IDC IDEA DATA CENTER

Building Capacity for High-Quality *IDEA* Data

IDEA Part B Confidentiality Checklist

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Westat®

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IDEA Part B Confidentiality Checklist

The following checklist was designed to aid state and local agencies in identifying actions, policies, and procedures needed to meet confidentiality provisions outlined in IDEA Part B, 20 U.S.C. §1400. This checklist is organized by broad categories, and within those categories, it provides a detailed description of what agencies must do to meet the provision. The evidence column can be used to document how confidentiality requirements are being implemented or to identify the location of source documentation. The action items column can be used to identify actions agencies may need to take to implement, or better implement, the confidentiality provision.

Confidentiality provision	What agencies must do to meet the provision	Evidence (such as source document, policy)	Action items
Safeguards			
§300.623 Procedures agencies should have in place to ensure the privacy of student data	☐ Agencies must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. Agencies may charge a fee for copies of a record if doing so does not effectively prevent the parents from exercising their right to inspect and review student records. ☐ One official at each participating agency must 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 the state's policies and procedures under Confidentiality of Personally Identifiable Information, 34 CFR §300.123, and *Family Educational Rights and Privacy Act*, 34 CFR Part 99. ☐ Each participating agency must maintain, for public inspection, a current listing of the names and positions of agency employees who may have access to personally identifiable information.	Examples: *training plan for agency employees using personally identifiable information, database or document that lists employees with access to personally identifiable information*	
Destruction of Information			
§300.624 Requirements for data that are no longer needed	☐ Agencies must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. ☐ The information must be destroyed at the request of the parents. However, a permanent record of students' names, addresses, and phone numbers; grades; attendance records; classes attended; grade level completed; and year completed may be maintained without time limitation.	Examples: *parent notification form letter, data destruction protocol that contains a consistent timeline and is explained to employees and parents*	

Confidentiality provision	What agencies must do to meet the provision	Evidence (such as source document, policy)	Action items
Enforcement			
§300.626 Procedures to ensure compliance with IDEA Part B and *Family Educational Rights and Privacy Act* (FERPA)	☐ Agencies must have policies and procedures in effect, including sanctions that the state uses, to ensure that policies and procedures are consistent with 34 CFR §§300.611–300.625 and followed throughout the agency and that the requirements of the act and the regulations in this part are met.	Example: *data governance or privacy program charter*	
Transparency			
§300.616 List of types and locations of information	☐ On request, agencies must provide parents a list of the types and locations of education records they collect, maintain, or use.	Example: *IDEA data inventory*	
§300.612 Notice to parents about rights under IDEA Part B	☐ Agencies must give adequate notice to fully inform parents about the confidentiality requirements of IDEA Part B, including the following: • a description of the extent to which the notice is given in the native languages of the various population groups in the state; • a description of the children about 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 which information is gathered), and the uses to be made of the information; • 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 • a description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99. Before any major identification, location, or evaluation activity takes place, the notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents throughout the state of the activity.	Example: *public notice on confidentiality requirements of IDEA Part B*	

Confidentiality provision	What agencies must do to meet the provision	Evidence (such as source document, policy)	Action items
Record of Access			
§300.614 Maintaining list of parties accessing education records	☐ Each participating agency must keep a record of parties accessing 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 was authorized to use the records.	Example: *audit logs in student information system*	
Consent			

§300.9 Consent Requirements	☐ Requests for consent must include a list of activities and the records that will be released.
	☐ Consent must be sought in the native language of parents.
	☐ Requests must clearly indicate consent is voluntary and can be revoked at any time.
	  • If a parent revokes consent, that revocation is not retroactive.
	  • If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
		Example: *consent form listing records covered and uses for those records*	

§300.622 Process or procedure to ensure consent has been granted before sharing personally identifiable information	☐ Consent must be obtained before personally identifiable information is disclosed to parties unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99. ☐ Consent must be given before personally identifiable information is shared with officials of participating agencies providing or paying for transition services. ☐ If a child is enrolled, or is going to enroll, in a private school that is not located in the local education agency (LEA) of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.	Examples: *documented procedure for gathering consent, storage repository for signed and dated consent forms*	

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Parental Inspection			
§300.613, §300.615, §300.617 Process/ procedure to allow parental inspection including charging fees for copies of education records	☐ Agencies must permit parents to inspect and review any education records relating to their child, without unnecessary delay, and before an individualized education program (IEP) meeting or any hearing or resolution session and within 45 days after the request has been made. ☐ Agencies must respond to reasonable requests for explanations and interpretations of the records. ☐ If an 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. ☐ Agencies may charge a fee for copies of a record if it does not effectively prevent the parents from exercising their right to inspect and review those records. ☐ Agencies may NOT charge a fee to search or retrieve information under IDEA.	Examples: *record review request procedure, record request form*	

§300.618, §300.619, §300.620, §300.621 Process to request amendment of records including the right to a hearing	☐ 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.
	☐ If a parent requests an amendment, agencies should do the following:
	  • amend the record within a reasonable time; or
	  • inform the parent of refusal to amend a record and of the opportunity to request a hearing.
	☐ Upon request, agencies must hold a hearing to allow the challenge information in the education record of a child to be heard.
	☐ If the education record of a child is amended as a result of a hearing, the agencies must inform the parents in writing.
	☐ If the education record of a child is not amended as a result of the hearing, agencies must inform the parents of their right to include a statement explaining that they disagree with the respective agency's decision and why.
	  • The statement of disagreement must be maintained as part of the child's records.
	  • If the child's record or the contested portion is disclosed by an agency to any party, the explanation must also be disclosed to the party.
		Examples: *record amendment procedure, storage repository for signed and completed forms*	