Student Records and Confidentiality

Wisconsin Department of Public Instruction

Student Records and Confidentiality

November 2018

Wisconsin Department of Public Instruction
Carolyn Stanford Taylor, State Superintendent
Madison, Wisconsin

This publication is available from:

Student Services/Prevention and Wellness Team
Wisconsin Department of Publication Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
(608) 266-8960

This document is available electronically at
https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/srconfid.pdf

© 2018 November Wisconsin Department of Public Instruction

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, color, religion, creed, age, national origin, ancestry, pregnancy, marital status or parental status, sexual orientation, or disability.

Printed on Recycled Paper

Introduction

Over the years, the Department of Public Instruction (DPI) has received many questions about student records. This bulletin addresses some of the most frequently asked questions and replaces *Information Update Bulletin 98.02 Pupil Records of Students with Exceptional Educational Needs*. As state and federal laws and policies change and additional questions arise, the Department will update this publication to keep it current.

State and federal statutes provide specific protections to students and parents regarding pupil records. In some circumstances, the state law provides additional protection not included in federal law and vice-versa. In any case, school districts must comply with the most restrictive statute (i.e., the law that provides the highest level of protection). State and federal statutes also provide protection of student information maintained by community agencies and dictate how schools exchange information with agencies and systems outside of education.

Other related publications are available through the DPI Student Services/Prevention and Wellness Team at http://dpi.wi.gov/sspw/resources. They include *Sharing Information Across Systems* and *Confidential Services Available to Youth in Wisconsin*. Additional information on student records and privacy is available at http://dpi.wi.gov/wise/data-privacy.

This bulletin has been designed to help local school districts develop their own local policies regarding student records and confidentiality. It is not to be construed as legal advice. A local education agency should consult with its own legal counsel when formulating local policies and procedures regarding access to and treatment, storage, and transfer of student records. Statutory citations are included within the response to each question to help facilitate local policy-making that is grounded in statute or other authoritative directive.

Please note that links in the electronic version of this publication are current as of April 2016.

Questions about this publication can be directed to Julie Incitti, Education Consultant, School Social Work Services, at (608) 266-0963 or julie.incitti@dpi.wi.gov.

Contents

Introduction iii

Definitions 1

1. What are "pupil records"? (Updated August 2004) 1
2. How do the federal definitions of pupil records differ from the state definitions above? 3
3. What kinds of confidential records or information regarding students are not considered pupil records and, therefore, not subject to state and federal laws governing student records? (Updated August 2004) 3
4. What are the requirements of schools related to the Safe at Home Program 4
5. What is "disclosure"? 4

Access and Disclosure 4

6. Under what circumstances may a school district disclose personally identifiable information from pupil records? 4
7. May school district employees and other school district officials access pupil records without written consent? (Updated December 2010) 4
8. What information must be included in a form used to obtain written consent to share information from a pupil record? 5
9. How do the requirements of the Health Insurance Portability and Accountability Act (HIPAA) affect schools? 5
10. What records must a school district keep regarding requests for access to and the disclosure of personally identifiable information from pupil records? 6
11. What steps must a school district take prior to disclosing directory data without parental consent? 7
12. What steps must a school district take prior to disclosing directory data without parental consent?7
13. What is the school health care provider's obligation to inform parents about access to patient health care records? 7
14. Are there any penalties for sharing information from a pupil record without proper statutory authority or consent? 7
15. May contracted professionals (e.g., police-school liaison officer, county public health nurse) working in schools access school records without parental consent? That is, for the purposes of access to pupil records, should a contracted professional be treated as a school staff member or an individual representing another organization? (Updated December 2010) 7

Maintenance and Transfer of Records 8

16. How does a school district protect the confidentiality of information from pupil records? (Updated December 2010) 8
17. How long must the school district maintain pupil records? (Updated April 2016) 9
18. Are there any guidelines for maintenance and destruction of test protocols? (New December 2010) 9
19. When a local education agency receives information about a student from another system (i.e., medical clinic, law enforcement, mental health, human services), how can it ensure this information is treated properly? 10

20. When a school receives a report from a health care provider outside the school, how is the report treated? 10
21. If a school staff member shares some or all of the contents of a personal record regarding a student, how does that change the status of this information? 10
22. What are the requirements regarding transfer of pupil records when a student moves from one public school to another school? (Updated August 2018) 11

Parents' and Students' Rights and Access 12

23. Is the local education agency required to provide notice to parents and/or students regarding access to pupil records? 12
24. What are the rights of parents to access the pupil records of their children? 13
25. Must a school district respond to reasonable requests from parents for explanations of pupil records? 13
26. How do the rights of parents and students change when the student turns 18 years old? 14
27. In a case involving separation or divorce, what are the rights of parents? 14
28. May a school district charge parents for copies of pupil records? 14
29. If a parent believes the information in a pupil record is inaccurate, misleading or violates the privacy or other rights of the child, what action can the parent take? 14
30. Do parents have the authority to limit access to their child's pupil records to designated staff within the local education agency? 15
31. Do parents have the authority to compel a school staff member to share information about their child with the parents? 15
32. Do parents have the right to inspect and review test protocols? (Updated December 2010) 15

Additional Requirements Related to Special Education 15

33. Where are the relevant state and federal requirements relating to pupil records of children with disabilities found? (Updated August 2008) 16
34. Who is considered a parent of a child with a disability? (Updated December 2010) 16
35. How must special education records be treated differently than other pupil records? 17
36. If information from a patient health care record is necessarily included in an educational report for an IEP team evaluation, how should the educational report be treated? 17
37. Is parental consent required for a school district to provide a due process hearing officer with a child's pupil records? 18
38. May a parent tape record an individualized education program (IEP) meeting? 18
39. When a student with a disability transfers from a public school district or a facility operated by the Department of Corrections (DOC) or the Department of Health Services (DHS) to another public school district or DOC- or DHS-operated facility in Wisconsin, what is the receiving school district's or state-run facility's obligation with regard to pupil records? (Updated December 2010) 18
40. What are the public notice requirements relating to pupil records of children with disabilities? 19
41. How does a school district protect the confidentiality of information from pupil records of children with disabilities? 19
42. What are the rights of parents of children with disabilities to access pupil records? 19

Definitions

1. What are "pupil records"?

All records directly related to a student and maintained by the school district are pupil records. Pupil records include records maintained in any way including, but not limited to, computer storage media, video and audio tape, film, microfilm, and microfiche.

