

Chapter 148-280 WAC
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

148-280-025 Education records—Access procedures. [Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-025, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-025, filed 7/19/90, effective 8/19/90.] Repealed by WSR 16-10-063, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300.

148-280-050 Safeguards. [Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-050, filed 7/19/90, effective 8/19/90.] Repealed by WSR 03-20-014, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.011.

148-280-070 Directory information. [Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-070, filed 7/19/90, effective 8/19/90.] Repealed by WSR 03-20-014, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.011.

WAC 148-280-010 Confidentiality of student records. The Washington state center for childhood deafness and hearing loss implements policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232(g); 34 C.F.R. Part 99 (FERPA). This law establishes that the education records of students attending or having attended the school for the deaf (school) are confidential and can be released only with written permission of the parent (or adult student). The primary rights of parents and adult students under FERPA are:

- (1) To inspect and review education records;
- (2) To request amendment of education records; and
- (3) To have some control over the disclosure of information from education records.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-010, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-010, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-010, filed 7/19/90, effective 8/19/90.]

WAC 148-280-011 Definitions. As used in this chapter:

(1) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, photograph, date of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, diplomas, honors, and awards received, and most recent school or program attended.

(2) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally

identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(3) "Education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (regulations implementing FERPA).

(4) "Adult student" means a student who has reached eighteen years of age. When a student becomes an "adult student," the rights accorded to, and the consent required of, parents under this chapter transfer from the parents to the student.

(5) "Legitimate educational interest" exists if the school official needs to have access to the record in order to fulfill the official's professional responsibility, perform appropriate tasks that are specified in his or her position description or contract agreement, perform a function related to a student's education or discipline, perform a service or benefit relating to the student or student's family, such as health education, counseling, advising, or student employment, or maintain safety and security.

(6) "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(7) "Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier, such as the student's Social Security number or student number or biometric record; a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(8) "School official" includes a person employed by the center or the school as a teacher, administrator, supervisor, counselor, support or clerical staff, human resources staff, information systems specialist, school security personnel, a person appointed to the board of trustees, a person with whom the school has contracted to perform a service to or on behalf of the center or school (such as an attorney, hearing officer, auditor, medical consultant, or therapist), a parent or student serving on an official committee or assisting another school official in performing his or her tasks, or other party to whom the school has outsourced institutional services or functions.

(9) "Participating agency" means any school district, agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained in implementing chapters 392-172A and 148-172 WAC (rules for the provision of special education), and includes the OSPI, school districts and other public agencies.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-011, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-011, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-011, filed 7/19/90, effective 8/19/90.]

WAC 148-280-015 Notice. The school provides parents and adult students currently in attendance with annual notice of their rights under FERPA by publication in the parent/student handbook and through these rules.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-015, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-015, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-015, filed 7/19/90, effective 8/19/90.]

WAC 148-280-020 Access rights. (1) The school shall permit parents of students eligible for special education to inspect and review, during school business hours, any education records relating to the student which are collected, maintained, or used by the school under chapters 392-172A and 148-172 WAC. A request by a parent (or adult student) to inspect and review education records should be made in writing to the supervising administrator K-12 (i.e., building principal). The supervising administrator K-12 shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) Where the education record includes information on more than one student, the parent(s) of those students (or the adult students) shall have the right to inspect and review only the information relating to their child (or themselves) or to be informed of that specific information.

(3) The right to inspect and review education records under this section includes:

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

(b) The right to request that the center provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent or adult student from exercising the right to inspect and review the records; and

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

(4) The school may presume that a parent has authority to inspect and review records relating to his/her child unless the school has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(5) A list of the types and locations of education records collected, maintained, or used by the school may be obtained by the parent (or adult student) at the superintendent's office.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-020, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-020, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-020, filed 7/19/90, effective 8/19/90.]

WAC 148-280-030 Amendment of records—Hearing on request to amend records.

(1)(a) A parent (or adult student) who believes that information contained in the education record is inaccurate, misleading, or violates the privacy or other rights of the student, may request the school to amend the information.

(b) A parent (or adult student) shall not be permitted under this chapter to challenge the validity of grades or other evaluations which are accurately recorded.

(2) The school shall decide whether to amend the record as requested within a reasonable time after receipt of the request.

(3) If the school decides to deny the request, it shall inform the parent (or adult student) of the decision and of the right to a hearing.

(4) The school will conduct a hearing within a reasonable time after it has received the request for a hearing.

(a) Notice of the date, time and place shall be provided reasonably in advance of the hearing.

(b) The hearing may be conducted by any party, including an official of the school, who does not have a direct interest in the outcome of the hearing. The parent (or adult student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend an education record. The parent (or adult student) may, at their own expense, be assisted or represented at the hearing by one or more individuals, including an attorney.

(c) The school will provide a written decision within a reasonable period of time after the conclusion of the hearing. The decision shall be based solely upon the evidence presented at the hearing and include a summary of the evidence presented and the reasons for the decision.

(5) If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or adult student) in writing.

(6) 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 the student, it shall inform the parent (or adult student) of the right to place in the record a statement commenting on the challenged information or setting forth any reasons for disagreeing with the decision of the school in the records it maintains on the student.

(7) Any explanation placed in the records of the student under this section must:

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

(b) Be included with any disclosure of the record or contested portion to which the explanation relates.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-030, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-030, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-030, filed 7/19/90, effective 8/19/90.]

WAC 148-280-040 Consent for release of records. (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99.

(2) Except as provided in this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(3) Parental consent, or the consent of an eligible student 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.

(4) If a parent (or adult student) so requests, the school shall provide him or her with a copy of the records disclosed.

(5) "Directory information" may be disclosed without the parent's (or adult student's) prior written consent, unless the parent (or adult student) notifies the school in writing within ten days of enrollment and thereafter by the tenth day of the academic year that he or she does not want any or all of the student's information to be designated as directory information.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-040, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-040, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-040, filed 7/19/90, effective 8/19/90.]

WAC 148-280-055 Record of access. The school shall maintain a record of parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-055, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-055, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-055, filed 7/19/90, effective 8/19/90.]

WAC 148-280-060 Destruction of information. (1) Student education records may be destroyed in accordance with state laws and regulations: Provided, That the school shall not destroy any education records if there is an outstanding request to inspect and review the records under this chapter.

(2)(a) The school shall inform parents (or adult students) when personally identifiable information is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law.

(b) At the request of a parent (or adult student), the school shall destroy personally identifiable information. However, the school may maintain a permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year of completion without time limitation.

(3) For the purpose of this section, "destruction" shall mean physical destruction or removal of personal identifiers.

[Statutory Authority: RCW 72.40.0191 and 34 C.F.R. Parts 99 and 300. WSR 16-10-063, § 148-280-060, filed 5/2/16, effective 6/2/16. Statutory Authority: RCW 72.40.011. WSR 03-20-014, § 148-280-060, filed 9/22/03, effective 10/23/03. Statutory Authority: RCW 72.40.022 and 20 U.S.C. §§1232(g), 1412 (2)(D), 1414 (a)(1)(B) and 1417(c). WSR 90-16-018, § 148-280-060, filed 7/19/90, effective 8/19/90.]