

TENNESSEE PUBLIC CHARTER SCHOOL COMMISSION

Students with Disabilities Confidentiality Procedures

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The purpose of this document is to provide procedural information regarding confidentiality of information for students with disabilities in Commission-authorized charter schools. Commission-authorized charter schools shall ensure that all requirements of state and federal laws (including, but not limited to the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973), rules and policies are followed pertaining to the confidentiality of information of students with disabilities ages 3-21. These procedures cover the following:

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School Responsibilities

Personally identifiable information¹ includes information that has:

- (a) A child's name, a parent's name, or the name of another family member;
- (b) A child's address;
- (c) A personal identifier, such as a child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify a child with reasonable certainty.

Notice to Parents.² Authorized charter schools shall give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

- (a) A description of the extent to which the notice is given in the native languages of the various population groups in the school;
- (b) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the school intends to use in gathering the information

¹ 34 CFR § 300.32

² 34 CFR § 300.612

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(including the sources from whom information is gathered), and the uses to be made of the information;

- (c) A summary of the policies and procedures that participating agencies (i.e., related service providers) must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- (d) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 C.F.R. Part 99.

Before any major identification, location, or evaluation activity (also known as “child find”), the notice must be published or announced in the media with circulation adequate to notify parents throughout the school of the activity to locate, identify, and evaluate children in need of special education and related services.

Access Rights.³ Authorized charter schools shall permit parents or legal guardians to inspect and review any education records relating to their child that are collected, maintained, or used by the school under Part B of the IDEA. The school must comply with the request to inspect and review any education records on the child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after the parent or legal guardian has made a request.

A parent or legal guardian’s right to inspect and review education records includes:

- (1) The right to a response from the school to a reasonable request for explanations and interpretations of the records;
- (2) The right to request that the school provide copies of the records if a parent or legal guardian cannot effectively inspect and review the records unless they receive those copies; and
- (3) The right to have a representative inspect and review the records. The school may presume that the parent or legal guardian has authority to inspect and review records relating to their child unless advised that they do not have the authority under applicable state law governing such matters as guardianship or separation and divorce.

Record of Access.⁴ Each authorized charter school shall keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More Than One Child.⁵ If any education record includes information on more than one child, the parents of those children have a right to inspect and review only the information relating to their child or to be informed of that specific information.

³ 34 CFR § 300.613

⁴ 34 CFR § 300.614

⁵ 34 CFR § 300.615

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List of Types and Locations of Information.⁶ Upon request, each authorized charter school must provide parents or legal guardians with a list of the types and locations of education records collected, maintained, or used by the school.

Fees.⁷ Each authorized charter school may charge a fee for copies of records that are made for a parent or legal guardian under Part B of the IDEA if the fee does not effectively prevent the parent or legal guardian from exercising their right to inspect and review those records. A school may not charge a fee to search for or to retrieve information.

Amendment of Records at Parent's Request.⁸ If a parent or legal guardian believes that information in the education records regarding their child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of the child, he or she may request the school that maintains the information to change the information. The school, upon receiving a request from a parent, shall decide, within 14 calendar days of its receipt of the request, whether to amend the information as requested. If the school refuses to change the information in accordance with the request, it must inform the parent or legal guardian of the refusal and advise him or her of the right to a hearing.

Opportunity for a Hearing.⁹ The authorized charter school shall, on request, provide a parent or legal guardian an opportunity for a hearing to challenge information in education records regarding their child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Hearing Procedures. A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

Result of Hearing.¹⁰ If, as a result of the hearing, the authorized charter school decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform the parent or legal guardian in writing. If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform the parent or legal guardian of his or her right to place in the records that it maintains on the child a statement commenting on the information or providing any reasons they disagree with the decision of the school.

Such an explanation placed in the records of the child must:

- (a) Be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; and

⁶ 34 CFR § 300.616

⁷ 34 CFR § 300.617

⁸ 34 CFR § 300.618

⁹ 34 CFR § 300.619

¹⁰ 34 CFR § 300.620

(b) If the school discloses the records of the child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information.¹¹ Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, parent consent must be obtained before personally identifiable information is disclosed to parties other than officials of the school. Except under the circumstances specified below, parent or legal guardian consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Parent consent, or consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

Safeguards.¹² Each authorized charter school must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each school shall assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding policies and procedures regarding confidentiality under Part B of the IDEA and FERPA. Each school 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.

Destruction of Information.¹³ Authorized charter schools must inform parents or legal guardians when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to their child. The information must be destroyed at the parent’s request. However, a permanent record of the child’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.

LEA Responsibilities.

Monitoring of Confidentiality Compliance. The Commission shall monitor compliance with the federal law requirement that authorized charter schools provide notice that is adequate to fully inform parents about confidentiality of personally identifiable information through annual review of Charter School Handbooks. As outlined in the (TPCSC Handbook), the Commission will monitor that all persons collecting or using personally identifiable information have received training or instruction regarding policies and procedures regarding confidentiality under Part B of the IDEA and FERPA through required logs demonstrating completion of in-service training. Schools shall provide evidence of maintaining a list of personnel with access to records through annual sub-recipient monitoring.

¹¹ 34 CFR § 300.622

¹² 34 CFR § 300.623

¹³ 34 CFR § 300.624