

STUDENT RECORDS

Special Education Records

INTRODUCTION

In addition to permanent and cumulative records that are required to be maintained for all students, school districts are legally mandated to create and maintain certain additional records for students eligible to receive special education services. These records are required to ensure that students receive a free appropriate public education and to demonstrate compliance with federal and state special education laws. There are also additional requirements relating to accessing, maintaining and destroying special education records.

All requirements of the federal Family Educational Rights and Privacy Act (FERPA) are specifically incorporated into the Individuals With Disabilities Education Act (IDEA) and the special education regulations adopted by both the United States Department of Education and the Iowa Department of Education. However, the special education laws also contain additional requirements regarding student records. The additional requirements are found at 34 C.F.R. 300.561 and 281 I.A.C. 41.30-.35.

- Schools, school districts and area education agencies must provide parents of students receiving special education, upon request, a list of the types and locations of education records collected, maintained and used by the school, school district or agency. Note that if a parent of a special education student requests this information, the school or school district must identify **all** types of student records collected, maintained and used by the schools, not just the special education records. Student records include any document, whether on paper or in a computer or on film, which contains personally identifiable information and which is shared with another person. This may include, for example, the cumulative file stored in the principal's or counselor's office, attendance records in the district's computer system, free and reduced price meal financial information in the business office, health records in the nursing office, special education records in the student's classroom and in the district's special education coordinator's office, specialized transportation procedures in the transportation office, special dietary directives in the food service office, and email messages on the principal's or teacher's computer which were sent back and forth between home and school.
- Both FERPA and the IDEA require that parents be granted access to student records within 45 calendar days of a request. However, IDEA also requires that parents upon request be provided access to student records prior to any individualized education program (IEP) meeting or special education hearing.
- Schools, school districts and area education agencies must designate **one** official to assume responsibility for ensuring confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. However, **all** persons collecting or using student records must receive training on maintaining student records in accordance with legal requirements. That includes training support staff as well as professional staff.
- Schools, school districts and area education agencies must maintain for public inspection a listing of the **names and positions** of employees who have access to personally identifiable information of students receiving special

education. Don't forget to name teacher associates who must access such information, and don't forget to update the list as personnel change. Note that this is a stricter requirement than the FERPA provision that the agency may designate by position those persons who have a legitimate educational interest in accessing records without parental consent. A record must also be kept of persons who access the special education record, the date, and the purpose for the access. This record does not need to show access by parents, the student, or by those persons who were named on the district's list.

- The IDEA authorizes, and the State of Iowa requires, that school districts transmit to schools the student seeks to enroll in, upon request of the school, the student's most current IEP and a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (Section 279.9A of the Iowa Code.) This is in addition to the requirement for accredited schools to transmit a copy of the student's permanent record when the student transfers.

CONTENTS AND MAINTENANCE OF SPECIAL EDUCATION RECORDS

A variety of persons may create documents which are special education records; for example, principals may send out notices of IEP meetings, teachers may complete progress notes, and speech pathologists and other providers may have records of evaluations and services. The following items are recommended for inclusion in a student's special education record regardless of who creates the record. **The items with an asterisk are legally required to be created and maintained and are subject to the special rules on destruction.**

- * Documentation of parental consents for all evaluations and re-evaluations.
- * Evaluation reports.
- * Documentation of parental consent for initial placement in special education.
- * Documentation of consent to receive or share information with other agencies.
- * Individualized education programs (IEPs) that may include individualized health plans and/or behavior intervention plans, as well.
- * Notices sent to parents notifying them of IEP meetings.
- * Documentation of attempts to contact parents to invite them to meetings.
- * Prior written notice of proposals or refusals relating to the identification, evaluation, placement, or the provision of a free appropriate public education for the child.
- Documentation of general education interventions provided prior to provision of special education if the student is then determined to be eligible for special education. If a student is evaluated for eligibility for special education and does not qualify, any general education interventions and notice to the parent that the child did not qualify may then be maintained in a separate special education record or may be maintained in the cumulative file. Schools or districts may want to consider the sensitivity of the information in the evaluation of a child who did not qualify in determining whether to place the information in the cumulative file. If the evaluation consists of academic

probes, the cumulative file may be most appropriate, but if there is a detailed family history, a special education file may be more appropriate.

- * Progress reports on IEP goals.
- * Documentation of compliance with special education disciplinary procedures, such as functional behavior assessments and documentation of meetings to conduct manifestation determinations.
- * Records of persons who accessed the special education record, the dates and the purposes for the access. The school or district does not need to, but may, document access by the parents or student or by persons the district has specified by name who may access the records for legitimate educational reasons. This doesn't mean the parents have to "sign in."
- Written parental requests for evaluations, independent evaluations or program changes or documentation by school employees of oral parental requests.
- Minutes of meetings or memoranda prepared for dissemination to other persons (not sole-possession records) to discuss the child's program or placement.
- Documents related to legal proceedings, including requests for pre-appeal, pre-appeal minutes and agreements, requests for injunctions or permission to place a child in an interim setting, requests for mediation, mediation agreements, requests for due process hearings, and any settlement agreements, administrative law judge rulings, or court rulings.