Records maintained for personal use by a teacher and others required to hold a license under Wis. Stat. sec. 115.28(7) are not pupil records, if the records are not available to others. In addition, records necessary for and available only to persons involved in the psychological treatment of a child are not pupil records. Finally, law enforcement unit records are also not defined as pupil records, Wis. Stat. sec. 118.125(1)(d).

School districts maintain various types of pupil records:

"**Directory data** means those pupil records which include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received, and the name of the school most recently previously attended by the pupil," Wis. Stat. sec. 118.125(1)(b). "Dates of attendance" is the time frame over which the student was enrolled in the school, not the specific dates when the student was or was not in school (i.e., records related to truancy).

School districts must have a written policy concerning pupil records. When defining directory data in the policy, the district is limited to the types of information listed above. The district may choose some, none or all of the data as directory data, Wis. Stat. sec. 118.125(3).

"**Progress records** means those pupil records which include the pupil's grades, a statement of the courses the pupil has taken, the pupil's attendance record, the pupil's immunization records, any lead screening records required under s. 254.162, and the records of the pupil's extracurricular activities," Wis. Stat. sec. 118.125(1)(c).

"**Behavioral records** means those pupil records which include psychological tests; personality evaluations; records of conversations; any written statement relating specifically to an individual pupil's behavior; tests relating specifically to achievement or measurement of ability; the pupil's physical health records other than immunization records or lead screening records required under s. 254.162, law enforcement officers' records obtained under s. 48.396(1) or s. 938.396(1)(b)2, (c)3, and any other pupil records that are not progress records," Wis. Stat. sec. 118.125(1)(a).

Although this definition states that behavioral records include "any other pupil records that are not progress records," when reviewing Wis. Stat. sec. 118.125 and sec. 146.81-84 in their entirety, directory data and patient health care records are treated fundamentally differently than either progress or behavioral records.

"**Pupil physical health records** means those pupil records that include *basic* [emphasis added] health information about a child, including the pupil's immunization records, an emergency medical card, a log of first aid and medicine administered to the pupil, an athletic permit card, a record concerning the pupil's ability to participate in an education program, any lead screening records required under s. 254.162, the results of any routine

screening test, such as for hearing, vision, or scoliosis, and any follow-up to such test, and any other basic health information, as determined by the state superintendent," Wis. Stat. sec. 118.125(1)(cm). Such basic health information includes a log of services, such as physical or occupational therapy, provided under the authority of the school district, but does not include records that contain such information as diagnoses, opinions, and judgments made by a health care provider. Pupil physical health records are behavioral records, except for a pupil's immunization records and any lead screening records required under Wis. Stat. sec. 254.162.

Patient health care records within a school are any pupil records that relate to a pupil's health and that do not fall within the definition of "pupil physical health record," Wis. Stat. sec. 118.125(2m). In general, records relating to the health of a child that contain such information as diagnoses, opinions, and judgments made by a health care provider, except for records containing only the basic health information included in the definition of pupil physical health records, are treated as "patient health care records." These records must be treated consistent with Wis. Stat. sec. 118.125(2m), 146.81-84, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

Wis. Stat. sec. 146.81(1), defines "health care provider" to include:

- a nurse licensed under ch. 441,
- a chiropractor licensed under ch. 446,
- a dentist licensed under ch. 447,
- a physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448,
- a physical therapist licensed under subch. III of ch. 448,
- a podiatrist licensed under subch. IV of ch. 448,
- a dietitian certified under subch. V of ch. 448,
- an athletic trainer licensed under subch. VI of ch. 448,
- an occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448,
- an optometrist licensed under ch. 449,
- a pharmacist licensed under ch. 450,
- an acupuncturist certified under ch. 451,
- a psychologist licensed under ch. 455,
- a social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457,
- a speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the Department of Public Instruction,
- a massage therapist or bodywork therapist licensed under ch. 460,
- a partnership of any providers specified under pars. (a) to (hp),
- a corporation or limited liability company of any providers specified under pars. (a) to (hp) that provides health care services,
- a cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility,
- a hospice licensed under subch. IV of ch. 50,

- an inpatient health care facility, as defined in s. 50.135(1),
- a community-based residential facility, as defined in s. 50.01(1g),
- a rural medical center, as defined in s. 50.50(11),
- an ambulance service provider, as defined in s. 256.01(3),
- an emergency medical technician, as defined in s. 256.01(5), and
- a first responder, as defined in s. 256.01(9).

2. How do the federal definitions of pupil records differ from the state definitions above?

Federal definitions of pupil records parallel but are simpler than the definitions found in Wisconsin statutes. Federal definitions of pupil records within the Family Educational Rights and Privacy Act (FERPA) include directory information and education records. The federal definition of directory information is comparable to the state definition of directory data. The federal definition of education records generally encompasses the state definitions of progress records and behavioral records, 20 USC 1232g and 34 CFR 99.3.

Since Wisconsin pupil records law also specifically addresses patient health care records and pupil physical health records, school districts' policies regarding pupil records should reflect the definitions delineated within Wis. Stat. sec. 118.125.

3. What kinds of confidential records or information regarding students are not considered pupil records and, therefore, not subject to state and federal laws governing student records?

State law specifically excludes personal records, psychological treatment records, and law enforcement unit records from the definition of pupil records. Personal records are notes or records maintained for personal use by a person required to be DPI-certified, if such notes and records are not available to others, Wis. Stat. sec. 118.125(1)(d)1.

Records necessary for the psychological treatment of a pupil are not pupil records, if they are only available to the persons involved in the psychological treatment of the pupil, Wis. Stat. sec. 118.125(1)(d)2. Local school districts, through their local policy, may determine 1) what individuals or professions within the school are qualified to provide psychological treatment, and 2) what services constitute psychological treatment (e.g., support and counseling for dealing with issues related to alcohol and other drug problems).

"**Law enforcement unit records** means records maintained by a law enforcement unit that were created by that law enforcement unit for the purpose of law enforcement," Wis. Stat. sec. 118.125(1)(bs).

