

**GUIDELINES ON THE RETENTION AND DESTRUCTION OF
STUDENT RECORDS/DATA PRIVACY****RETENTION AND DESTRUCTION OF STUDENT RECORDS****DRAFT**

According to Minnesota statute, school district records can only be destroyed pursuant to a records retention schedule that has been adopted by the school board and approved by the Records Disposition Panel of the State of Minnesota or by special permission.

At the federal level, the retention of special education student records is governed by several laws. The first, governing recipients of federal funds, 20 U.S.C. § 1232f, requires that records related to the expenditure of federal funds be maintained for five years after completion of the activity for which the funds were used. A district's right to destroy special education records is further restricted by the Family Educational Rights and Privacy Act (FERPA). Under FERPA, educational records may not be destroyed if there is an outstanding request to inspect the records by the parent or eligible student, 34 C.F.R. § 99.10(e).

In addition, the Individuals with Disabilities Education Act's (IDEA) regulations require school districts to "...inform parents when personally identifiable information collected, maintained, or used..." pursuant to the IDEA, "...is no longer needed to provide educational services to the child..." and therefore will be destroyed by the district. The notes that accompany this provision explain that "this notice would normally be given after a child graduates or otherwise leaves the agency." An attempt must be made to individually contact the student before the file is destroyed. Districts are advised to provide "Notice" to the student of the district's policy at the last IEP meeting prior to graduation. This should constitute sufficient notice.

The IDEA regulations also provide that "information must be destroyed at the request of the parents if they are no longer needed for education purposes." However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitations."

Based on the above information, it is the practice of the Goodhue County Education District and its participating districts that schools will retain educational records for students with disabilities a period of five years beyond the student's 21st birthday. In addition, special education records will not be destroyed if there is an outstanding request for the record by the parent or eligible student. Also, parents and eligible students will be notified about this practice at the time the student is (a) dismissed from special education services, (b) graduates from school, or (c) ages out of school. This will constitute notice and no further notice will be given at the end of the five years. Students will be asked to sign an acknowledgment (**Notice of Special Education File Retention Policy**) of the district's policy to destroy the records after five years and that the "Notice" has been given. A copy of this notice will be retained by the school. Results of achievement and other standardized tests will be retained permanently. A record of all standardized tests results administered as an evaluation for eligibility while the student was in special

education services will be permanently retained. Finally, when the student reaches the age of at least 26, all special education records will be destroyed with exception for the final **IEP/IIIP** and all the **Evaluation Reports** and the **Parental Consent/Objection Form** indicating the student's dismissal from services.

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The school must provide a child's divorced, non-custodial parent(s) with the same procedural protections as the child's custodial parent, unless a state court has determined otherwise (see **Divorced Parents**). As a result, both divorced parents of a disabled child must be notified of IEP/IIIP issues and must be granted access to relevant records, regardless of who has custody. Further, while in some circumstances it may be possible for an educational institution to rely solely on the approval of an IEP/IIIP by a custodial parent, both divorced parents must be given the *opportunity* to participate in the development and approval of the child's educational placement. *Doe v. Arnig*, 651 F. Supp. 424, 37 Educ. L.R. (D. Mass. 1987).

The custodial parent should provide documentation to the principal establishing custodial rights and any other court orders. The noncustodial parent should receive a copy of any correspondence upon providing the principal with a mailing address.

Due Process and Procedures Related Links

Guidelines on Access and Storage of Test Protocols **Process for Storage and Destruction of Student Records**
Divorced Parents

GUIDELINES ON ACCESS AND STORAGE OF TEST PROTOCOLS**DRAFT**

Under the Family Educational Rights and Privacy Act (FERPA), a district must permit parents of a student with a disability to inspect and review educational records about their child. A district must respond to such a request within ten business days and must comply with the request before an IEP team meeting or due process hearing is held and within 45 calendar days. Test data is part of the educational record.

Test Protocols as Educational Data

To determine whether the test protocols contain educational data and to what extent before releasing them to the parents, use the following guidelines provided by the Family Policy Compliance Office (FPCO), the federal office responsible for implementation of FERPA.

