

CONFIDENTIALITY



This workshop on confidentiality is designed to meet federal requirements for staff training while increasing staff awareness of their responsibilities regarding privacy of student records.

Two Confidentiality Laws

1. **FERPA**-Family Education Rights and Privacy Act
2. **IDEA**-Individuals With Disabilities Education Act



FERPA

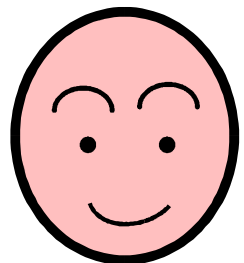
- ❖ Passed in 1974
- ❖ Applies to all schools that receive money from the U.S. Department of Education
- ❖ Also called the “Buckley Amendment”

IDEA

- ❖ Passed in 1975, reauthorized in 2004
- ❖ Applies to all schools that receive money to serve students with disabilities
- ❖ Formerly the Education of the Handicapped Act

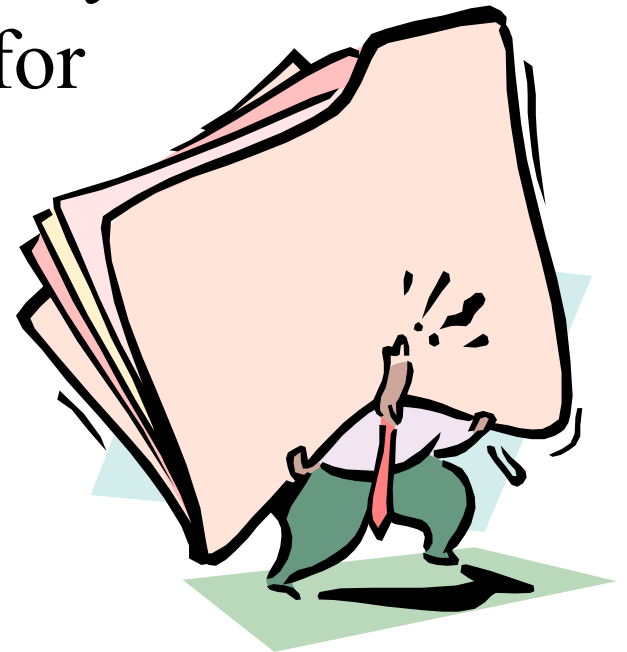
Personally Identifiable Information

- ❖ Name of student, student's parents or other family member
- ❖ Address of the student or student's family
- ❖ Any personal identifier (SS #/student id #)
- ❖ A list of personal characteristics or other information that would make it possible to identify the student



Definition Of Education Records

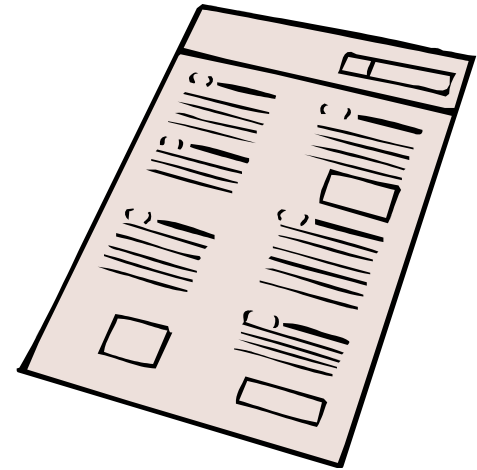
Records, files, documents and other materials which contain information directly related to a student and are maintained by an educational agency or institution, or by a person acting for such agency or institution.



Education records **not** covered in this section include records of instructional, supervisory and administrative personnel which are in the sole possession of the maker and are not revealed or accessible to any other person.

Directory Information

- ❖ Student's name
- ❖ Student's address
- ❖ Student's telephone number
- ❖ Student's date and place of birth
- ❖ Student's major field of study
- ❖ Participation in officially recognized sports and activities



- ❖ Student's weight, height if member of athletic team
- ❖ Dates of attendance
- ❖ Degree, awards received
- ❖ Most recent previous educational institution or agency attended

Directory Information May Be Disclosed If:

❖ Parents are annually given public notice of the types of information designated as directory information

AND

❖ Given opportunity to refuse

Right To Inspect And Review Records

- ❖ Right to review records within a reasonable period of time of written request
- ❖ Right to have representative review records
- ❖ Right to response to requests for explanation and interpretation of records
- ❖ Right to inspect only information related to own child
- ❖ Rights extend to both parents unless otherwise indicated by law
- ❖ Right to obtain copies of records