"**Law enforcement unit** means any individual, office, department, division, or other component of a school district that is authorized or designated by the school board to do any of the following: 1) enforce any law or ordinance, or refer to the appropriate authorities a matter for enforcement of any law or ordinance, against any person other than the school district, 2) maintain the physical security and safety of a public school," Wis. Stat. sec. 118.125(1)(bL).

The Family Educational Rights and Privacy Act (FERPA) also specifically excludes some types of records from its definition of education records. These exclusions include, but are not limited to, personal records not shared with others, records of a law enforcement unit of the local education agency, and employee records, 34 CFR 99.3.

4. **What are the requirements of schools related to the Safe at Home Program?**

   Safe at Home is a statewide address confidentiality program and mail-forwarding service that provides victims of actual or threatened abuse, stalking, and/or human trafficking with a legal substitute address to be used for both public and private purposes. All entities, including public and private schools, must accept the substitute assigned address as a program participant's legal address. See Wis. Stat. §165.68 (b) and (c). School districts may verify an individual's participation in the program by requesting to view their Safe at Home provided authorization card, or if necessary, contacting Safe at Home directly.

   The address of students participating in the Safe at Home Program must be protected, with particular importance paid to enrollment and transfer procedures. The district must use the Safe at Home address as the address of record for the student enrolling into their district. This is the student's legal address to be used for all purposes and should be the only address that appears in the pupil record. The student's actual residence may only be disclosed to the Wisconsin Department of Public Instruction and the student's district if required by law for tracking and funding purposes and may not be disclosed as part of the pupil record. See question #21 for more information on transfers.

   The following information is not considered confidential under Wis. Stat. §165.68, but may still be confidential under FERPA and/or Wis. Stat. §118.125:

   • Participation in Safe at Home
   • Date of enrollment in Safe at Home
   • A participant's assigned address
   • State of residence

   Please see the Safe at Home Guide for Schools publication from the Wisconsin Department of Justice for more information.

5. **What is "disclosure"?**

   Under the Family Educational Rights and Privacy Act (FERPA), disclosure means to permit access to or the release, transfer, or other communications of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means, 34 CFR 99.3.

Access and Disclosure

6. **Under what circumstances may a school district disclose personally identifiable information from pupil records?**

   A school district may disclose personally identifiable information from a pupil record under three circumstances: 1) written consent from a parent, guardian or adult pupil, 2) receipt of a court order, or 3) by authority of statute.

7. **May school district employees and other school district officials access pupil records without written consent?**

   Pupil records must be made available to persons employed by the school district that the pupil attends who are required to be DPI-licensed, law enforcement officers who are

individually designated by the school board and assigned to the school district, and other school district officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records, Wis. Stat. sec. 118.125(2)(d). A school official may include a person employed by the school district such as an administrator, supervisor, instructor, or support staff member; a person serving on the School Board; a person or company with whom the school district has contracted to perform a special task (such as an attorney, auditor, health consultant, or therapist); or a person serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an educational record in order to fulfill his or her professional responsibility.

8. May school district employees and other school district officials access patient health care records without written consent?

Patient health care records maintained by the school may be released without informed consent to school district employees or agents, if access to the records is necessary to comply with a requirement in federal or state law. For instance, such records may be released to school district employees and agents who need the information to carry out specific duties relating to the identification, evaluation, placement, and the provision of a free appropriate public education (FAPE) to a child with a disability under state and federal special education laws. In addition, districts need to ensure that certain staff have health information and a safety plan that will enable them to respond to a student health emergency. Such records may also be released without informed consent to school district employees or agents responsible for the preparation or storage of the records, Wis. Stat. sec. 146.82(2)(a)12.

The law is silent on who may independently access patient health care records. Both state and federal laws state that school staff with a legitimate interest or "need to know" may have access to the information on a particular student. However, staff without a health care background may not be able to appropriately interpret and determine the educational relevance of information from a patient health care record or to develop a safety plan. Since there are specific sanctions for violations of use and disclosure of patient health care records, a school district may wish to limit independent access to staff qualified to interpret the information.

School district employees obtaining information from patient health care records must keep the information confidential, Wis. Stat. sec. 146.82(1). A school district may redisclose this information only if it receives informed consent, a court order, or the redisclosure is limited to the same purpose of the original disclosure, Wis. Stat. sec. 146.82(5)(c). Furthermore, the district health care providers are to record the time, date, and circumstance of any release of patient health information, Wis. Stat. sec. 146.83(3), 118.125(3).

9. What information must be included in a form used to obtain written consent to share information from a pupil record?

For pupil records, the consent form must:

- name the student whose record is being released,
- specify the records that may be disclosed,
- state the purpose of the disclosure,

- identify the party to whom the disclosure will be made, and
- include the signature of the parent (or the student, if the student is an adult, i.e., 18 years or older), 34 CFR 99.30.

As a matter of practice, a school district may also wish to require the consent to state the time period during which disclosure will be permitted.

According to state law, informed consent to share patient health care records must include:

- the name of the person whose record is being released,
- the type of information to be disclosed,
- the types of health care providers making the disclosure,
- the purpose of the disclosure, such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes,
- the individual, agency, or organization to which disclosure is made;
- the signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of the person to the patient or the authority of the person,
- the date on which the consent is signed, and
- the time period during which the consent is effective, Wis. Stat. sec. 146.81(2).

10. How do the requirements of the Health Insurance Portability and Accountability Act (HIPAA) affect schools?

Patient health care records maintained by schools are considered education records and are thus subject to the Family Educational Rights and Privacy Act (FERPA) rules, and not the privacy portions of HIPAA. When a school wants or needs health information from outside health care providers, schools will need to adhere to the disclosure requirements of the outside health care providers (which are HIPAA-governed) in order to gain access to the information.

11. What records must a school district keep regarding requests for access to and the disclosure of personally identifiable information from pupil records?

A school district must keep a record of each request for access to and each disclosure of personally identifiable information from pupil records, 34 CFR 99.32. The record of requests for access and disclosures may be inspected by the parent; the school district official or his/her assistants who are responsible for the custody of the records; and school district, state, and federal officials for the purposes of auditing the record-keeping procedures of the district. A record of access by parents and authorized school district personnel is not required, 34 CFR 99.32, 300.614 (go to page 265 of 307). However, a school district must maintain a record of all persons, including parents and school personnel, obtaining access to patient health care records, Wis. Stat. sec. 146.82(2), 146.83(3).