1. If the test questions and answers are both personally identifiable to the student (that is, if the answers appear on the same sheet as the questions, and are identified by the student's name), the parents have a right to inspect both the questions and answers.
2. If the questions are separate from the answers, and only the answers are personally identifiable to the student, the parent has the right of access to the answers only. However, since 34 C.F.R. § 99.10 also requires an agency to respond to a reasonable request for explanation or interpretation of the record, the agency would have to inform the parent of the questions, if so requested, in order to explain the answers to the questions.

See *Letter to Thomas*, 211 IDELR 240 (FPCO 1986).

If schools maintain copies of a student's test answer sheets (an 'education record'), the parent would have a right under Part B [of IDEA] and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school district could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the responses in some other adequate manner that would inform the parent. 34 C.F.R. § 300.562 (discussion).

Providing Copies of Test Protocols and Educational Data

The district is not unequivocally obliged to distribute copies of test protocols containing educational data to the parents unless failure to do so would effectively prevent the parents from exercising their right to inspect and review. 34 C.F.R. § 300.562(b)(2). In other words, if parents are physically unable to inspect and review the educational data about their child, the district must provide copies of the data to them. The U.S. Department of Education has interpreted this to mean that a parent shall receive copies of the records when he or she lives too far from the school district to see the records in person. *Letter to Anonymous*, 213 IDELR 188 (OSERS 1989) and *Letter to Kincaid*, 213 IDELR 271 (OSERS 1989). The parent might also be prevented from exercising the right to inspect and review for other reasons, such as a disability, lack of transportation, etc. Representatives from the district may use their own judgment regarding whether a parent is effectively denied access, but should take the above examples into consideration when making this determination.

In *Letter to Thomas*, the FPCO determined that "an educational agency or institution makes fair use of copyrighted material when the agency or institution provides a copy of test questions and a student's answers to those questions to the parents of the students." 211 IDELR 420 (FPCO 1986). However, to reduce the risk of test security violations, the FPCO also counseled: "[Districts] mark the documents with appropriate language informing the party to whom it is released that the test instrument is copyrighted." Even though this approach will not alleviate all test security concerns, a

district must balance those concerns with a parent's right, guaranteed by federal law, to inspect and review his or her child's educational data.

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Rights of a Parent Representative

The IDEA regulations diverge from FERPA by allowing a parent representative access to inspect and review special education data on behalf of the parent; however, nothing in FERPA, IDEA or its implementing regulations allows a parent representative to obtain copies of the child's educational data directly from the district, even if the district has parental consent. See 34 C.F.R. § 300.562(b)(3) and 34 C.F.R. § 99.10(d).

Nothing in that EHA-B³ provision gives a parent representative the right to obtain a copy of an education record of a student, even if failure to provide the copy would effectively prevent the representative from inspecting and reviewing the record. Therefore, while a school district is not required to give copies of education records to a parent representative, a parent could obtain copies of records, if he or she has a right to them, and provide them, in turn, to a representative. *Letter to Longest*, 213 IDELR 173 (OSEP 1988).

PROCESS FOR STORAGE AND DESTRUCTION OF STUDENT RECORDS**DRAFT****Procedures for Storage of Files:****1) At the conclusion of an educational evaluation, if student does not qualify:**

- a) Complete a **Special Education File Notice** and place in the student's cumulative file.
- b) Start new file on non-qualifying students and place the evaluation report (ER) in the file.
- c) All non-qualifying students are to be filed by grade, alphabetically and maintained in a locked cabinet.
- d) At the time of transition to the next building, all non-qualifying files for the grade level leaving are to be sent for filing in a locked cabinet to the principal's office of the receiving school.

2) For students who qualify for service:

- a) Complete a **Special Education File Notice** and place in the student's cumulative file.
- b) Special education records are to remain with the case manager in a locked file cabinet.

3) Students terminated from special education:

- a) After a one-year follow-up, file is to be placed in a central location in a locked file cabinet.
- b) At the end of transition to the next building up, all terminated files for the grade level leaving are to be sent to the principal's office in the next building to be placed in a locked file at a central location.