Sole Possession Records

Sole Possession Records are exempt from parent access if they meet the following:

- Must be a private note created solely by the individual possessing the note
- Must be a personal memory aid
- Not be used to develop a “plan” for the student

AND/OR

- The information in the note must not be accessible or revealed to any other person



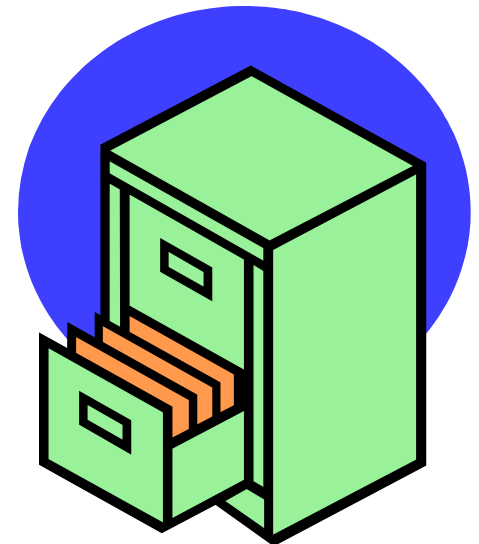
Amendment Of Records

- ❖ Annual notification of right to request amendment of records
- ❖ Right to request amendment of records if information is inaccurate, misleading or in violation of privacy rights
 - If agency decides to amend, parents must be notified in writing
 - If agency refuses to amend, parents must be notified in writing and informed of their right to a hearing
 - Results of hearing are communicated to parents in writing

❖ Any parent explanation of disagreement with records

- must be maintained with record as long as the agency maintains the record

- disclosed with the record



Consent for Disclosures

- ❖ Annual written notification of right to consent to disclosures
- ❖ Written consent signed and dated, including
 - specification of records disclosed
 - purpose of disclosure
 - parties to whom disclosure is made



- ❖ Copy of disclosed records provided to parent upon request
- ❖ Third party disclosure prohibited without written consent of parent



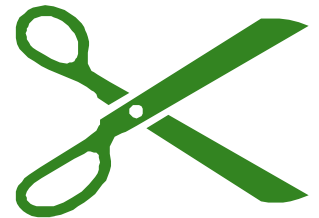
Conditions Where Prior Consent Not Required

- ❖ Disclosure within agency with legitimate education interest
- ❖ To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll
- ❖ Directory information
- ❖ Audit purposes
- ❖ Subpoenas or court order
- ❖ Financial aid
- ❖ Health and safety emergencies



Destruction Of Information

- ❖ Records are not destroyed if there is an outstanding inspection request
- ❖ Parents informed when information no longer needed
- ❖ Information no longer needed destroyed at parents' request
- ❖ Permanent record maintained



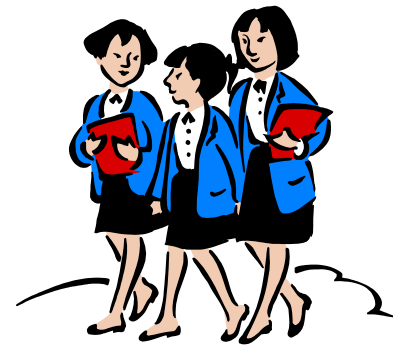
Confidentiality In Practice

- ❖ The district maintains a list, for public inspection a current listing of names and positions of those employees who may have access to personally identifiable information.
- ❖ Staff should be aware of confidentiality laws and requirements.
- ❖ Staff should comply with procedures regarding written educational records.
- ❖ Staff should be sensitive to violations of confidentiality in verbal exchanges with others.



Confidentiality May Be Violated

- ❖ When staff discusses a child in inappropriate places or situations
- ❖ When staff repeats gossip or rumors about a child or his family



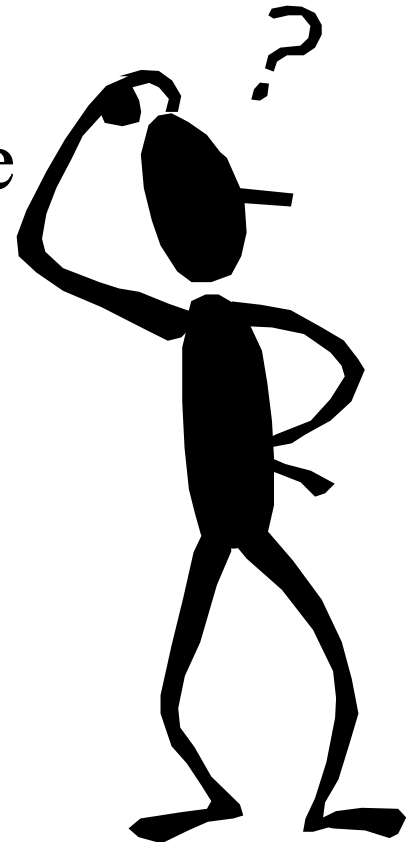
Gossip vs. Professional Sharing Of Information

When talking to a colleague about a student or his family, apply these four tests to see if the discussion may be violating the student's confidentiality rights.