The record of access to pupil records must include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A record of access to patient health care records must also include the time of the release and identification of the specific records released. The record of requests for access and disclosures must be maintained with the pupil records of the student consistent with the

length of time that particular type of record must be maintained. See Question 17 for discussion of record retention.

12. What steps must a school district take prior to disclosing directory data without parental consent?

Prior to disclosing directory data, a school district must notify the child's parent, legal guardian, or guardian ad litem of the categories of information designated as directory data with respect to each pupil and allow 14 days for the parent, legal guardian, or guardian ad litem to inform the district that all or any part of the directory data may not be released without prior consent, Wis. Stat. § 118.125(2)(j), 34 CFR 99.37.

Usually such notice is given by the district as part of its annual notice to parents of their rights with regard to pupil records. If the parent, legal guardian, or guardian ad litem requests that certain directory data be disclosed only with written consent, then that data may not be released without consent.

For safety concerns, it is recommended that Safe at Home participants opt-out of any type of school directory. Please work with Safe at Home participants to identify any directories or public listings that your district publishes. A Safe at Home participant's actual address may not be listed in a school directory. For more information on Safe at Home see Question #5.

13. What is the school health care provider's obligation to inform parents about access to patient health care records?

Each health care provider must provide the parent with a statement explaining who has access to patient health care records (found in Wis. Stat. sec. 146.83), upon the first provision of services by the health care provider, Wis. Stat. sec. 146.83(2).

14. Are there any penalties for sharing information from a pupil record without proper statutory authority or consent?

Custodians of pupil records are immune from liability for nondisclosure of information, unless the custodian acted with actual malice in failing to disclose. A school district is not liable for nondisclosure of information, unless it acted with gross negligence or reckless, wanton or intentional misconduct, Wis. Stat. sec. 118.125(2)(d).

State law specifically lists a variety of penalties for unauthorized disclosure of patient health care records that are the result of negligence, fraud or intentional misconduct. A custodian of patient health care records incurs no liability for disclosure, if acting in good faith, Wis. Stat. sec. 146.84(1)(a).

15. May contracted professionals (e.g., police-school liaison officer, county public health nurse) working in schools access school records without parental consent? That is, for the purposes of access to pupil records, should a contracted professional be treated as a school staff member or an individual representing another organization?

In order to have access to pupil records without consent or some statutory authorization, a school board must designate a contracted professional as a local school district official. Access to pupil records is limited to situations where the contracted professional has a legitimate educational interest, including safety interests, in the record. Furthermore, the contracted professional is prohibited from re-disclosing the record, unless specifically authorized by law, Wis. Stat. sec. 118.125(2)(d). A school district may choose to have school

district officials sign a statement as a means of documenting that the school district has notified school district officials of these conditions.

Occupational therapists, physical therapists, speech/language clinicians, nurses – School districts commonly contract for therapy and health services, either through professional organizations or with individuals. These professionals must be designated by the school board as school district officials with an educational interest in student records, if they are to have access to pupil records.

Public health nurses – Many school districts utilize county public health nurses for their school nursing services. If a county public health nurse needs access to student records in the course of performing her/his school nursing functions, it is recommended that a written memorandum of agreement be established between the school district and the county public health department. As above, the county public health nurse should be designated by the school board as a school district official with an educational interest in student records.

Police-school liaison officers – Law enforcement officers who are individually designated by the school board and assigned to the school district must be given access to pupil records in the same manner as DPI-licensed educators employed by the school district, Wis. Stat. sec. 118.125(2)(d).

Maintenance and Transfer of Records

16. How does a school district protect the confidentiality of information from pupil records?

School boards must adopt policies to maintain the confidentiality of pupil records. School boards may adopt policies to promote the disclosure of pupil records and information permitted by law for purposes of school safety, Wis. Stat. sec. 118.125(2).

Under special education law, each school district must protect the confidentiality of personally identifiable information from pupil records at the collection, storage, disclosure, and destruction stages. One official in each school district must assume responsibility for ensuring the confidentiality of pupil records. In addition, all persons collecting or using information from pupil records must receive training regarding policies and procedures relating to pupil records. Each school district must maintain, for public inspection, a listing of names and positions of employees and school district officials who may have access to pupil records, 34 CFR 330.623(d) (go to page 266 of 307). School districts may choose to apply this higher standard to all student records (rather than just special education records) in order to make it easier to comply with the law.

Please note that under Wis. Stat. sec. 118.125(2m), any pupil record that contains health care information other than the basic health information found in pupil physical health records must also be treated as a patient health care record.

Any pupil record that contains the results of a test for the presence of HIV (human immunodeficiency virus) antigen or nonantigenic products of HIV or an antibody to HIV must be treated as provided under Wis. Stat. sec. 252.15, 118.125(2m)(b).

The department recommends patient health care records be maintained separately from other pupil records, because the requirements relating to access to and disclosure of information

from patient health care records are more restrictive than the requirements for other pupil records.

Although classified as a behavioral record, law enforcement records obtained under Wis. Stat. sec. 48.396(1) or 938.396(1) must be stored separately from other pupil records, Wis. Stat. sec. 118.125(1)(a), (3).

For a school's responsibilities relating to the Safe at Home Program, see question #5 and #21.

17. How long must the school district maintain pupil records?

Each school district must adopt rules specifying the content of pupil records and how long pupil records will be maintained. A student's progress records must be maintained for at least five years after the student ceases to be enrolled. Please note this is a minimum retention period, Wis. Stat. sec. 118.125(3).

A student's behavioral records may be maintained for no longer than one year after the student graduates or otherwise ceases to be enrolled, unless the parent or adult student specifies in writing that the records may be maintained for a longer period of time. Please note this guideline is a permissive maximum period of time these records may be maintained, Wis. Stat. sec. 118.125(3). See Question 35 related to retention of special education records for audit purposes.

There are no legal provisions explicitly addressing the period of time patient health care records must be maintained or when they must be destroyed. The department recommends that a school district consult with their legal counsel and medical advisor to develop policies regarding the maintenance and destruction of pupil records that must be treated as patient health care records.

