent.
- 3. The notice shall be distributed to parents/guardians and adult pupils at the beginning of each school year in the school directory or at initial referral to

Outreach. When a pupil transfers into the Program after the above notice has been given, the pupil and his/her parent(s)/guardian shall receive a copy of the notice at the time and place of enrollment.

LEGAL REFERENCES

Wisconsin Statutes

19.65

48.396

118.125

118.126

118.127

118.51(8)

118.52(10)

146.81 - 146.84

252.15

767.41(7)

938.396

950.08(2w)

Family Educational Rights and Privacy Act

U.S. Department of Education FERPA Regulations [34 C.F.R. part 99] U.S.

Department of Education IDEA regulations [34 C.F.R. part 300] Elementary and Secondary Education Act [20 U.S.C. § 7908]

National School Lunch Program Rules