Four Tests

1. **What** is discussed
2. **Where** the discussion takes place
3. **Who** is listening
4. **Why** the discussion took place



What Is Discussed

- If the discussion involves directory information (name, address, etc.) there is no problem unless the parent has refused to have this information released
- If the discussion involves other personally identifiable information that is confidential (disability, family data, etc.), the parties should be sure that legitimate educational interest is involved
- If the discussion involves information that is rumor, opinion, or hearsay, chances are that confidentiality will be in question, and the parties have moved from professionalism to gossip.



Where The Discussion Takes Place

- If the discussion occurs in a private place (such as a teacher's empty room, empty teachers' lounge), there is no problem with confidentiality
- If the discussion occurs in a public place (such as the playground, the halls, a busy teachers' lounge, the supermarket), there is a good chance that confidentiality could be violated.



Who Is Listening



1. If the parties to the discussion are school officials with legitimate educational interest there is no problem with confidentiality
2. If others are listening who have no legitimate educational interest (such as a teacher who is eavesdropping, a nosy child on the playground, children in the hall, etc.) confidentiality may be violated.

Why The Discussion Took Place

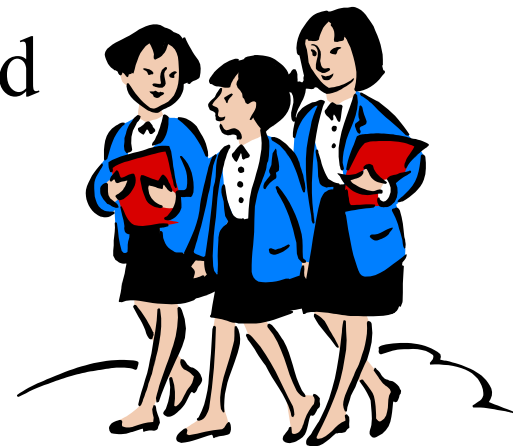
- If the parties have legitimate educational interest in a student and are sharing information that will help them work with the child, then there is no problem with confidentiality
- If the parties are gossiping to pass time, carrying tales about a student or his family, or for other non-educational reasons, there is probably a problem with confidentiality.

Sample Situations



Two teachers in the lounge talking about a child, another walks in, they keep talking, the third listens in, adds to discussion

1. What are they discussing
2. Does the third teacher have a legitimate educational interest in the child
3. Is the location inappropriate
4. Why are they discussing the child



Two teachers see each other in the grocery store, start talking about a student at school (“I hear the father drinks and beats the mother. No wonder the student has so many problems.”)

1. Inappropriate place
2. Others listening
3. Content not appropriate



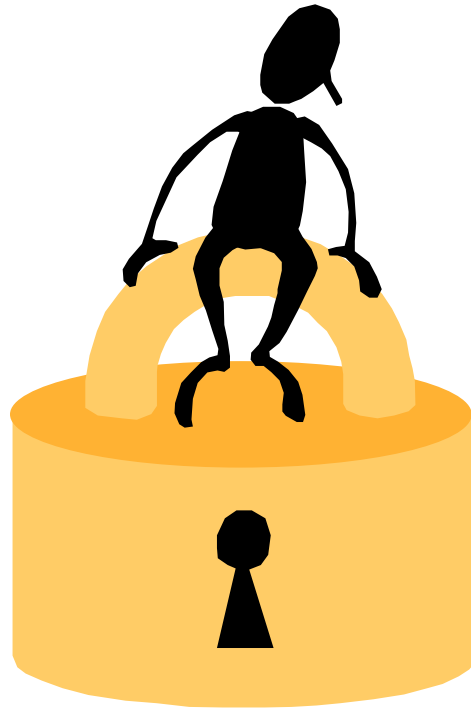
Scenarios



When asked if her confidential files were secured, the teacher replied, “Yes. I keep them in my desk drawer, and when I leave the room, I lock the door to my room.”