A school district may not destroy any education records if there is any outstanding request to inspect and review the records, 34 CFR 99.10(e).

Additional direction regarding retention of pupil records is available in the *Wisconsin Records Retention Schedule for School Districts* at http://dpi.wi.gov/rl3/resources/records.

18. Are there any guidelines for maintenance and destruction of test protocols?

A student's name does not necessarily have to be on a document to be considered a pupil record. Specifically, "…if a student's name appears on a document or the student's answers or work appear in a document, such as a test protocol, then the document is an education record to which the parent has a right to inspect and review," Family Policy Compliance Office, U.S. Department of Education, Letter to Westport Central School, (3/22/05).

Wisconsin law considers psychological tests, achievement tests, personality evaluations, and intelligence tests to be behavioral records, Wis. Stat. sec. 118.125(1)(a). Behavioral records may only be maintained for up to one year after a student graduates or leaves school, Wis. Stat. sec. 118.125(3). Test protocols are typically maintained as long as necessary to properly inform future evaluations.

If a test protocol was not created or later used as part of an evaluation under IDEA, then it may be maintained for the same length of time that the district maintains other behavioral records. However, if the protocol was used as part of an evaluation under IDEA, additional

regulations should be followed, including notification of parents when special education records are no longer needed, 34 CFR 300.624 (go to page 266 of 307). See Question #35.

Because of the need for test security, districts should use caution when determining an appropriate physical location for test protocols, regardless of the reason for creating the record.

19. When a local education agency receives information about a student from another system (i.e., medical clinic, law enforcement, mental health, human services), how can it ensure this information is treated properly?

When a school district receives information about a student from another system, it is critical that the information be classified as the appropriate kind of student record (i.e., progress record, behavioral record, pupil physical health record, or patient health care record) prior to the information being stored in order to ensure the information is treated properly, Wis. Stat. sec. 118.125, 146.82(1).

Please note that although classified as behavioral records, law enforcement records obtained under Wis. Stat. sec. 48.396(1) or 938.396(1) must be stored separately from other pupil records, Wis. Stat. sec. 118.125(1)(a), (3).

20. When a school receives a report from a health care provider outside the school, how is the report treated?

A report about a child from a health care provider outside the school will generally be treated as a patient health care record. Appropriate school staff should review the report. Based upon information from the health care provider's report, the school staff may prepare a report to be shared with other school staff with a legitimate educational interest. If the school report is limited to information about how the child's health affects participation and performance in the educational program and other basic health information described in the district's policy on pupil physical health records, the school report may be treated as a pupil physical health record. Once a report interpreting the educational implications of the health care provider's report is prepared, the original report may be destroyed if the information is no longer needed, or if the document is not needed to demonstrate compliance with a requirement. Please note that some school staff may be required to demonstrate that they obtained certain medical information for the provision of services. For example, occupational and physical therapists must have medical information before a child receives therapy. Physical therapists must receive this information from a licensed physician, Wis. Admin. Code sec. PI 11.24(7)(c) and (9)(c). In such instances the school may decide to retain the report from the outside health care provider and store it as a patient health care record. See Questions #22 and #36 for more information.

21. If a school staff member shares some or all of the contents of a personal record regarding a student, how does that change the status of this information?

If a school staff member shares some or all of the contents of a personal record or note (which are not part of a pupil record) regarding a student, this information loses its personal nature and necessarily becomes a pupil record and must be entered into the appropriate student file (e.g., progress record, behavioral record, patient health care record, etc.), Wis. Stat. sec. 118.125(1)(d).

22. What are the requirements regarding transfer of pupil records when a student moves from one public school to another school?

State law requires a public school district to transfer no later than the next working day, all pupil records relating to a specific pupil if the school district has received written notice from

- the parent that the pupil intends to enroll in another school or school district,
- the other school or school district that the pupil has enrolled, or
- a court that the pupil has been placed in a secured correctional facility, child caring institution or group home.

This requirement applies to Wisconsin public school districts, which are defined to include juvenile correctional facilities, defined in Wis. Stat. sec. 938.02(10p), a secured residential care center for children and youth, defined in Wis. Stat. sec. 938.02(15g), and an adult correctional facility, mental health institute, or center for the developmentally disabled that provides an educational program for its residents instead of or in addition to that which is provided by public and private schools. Under this requirement, public schools and schools participating in the Milwaukee Parental Choice program must transfer records to private schools, but the reverse is not true, Wis. Stat. sec. 118.125(4).

If a student or family participates in the Safe at Home Program, do not request a transfer of pupil records from the student's previous school. To ensure protection of the Safe at Home participant's actual address, all transfers of pupil records should be facilitated directly by Safe at Home. Parents or guardians should complete the Safe at Home "Release of Information: School Records" form and provide it directly to Safe at Home, not the school. Safe at Home may then request student records from the previous school and forward them to the enrolling school. Please see the Safe at Home Guide for Schools publication from the Wisconsin Department of Justice for more information.

All pupil records must be transferred to the new school. Pupil physical health records may be transferred with other behavioral records. As discussed in Question #20, whenever possible, reports from school staff should be limited to basic health information described in the school district's policy concerning pupil physical health records.

A report prepared by a school physical therapist, occupational therapist, speech pathologist or nurse that goes beyond basic health information described in the district's policy on pupil physical health records must be treated as a patient health care record. These records should be sealed and sent to the new school with instructions that they are to be accessed only by a health care provider or person acting under the supervision of a health care provider.

State law specifically allows for treatment records to be forwarded from one school district to another when a student transfers, subject to restrictions enumerated in Wis. Stat. sec. 51.30, Wis. Stat. sec. 51.30(4). Treatment records are defined as "registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437 and their staffs, and by treatment facilities," Wis. Stat. sec. 51.30(1)(b). "Treatment facilities" are defined as "any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but

not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs," Wis. Stat. sec. 51.01(19). Treatment facilities must be licensed as such by the Department of Health Services (DHS). Clinical licensure of an individual through the Department of Safety and Professional Services (DSPS) and subsequent individual, clinical practice does not constitute licensure as a treatment facility. Current treatment directories can be found at https://www.dhs.wisconsin.gov/guide/mh-directory.pdf and https://www.dhs.wisconsin.gov/regulations/aoda/sa-only-directory.pdf.

