

707 KAR 1:360. Confidentiality of information.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1 -300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes requirements ensuring confidentiality of information maintained by school districts regarding children with disabilities.

Section 1. Access Rights. (1) An LEA shall permit a parent to inspect and review any education records relating to his child that are collected, maintained, or used by the LEA. The LEA shall comply with a request without unnecessary delay and before any meeting regarding an IEP, dispute resolution meeting, or due process hearing, and in no case more than forty-five (45) days after the request has been made.

(2) The right to inspect and review education records under this administrative regulation shall include:

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

(b) 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

(c) The right to have a representative of the parent inspect and review the records.

(3) An LEA may presume that a parent has authority to inspect and review records relating to his child unless the LEA has been advised under a court order that the parent does not have the authority.

Section 2. Record of Access. An LEA shall keep a record of parties obtaining access to education records collected, maintained, or used under 707 KAR Chapter 1 (except access by parents and authorized employees of the LEA), including:

(1) The name of the party;

(2) The date access was given; and

(3) The purpose for which the party is authorized to use the records.

Section 3. Records on More than One (1) Child. If any education record includes information on more than one (1) 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 only that specific information.

Section 4. Types and Location of Information. An LEA shall provide parents, on request, a list of the types and location of education records regarding their child with disabilities that is collected, maintained, or used by the LEA.

Section 5. Fees. (1) An LEA may charge a fee for copies of records that are made for a parent under 707 KAR Chapter 1 if the fee does not effectively prevent the parent from exercising his right to inspect and review the records.

(2) The LEA shall not charge a fee to search for or to retrieve information under 707 KAR Chapter 1.

Section 6. Amendment of Records and Opportunity for Hearing. (1) A parent who believes that information in the education records collected, maintained, or used under 707 KAR Chapter 1 is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA to amend the information. Once a request is made by a parent for an amendment to be made to the child's record, the LEA shall respond within ten (10) school days.

(2) If a request to amend the information is made by a parent or legal guardian, the hearing procedures contained in 702 KAR 1:140 shall apply.

Section 7. Consent. (1) Except as to disclosures to appropriate law enforcement agencies as referenced in 707 KAR 1:340, Section 17, parental consent shall be obtained before personally identifiable student information is:

(a) Disclosed to anyone other than officials of the participating agencies collecting or using the information under 707 KAR Chapter 1; or

(b) Used for any purpose other than meeting a requirement under 707 KAR Chapter 1.

(2) An LEA shall not release information from education records to participating agencies without parental consent unless authorized to do so under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

(3) If a parent refuses to provide consent for release of personally identifiable information, a party may request a due process hearing pursuant to 707 KAR 1:340 or comply with the FERPA.

Section 8. Safeguards. (1) An LEA shall protect the confidentiality of personally identifiable student information at collection, storage, disclosure, and destruction stages.

(2) An LEA shall assign a staff member to assume responsibility for ensuring the confidentiality of any personally identifiable student information.

(3) An LEA employee collecting or using personally identifiable information shall receive training or instruction regarding the requirements of this administrative regulation.

(4) An LEA shall maintain, for public inspection, a current listing of the names and positions of employees within the LEA who may have access to personally identifiable student information.

Section 9. Destruction of Information. An LEA shall inform the parent when personally identifiable student information collected, maintained, or used under 707 KAR Chapter 1 is no longer needed to provide education services to a child. The information shall be destroyed at the request of a parent. However, a permanent record of a child's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitations.

Section 10. Children's Rights. The rights of parents regarding education records under FERPA and 707 KAR Chapter 1 shall be transferred to the child at the age of eighteen (18), unless the child has been declared incompetent under KRS Chapter 387 in a court of law. (26 Ky.R. 2144; 27 Ky.R. 169; 506; eff. 8-14-2000; 33 Ky.R. 3490; 34 Ky.R. 981; eff. 12-7-2007; Crt eff. 11-16-2018.)