Was she correct?

No. Her files are not secure because anyone with a key has access. It is better to have a file cabinet or desk with a lock.



When the TEA monitor visited the school, he asked to see the education records of 5 students selected at random. He was given the students' folders, which he examined for required documentation. Later, he was asked to sign a form stating that he had had access to the students' folders and listing the names of the students.

Was confidentiality violated?

Yes. The monitor should have signed a separate record of access for each folder he examined, and the records should be kept with the folders.

The teacher keeps a folder in which she records notes about her students. These notes have to do with the student's personality, behavior, achievement level, likes and dislikes, attitudes and the like. As the teacher is making notes in the folder after school, a parent comes in and, noticing the folder, asks to see notes relating to her child. The teacher refuses on the grounds that her notes are not educational records and, therefore, not accessible by the parent.

Is the teacher correct in her position?

Yes, if she does not show or reveal the contents of the notes to anyone, if she uses them as a memory aid, and if they remain her private notes in her sole possession. However, if she shares the information with anyone, it becomes an educational record.



The school district had given public notice of the types of information that would be considered directory information, and the parents were duly notified of their rights of refusal. Three months later, the school published a directory containing the specified information on its students. One parent became very upset, saying the district had no right to publish this information.

Was the parent correct in his statement?

No. The district had followed FERPA requirements regarding directory information (given public notice, notified parents of rights to refuse). Three months could be considered more than enough time to refuse.

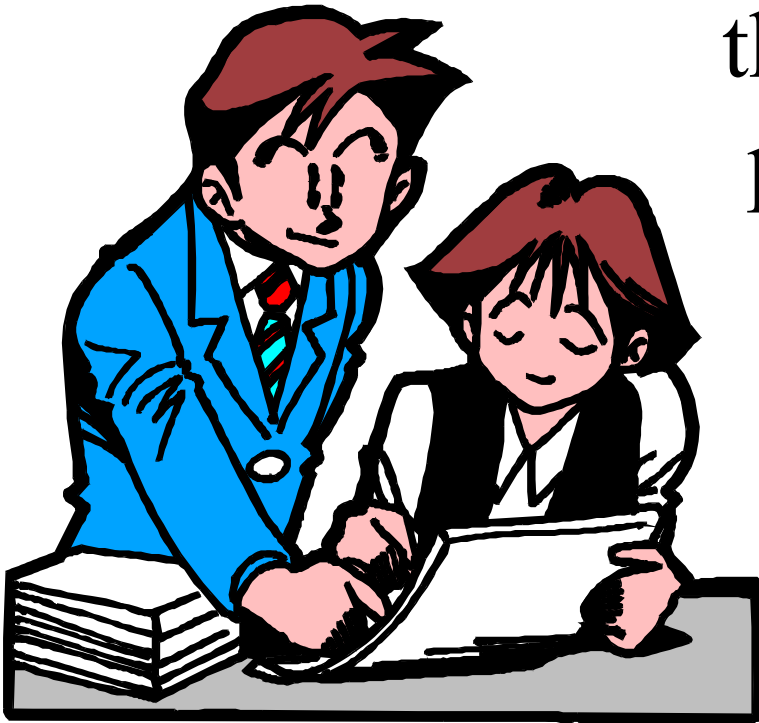
A parent wanted to inspect her child's achievement test results.

She was given her child's test booklet, his individual scoring summary and the class scoring summary to review. She was also shown the district profile for comparison.

Were confidentiality procedures violated?

Yes, if the class scoring summary contained other children's names. A parent has the right to view only that information that relates to her child. If the district profile contained a graph or something similar (with no names),

there would be no problem in showing the parent.



A general and a special education teacher were sitting in the teachers' lounge discussing a child they both taught. They called the child by name and talked about his behavior problems, his family situation, and his disability.

Were the teachers violating confidentiality?

If the teachers were discussing the child in private (no other teachers in the lounge or not within earshot of others) and they had a legitimate educational interest in the child, they were probably not violating the child's confidentiality, but they should monitor what they say if others come in.