Public schools may not withhold pupil records for failure to pay fees or fines, Wis. Stat. sec. 118.125(4). Upon request, parents must be provided a copy of the records, Wis. Stat. sec. 118.125(2)(a), (b).

Please note that school districts must maintain copies of certain records for audit purposes. See Question #35.

Parents' and Students' Rights and Access

23. Is the local education agency required to provide notice to parents and/or students regarding access to pupil records?

Yes. The Family Educational Rights and Privacy Act (FERPA) requires parents be notified annually of their rights related to student records. Specifically, the notice must inform parents of their right to:

- inspect and review the student's education records,
- seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights,
- consent to disclosures of personally identifiable information contained in the student's education records, unless otherwise authorized without consent, and
- file a complaint with the Department of Education for alleged violations of FERPA, 34 CFR 99.7.

The annual notice must include:

- the procedure to exercise the right to inspect and review education records,
- the procedure for requesting amendment of education records, and
- how the school district defines a school official (who will be allowed access to education records) and what constitutes a legitimate educational interest, 34 CFR 99.7.

The annual notice may be provided by any means reasonably likely to inform parents and students of their rights. A sample annual notice provided by the Federal Policy Compliance Office can be accessed at http://www.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html.

Directory Data – Annually, a school district must notify the child's parent, legal guardian, or guardian ad litem of the categories of information designated as directory data and allow them 14 days to inform the district that all or any part of the directory data may not be released without prior consent, Wis. Stat. sec. 118.125(2)(j).

Patient Health Care Records – Before the provision of service, a health care provider must provide the parent with the provisions of access to patient health care records within the school district, Wis. Stat. sec. 146.83(2).

See Question #40 for more information related to special education.

24. What are the rights of parents to access the pupil records of their children?

Upon request, a parent must be shown and provided a copy of his or her child's education and progress records, Wis. Stat. sec. 118.125(2)(a), 34 CFR 99.10(a). Under state law, upon request, the pupil's behavioral records must be shown to a parent in the presence of a person qualified to explain and interpret the records, Wis. Stat. sec. 118.125(2)(b). If circumstances effectively prevent the parent from exercising the right to inspect and review the education records, the school must provide the parent with a copy of the records requested or make other arrangements for the parent to inspect and review the records, 34 CFR 99.10(d). If a pupil record contains information on more than one student, the parent may inspect and review the specific information related only to their child, 34 CFR 99.12(a). The school may not destroy any education records if there is any outstanding request to inspect and review the records, 34 CFR 99.10(e). Federal law requires schools to provide access to the education records without unnecessary delay (no longer than 45 days from the date of request), 34 CFR 99.10(b). See Question #41 for information specific to records of children with disabilities.

Parents who have been denied periods of physical placement with a child by a court under Wis. Stat. sec. 767.41(4) do not have the right to inspect, review or receive copies of the child's education records, Wis. Stat. sec. 118.125(2)(m), 34 CFR 99.4.

Parents are not allowed access to information relating to their adolescent child's reproductive health without authorization from the adolescent, Wis. Stat. sec. 253.07(3)(c). In addition, parents are not entitled to information received by a school psychologist, counselor, social worker or nurse, or any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities from a pupil that the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs unless 1) the pupil gives written consent for disclosure, 2) there is serious and imminent danger to the health, safety or life of any person and that disclosure of the information will alleviate the serious and imminent danger, or 3) a report of suspected child abuse or neglect is required under Wis. Stat. sec. 48.981, 118.126. Also, parents may not access information related to the HIV test results of a student age 14 years and older without the student's consent, Wis. Stat. sec. 118.125(2m), 252.15(3m)(c). More information is available in *Confidential Services Available to Youth in Wisconsin* at http://dpi.wi.gov/sspw/pupil-services/school-social-work/publications/confidential-services.

25. Must a school district respond to reasonable requests from parents for explanations of pupil records?

Yes. A school district must respond to reasonable requests from parents for explanations and interpretations of all pupil records. State law requires that a school district, upon request, show a parent the child's behavioral records in the presence of a person qualified to explain and interpret the records. However, a district may not use this provision of the law to unreasonably restrict the parent's right to access behavioral records. Parents are entitled to copies of any pupil records, Wis. Stat. sec. 118.125(2)(a), (b).

There is no specific requirement in state law to have a health care provider explain and interpret a patient health care record to a patient or parent requesting to access their child's record, nor is there language that prevents this. However, since patient health care records have additional use and disclosure protections, it would be prudent to treat patient health care records similarly to behavioral records in the requirement that a qualified staff person (i.e., a health care provider) be present to interpret the record.

26. How do the rights of parents and students change when the student turns 18 years old?

The rights held by a parent regarding his or her minor child transfer to the child when the child reaches the age of 18 years, 34 CFR 99.5. However, the parents of an adult student who continues to be financially dependent upon the parents may continue to have access to their child's pupil records, unless the adult student notifies the school in writing this information may not be shared with the parents without the student's permission, Wis. Stat. sec. 118.125(2)(k). This transfer of rights at the age of majority should be included in the school district's policy on pupil records to help ensure both parents and students understand this process.

27. In a case involving separation or divorce, what are the rights of parents?

The school district must give full rights with regard to pupil records to either parent, unless there is a court order or other legally binding document relating to divorce, separation, or custody that specifically revokes these rights. The terms of the court order or other legally binding document determine the rights of the parents. A parent who has been denied periods of physical placement with a child by a court in an action relating to divorce or separation does not have the rights of a parent with regard to pupil records, Wis. Stat. sec. 118.125(2)(m).

28. May a school district charge parents for copies of pupil records?

A school district may not charge a fee for copies of records, if the fee would effectively prevent the parent from accessing or obtaining a copy of the records, 34 CFR 99.11(a). The school district may not charge a fee to search for or to retrieve pupil records, 34 CFR 99.11(b), Wis. Stat. sec. 118.125(2)(a), (b).

29. If a parent believes the information in a pupil record is inaccurate, misleading or violates the privacy or other rights of the child, what action can the parent take?