The following documents are not legally required to be maintained (unless the IEP calls for such documents to be created). However, if such documents are created and maintained and contain personally identifiable information on the student, they are deemed "student records" that the parents are entitled to access, and they are covered by FERPA requirements. These documents do not need to be physically placed in the special education folder, but they should be maintained in a secure fashion to protect confidentiality.

The following documents may be destroyed after they are summarized and included in evaluation, progress or other reports and the parents have been given notice of the intent to destroy. (This can be accomplished at an IEP meeting.)

- Daily or weekly (or other periodic) progress charting.
- Periodic home-school communications, such as notebooks that travel back and forth in the student's backpack or email messages.
- Videotapes of the student. If the videotapes cannot be viewed without showing other students, parents do not automatically have a right to access the videotape.
- Audio or videotapes of IEP meetings.

It is recommended that schools and school districts maintain a special education record separate from the student's permanent and cumulative student records and in a locked or other secure location. Many districts maintain special education records of currently-served students in a file cabinet in the student's classroom. Care must be taken that the record is maintained in accordance with FERPA, including insuring that only authorized individuals may access the record.

It is also recommended that service providers, such as area education agency speech pathologists, occupational and physical therapists, school social workers,

psychologists, and consultants place copies of their records in the district's special education record for the student if the records have been shared with others (non-sole possession records), or if the records are important to demonstrate compliance with the IEP.

The special education record should be transmitted to the child's new attendance center when the child is reassigned to another attendance center in the district. At a minimum, a copy of the most recent evaluation and IEP from the special education record for the student should be sent to the new school or school district and/or area education agency when a student transfers from the district and/or changes area education agency. If requested by the new district, a copy of the most recent IEP is legally **required** to be sent. If a copy of the entire special education file is being sent, it is recommended that evaluations and reports from third parties which were shared with the district or AEA pursuant to consent of the parent not be sent unless the parent consents again to the transmission. However, an independent evaluation paid for by the AEA may be sent without that specific additional parental consent.

DESTRUCTION OF SPECIAL EDUCATION RECORDS

The federal General Education Provisions Act requires retention of records for three years after the completion of an activity for which federal funds are used. The Iowa Department of Education rules require that school districts and area education agencies retain special education records for three years after an individual is determined no longer eligible for special education (the student graduates, ages out at age 21, or is evaluated as no longer eligible). Before the records are destroyed, however, even following the three-year period, notice must be given to the parent that the district or agency intends to destroy the records. If, after this notice, the parents request that the records be destroyed, they must be destroyed. State rules also require that the district or agency notify the parents if the parents request destruction of special education records that they may wish to retain copies of the records for social security or other reasons; it is good practice to put this statement in the original notice to parents of the planned destruction of records.

The school district or area education agency may determine that certain special education documents are no longer educationally relevant or necessary. For example, when students move from elementary to secondary school, districts may want to destroy some older documents, such as records of students who progressed so they no longer are eligible for special education (there are lots of these records for speech-only students) or even of some older documents in records of currently-served students, such as health screenings or notices to parents of IEP meetings. This may be accomplished if the records are at least three years old and the district first gives notice to the parents of the planned destruction. However, note the recommendations below for retention of certain records.

Districts are advised to retain for currently-served students, the following documents until at least three years after the student has either graduated or aged out for services. This is recommended even for students who transfer to another district or private school, as the student may re-enroll. (If these records are maintained by the area education agency, then the local district may destroy these documents after three years and notice to the parents.)

- parental consents for evaluations, reevaluations, and for initial placement in special education

- general education interventions
- evaluations that show compliance with special education laws
- all IEPs
- prior written notices of proposals or refusals to parents

For students who were previously served in special education, but who are no longer eligible, it is recommended that at a minimum, the most recent evaluation, all IEPs, and all prior parental notices be retained for at least three years after graduation or the student ages out for services. Other documents should be kept for three years after services cease and then may be destroyed after notice to the parents of the planned destruction.

Schools, school districts and area education agencies do not have to destroy records merely because parents have requested destruction. The decision as to when records are no longer needed is one that largely falls within the discretion of the school or school district, not the parents. FERPA provides that if parents request that any student record or personally identifiable information be amended or destroyed, and the district or agency refuses the request, the parents are entitled to a hearing. Following the hearing, if the records are not amended or destroyed, the parents may place in the student record written comments disagreeing with the records.