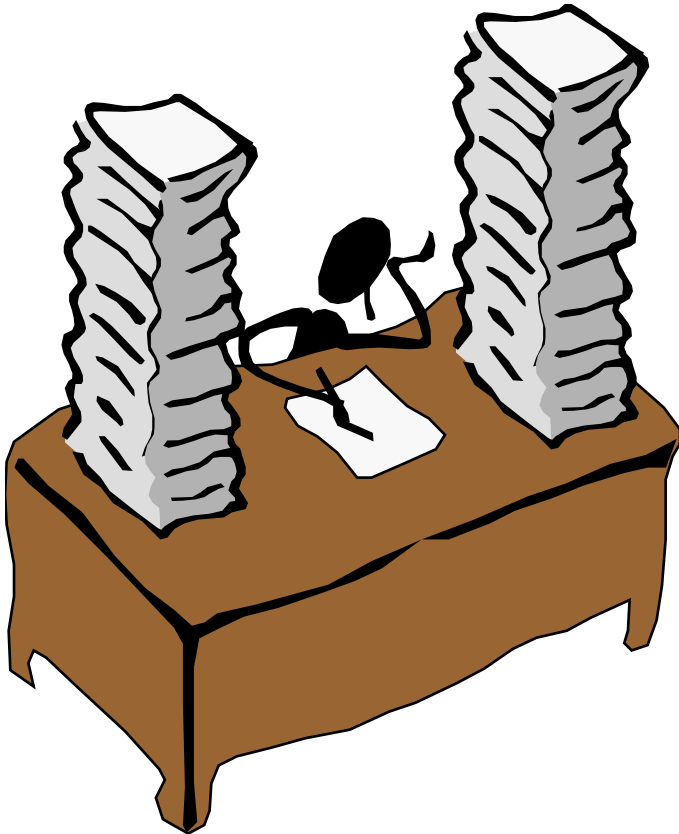
A school posts on the main office bulletin board a list of all the students in the resource classroom.

Was confidentiality violated?

Yes. Any list that singles children out violates confidentiality, if the list contains any information other than directory information.



A school diagnostician has a habit of leaving students' files out on her desk during the day. She uses them in planning evaluations and writing reports.



Is there a violation of confidentiality?

There is no clear-cut answer. Leaving confidential files on the desk could be a cause for concern if the office is in a high access area of the campus. The diagnostician should be encouraged to close the files or remove them from her desk when she leaves. The same applies to teachers who have copies of IEPs. It is acceptable to keep them open on a desk while teaching, but they should be put away at the end of the teaching period.

The father of a student requests to see the report card of his son who is a student in the local elementary school. The son is not in any special classes. The parents are divorced and the son lives with his mother for the purposes of a school address. The school refused to disclose the boy's grades to the father.

Was there a violation of parent access to records?

Yes, unless the school has been provided with evidence that there is a court order, state statute or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

A middle school student moves from our district to Wichita Falls ISD. Upon enrollment in the WFISD, we receive a request for educational records. We immediately complied.



Did our district violate confidentiality?

No. According to FERPA prior consent is not required to disclose information to officials of another school system in which the student seeks to enroll.

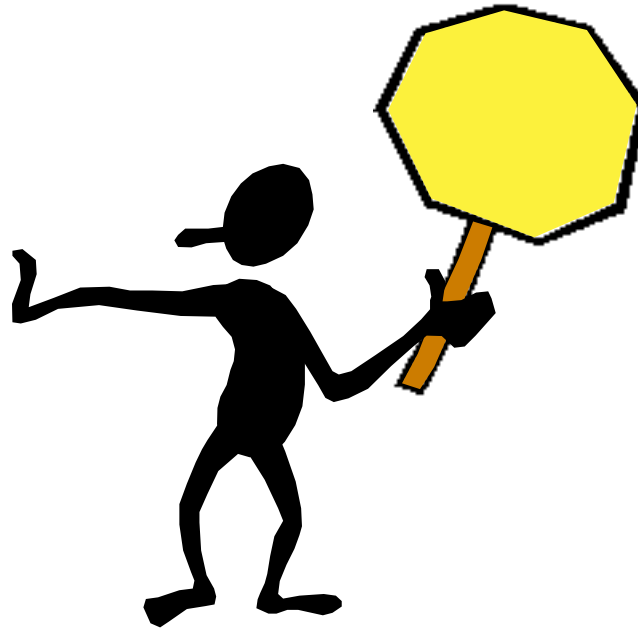
The secretary in the office has constant access to student information as she files records of all students, acts as attendance clerk and assists with the PEIMS reports which is sent to TEA.

What advice can you offer the secretary concerning information she might access?

Suggest that the information is confidential and since all agencies must protect the confidentiality of personally identifiable information, it is important that all staff having access to such information receive training.



Stop



THE END