If a parent believes the information in pupil records is inaccurate, misleading or violates the privacy or other rights of the child, the parent may request the school district amend the information. The district must decide within a reasonable period of time whether to amend the information. If the district decides to refuse to amend the information, it must inform the parent of the refusal, and advise the parent of the right to a hearing under the regulations implementing the Family Educational Rights and Privacy Act (FERPA) of 1974 and the Individuals with Disabilities Education Improvement Act (IDEA). If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform the parent in writing. If the district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records a statement commenting on the information or stating the reasons for disagreeing with the district's decision. The parent's

statement must be maintained by the district as part of the child's pupil records as long as the contested information is maintained by the district. If the contested information is disclosed to any person, the parent's statement must also be disclosed to that person, 34 CFR 99.20-22 and 300.618-621 (go to page 265 of 307).

30. Do parents have the authority to limit access to their child's pupil records to designated staff within the local education agency?

Pupil records are the property and in the custody of a student's school district of residence. State law specifically requires pupil records to be made available to any DPI-licensed school staff member with legitimate educational interests, including safety interests. A parent could only seek to have a school employee barred access to the parent's child's pupil records on the basis of the school employee not having any legitimate need to have this information. Ultimately, it is the decision of the school district who within the school system has access to pupil records, Wis. Stat. sec. 118.125(2)(d).

31. Do parents have the authority to compel a school staff member to share information about their child with the parents?

To the extent that the information a school staff member possesses about an individual student is part of a pupil record, a parent may compel a school staff member to share information about their child, since parents have access to all pupil records. However, some types of information about students are exempted from the definition of pupil records and parents may not compel a school staff member to share this information. These include, but may not be limited to:

- personal records of individual staff members not available to others, Wis. Stat. sec. 118.125(1)(d),
- records necessary for and available only to people involved in the psychological treatment of a student, Wis. Stat. sec. 118.125(1)(d),
- information received from a student that the student or another student is experiencing problems related to the use of alcohol or other drugs, Wis. Stat. sec. 118.126,
- records related to reports to county child protective services for suspected abuse or neglect, Wis. Stat. sec. 48.981(7), and
- records that are defined in statute as being confidential unless the student gives consent to have this information released, Wis. Stat. sec. 252.15(3m)(c), 118.125(2)(k).

32. Do parents have the right to inspect and review test protocols?

Parents have the right to review and receive copies of their children's pupil records, Wis. Stat. sec. 118.125(2)(a), (b), 34 CFR 99.10. Both Wisconsin and federal law classify psychological tests, achievement tests, personality tests, and intelligence tests as behavioral records, Wis. Stat. sec. 118.125(1)(a), 34 CFR 99.3.

A student's name does not necessarily have to be on a document to be considered a pupil record. Specifically, "…if a student's name appears on a document or the student's answers or work appear in a document, such as a test protocol, then the document is an education record to which the parent has a right to inspect and review," Family Policy Compliance Office, U.S. Department of Education, Letter to Westport Central School (3/22/05).

In order to balance parents' rights to review records with the importance of maintaining the security of certain copyrighted test protocols, the department encourages educators and parents to collaborate in the review of test protocols. As an appropriate first step, the department recommends that school staff review protocols and test materials with parents. If the parent is working with a private clinician who is qualified to interpret tests such as these, the protocol may be released to that clinician (with parental consent). Upon request, the parent or guardian of a minor pupil shall be provided with copies of the pupil's behavioral records, including test protocols, Wis. Stat. sec. 118.125(2)(b), 34 CFR 99.10.

Please note that when a school district proposes to evaluate a child under IDEA, the school district must provide parents with a notice that includes a description of the tests or the type of tests or other evaluation procedures the district proposes to use. Further, when the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a child, the district must send the parents a notice that includes a description of each evaluation procedure, test, record, or report it uses as a basis for its proposal or refusal, Office of Special Education Programs, U.S. Department of Education, Letter to MacDonald (10/25/93); 34 CFR 300.503(b)(4) (go to page 254 of 307).

Additional Requirements Related to Special Education

33. Where are the relevant state and federal requirements relating to pupil records of children with disabilities found?

The requirements relating to pupil records are found in both state and federal law. In state law, the requirements relating to the records of all pupils are located at Wis. Stat. sec. 118.125, 146.81-84. Additional state requirements related to students with disabilities are found in Wis. Stat. sec. 115.787, 115.792, and 115.807.

Federal requirements relating to the education records of all pupils are found at 34 CFR Part 99, the regulations implementing the Family Educational Rights and Privacy Act (FERPA) of 1974. Federal requirements relating to education records of children with disabilities are found at 34 CFR 300.610-627 (go to pages 264-266 of 307) of the regulations implementing the Individuals with Disabilities Education Act (IDEA). Information concerning requirements relating to records used to provide services paid for by Medical Assistance may be obtained by contacting the Wisconsin Medicaid Office at the Department of Health Services or http://dhs.wisconsin.gov/medicaid/index.htm.

34. Who is considered a parent of a child with a disability?

Under Wis. Stat. sec. 115.76(12), a parent means any of the following:

- a biological parent,
- a husband who has consented to the artificial insemination of his wife under s. 891.40,
- a male who is presumed to be the child's father under s. 891.41,
- a male who has been adjudicated the child's father under subch. VIII of ch. 48, under subch. IX of ch. 767, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state,

- an adoptive parent,
- a legal guardian,
- a person acting as a parent of a child,
- a person assigned as a surrogate parent under s. 115.792(1)(a)2.
- a foster parent, if the right and the responsibility of all of the persons specified in Wis. Stat. sec. 115.76(12)(a)1.-5. to make educational decisions concerning a child have been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order, and if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions that are required of a parent under this subchapter and has no interests that would conflict with the interests of the child.

When a student attains the age of 18, the rights accorded to parents transfer from the parent to the student, Wis. Stat. sec. 115.807.

35. How must special education records be treated differently than other pupil records?

Under federal law, recipients of federal funds must maintain certain records for financial or program audit purposes. These records include a child's individual education plan (IEP) evaluation reports, IEPs, and placement notices. The records must be kept for the current fiscal year plus four more years.