PARENT/GUARDIAN NOTICE

- Parent(s)/Guardian(s) should be provided notice of meetings* to ensure they have an opportunity to participate. Case managers should notify parent(s)/guardian(s) of the meeting early enough to allow them the opportunity to participate.
- Parent(s)/Guardian(s) should be served notice before a proposal or refusal to perform a formal educational evaluation or reevaluation.
- Parent(s)/Guardian(s) should be served with a formal, written notice of the district's **proposal or refusal to initiate or change** in the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student.
- Parent(s)/Guardian(s) should be informed of the procedural safeguards available to them. For a copy of these safeguards see **Notice of Procedural Safeguards: Parental Rights for Special Education.**

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***NOTE:** A "meeting" DOES NOT include:

- Informal or scheduled conversations
- Conversations on issues such as methodology, lesson plans, or coordination of service provisions
- Preparatory activities to develop a proposal (i.e., draft of the IEP)

Divorced Parents

When working with parents who are separated or divorced, remember each parent retains the right to consent or to refuse consent for evaluation, placement, and/or programming unless:

- one of the parent's rights have been terminated, or
- a court has ordered one parent not to participate, or
- one parent has been granted sole rights to make educational decisions.

If disagreement between the parents occurs, the district must offer mediation, conciliation, or may initiate a hearing. Districts should initially suggest parents settle disagreements regarding their child's special education programs in Family Court.

See related information regarding **Data Privacy.**

PARENT INVOLVEMENT

- Parent(s)/Guardian(s) must be given the opportunity to help plan their child's special education program.
- IDEA Regulations require that "parent input" be included from a variety of sources from which the districts should include in interpreting evaluation data for the purpose of determining a student's eligibility.
- Parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to: the identification, evaluation and placement and the provision of a free appropriate public education (FAPE) to the student.
- Parent notice is not required for such activities as large group screenings, individual student observation within the regular classroom, informal inventories and consultation between regular and special education personnel.

NOTE: Placement decisions may be made by the IEP team without parent participation, only if the district is unable to obtain the participation of parent(s)/guardian(s).

SPECIAL EDUCATION FILE NOTICE

Place in Student's Cumulative File

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District: _____

Student: _____

DOB: _____

Date Evaluation Completed: _____ Grade(at time of evaluation) _____

Person(s) Completing Evaluation:

_____	_____
_____	_____
_____	_____

Check Area(s) Evaluated:

- ____ Intellectual/Cognitive
- ____ Academic
- ____ Communication
- ____ Sensory
- ____ Motor
- ____ Health And Physical
- ____ Social/Emotional/Behavioral
- ____ Transition
- ____ Functional
- ____ Other

____ Does qualify for _____ services.
____ Does not qualify for special education services.
____ Student has been discontinued from special education services.

More information may be found in files located: _____

NOTICE OF SPECIAL EDUCATION FILE RETENTION POLICY

In accordance with the policy adopted by the _____ School District and approved by the Minnesota Records Disposition Panel, notice is hereby being given as to the length of time that your special education file will be maintained.



The record will be retained until five years after your 21st birthday in accordance with the District's retention schedule. At that time, the contents will be destroyed with the exception of the last IEP/IIIP, all evaluation reports and the Notice of Proposed Action and the following which will be maintained without time limitation: standardized and achievement test results, student's name, address, phone number, grades, attendance and grade level completed.

By signing this notice, you are acknowledging the retention policy. No further notice will be given.

Student

Parent

Date

Date

Witness

Date

Student Copy

In accordance with the policy adopted by the _____ School District and approved by the Minnesota Records Disposition Panel, notice is hereby being given as to the length of time that your special education file will be maintained.

The record will be retained until five years after your 21st birthday in accordance with the District's retention schedule. At that time, the contents will be destroyed with the exception of the last IEP/IIIP, all evaluation reports and the Notice of Proposed Action and the following which will be maintained without time limitation: standardized and achievement test results, student's name, address, phone number, grades, attendance and grade level completed.

By signing this notice, you are acknowledging the retention policy. No further notice will be given.

Student

Parent

Date

Date

Witness

Date