Under the IDEA, a school district must inform the parents of a child with a disability when personally identifiable information is no longer needed to provide educational services to the child. The notice would normally be given at the time the child graduates or otherwise ceases to be enrolled in the school district. The purpose of the notice is to alert parents that certain pupil records may be needed for proof of eligibility for benefits or other purposes. The information that is no longer needed must be destroyed at the request of the parent, 34 CFR 300.624 (go to page 266 of 307). Otherwise, as noted above, under state law the information may be maintained for only one year after the child graduates or otherwise ceases to be enrolled, unless the parent or adult pupil specifies in writing that the records may be maintained for a longer period of time, Wis. Stat. sec. 118.125(3).

Therefore, the department recommends that when a child graduates or otherwise ceases to be enrolled, the district obtains the permission of the parent or adult pupil to maintain IEP team evaluation reports, IEPs, and placement notices for the current fiscal year plus four more years for audit purposes. If the parent requests destruction of the records or will not grant permission to maintain the records for five years, then the Office of Special Education Program (OSEP), U.S. Department of Education, recommends removing the personal identifiers from the records. Once personal identifiers are removed, the records are not pupil records and may be maintained until they are no longer needed to satisfy the federal record maintenance requirement. See Question #15-17 for additional information.

36. If information from a patient health care record is necessarily included in an educational report for an IEP team evaluation, how should the educational report be treated?

Whenever possible, IEP team summaries of evaluation findings, IEP team reports, and written recommendations from school staff should be limited to basic health information. Basic health information includes information about the child's ability to participate in the

educational program. Limiting the information in these documents to the effects of the child's health on participation and performance in the educational program and other basic health information permits the school to treat these records as pupil physical health records. Reports and recommendations that contain information beyond the basic health information described in the district's policy on pupil physical health records must be treated as patient health care records (e.g., the treatment plans and therapy notes of physical and occupational therapists).

If for some reason it is necessary to include information that would be considered patient health care information, then it may be easier for the school to treat all of the information associated with the evaluation as patient health care information. The higher level of protection afforded to patient health care information may necessitate maintaining all of these records together.

37. Is parental consent required for a school district to provide a due process hearing officer with a child's pupil records?

No prior consent from the parent is required before the child's pupil records are disclosed directly or redisclosed through a school district's attorney to a due process hearing officer. However, the disclosure must occur in the course of the school district's presentation of evidence at the due process hearing, Office of Special Education Programs, U.S. Department of Education, Letter to Stadler (2/21/96).

38. May a parent tape record an individualized education program (IEP) meeting?

The use of tape recorders at IEP meetings is not addressed in state or federal special education law. The decision about whether parents may tape such meetings is left to the discretion of local school districts. Any policy limiting or prohibiting a parent's right to tape record an IEP meeting should provide for exceptions if they are necessary to ensure that the parent is able to understand the IEP or the IEP process or to implement other parental rights. A policy limiting or prohibiting a parent's right to tape record IEP meetings involves complex issues of federal constitutional law. Interested school districts should consult their attorneys before adopting such a policy. Please note that when a tape recording of an IEP meeting is maintained by the district, it must be treated as a pupil record, Wis. Stat. sec. 118.125(1)(d), (e).

39. When a student with a disability transfers from a public school district or a facility operated by the Department of Corrections (DOC) or the Department of Health Services (DHS) to another public school district or DOC- or DHS-operated facility in Wisconsin, what is the receiving school district's or state-run facility's obligation with regard to pupil records?

If a school district or DOC- or DHS-operated facility, upon receiving a transfer student, does not receive the child's pupil records, then the district or facility must request in writing the child's pupil records from the sending district or facility, Wis. Admin. Code sec. PI 11.07(2)(d). The transferring facility must comply with such requirements within five working days of receipt of written notice, Wis. Stat. sec. 118.125(4).

40. What are the public notice requirements relating to pupil records of children with disabilities?

At least annually and before any major child find (screening) activity, each school district must notify parents of their rights with regard to pupil records as part of a special education screening notice. The notice must be given in the native language of the various population groups in the school district and may be given through such means as public announcements, written notices, or paid advertisements. The notice must include:a statement of the school district's duty to identify, locate, and evaluate all resident children with disabilities, regardless of the severity of their disability,

- a description of the extent to which the notice is given in the native languages of the various population groups in the district,
- a description of the children on whom personally identifiable information is maintained, the type of information sought through child find activities, the methods the school district intends to use to gather the information (including the sources from whom information is gathered), and the uses to be made of the information,
- a summary of the policies and procedures the district follows regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information,
- a description of all of the rights of parents and children regarding pupil records, including their rights under state and federal law, including the Family Educational Rights and Privacy Act (FERPA), and
- the educational opportunities available in the community for children with disabilities, 34 CFR 300.612 (go to page 264 of 307).

An example of a notice that may be adapted to meet these requirements may be found at http://dpi.wi.gov/sped/laws-procedures-bulletins/procedures/sample/forms.

41. How does a school district protect the confidentiality of information from pupil records of children with disabilities?

Each school district must protect the confidentiality of personally identifiable information from pupil records at the collection, storage, disclosure, and destruction stages. One official at each school district must assume responsibility for ensuring the confidentiality of pupil records. All persons collecting or using information from pupil records must receive training regarding policies and procedures relating to pupil records. Each school district must maintain, for public inspection, a listing of names and positions of employees who may have access to pupil records, 34 CFR 300.623 (go to page 265 of 307). See Question #15 for more information.

42. What are the rights of parents of children with disabilities to access pupil records?

A parent of a child with a disability must, upon request, be shown and provided with a copy of pupil records, Wis. Stat. sec. 118.125(2)(a), (b). In addition, the parent has a right to have a representative of the parent inspect and review the records. A school district must comply with a request for access to records without unnecessary delay and before any meeting regarding an individualized education program (IEP) or a hearing under Wis. Stat. sec. 115.80. In all cases, the school district must comply with a parent's request within 45 days. A school district may not destroy any pupil records if there is an outstanding request to inspect and review pupil records, 34 CFR 99.10(e). If any pupil record includes information on more

than one student, the parents of those students have the right to inspect and review only the information relating to their child or to be informed of that specific information, 34 CFR 300.615 (go to page 265 of 307). The local educational agency may presume that the parent has the authority to inspect and review records relating to his or her child unless the school has been advised that the parent does not have the authority under state law, 34 CFR 300.613 (go to page 265 of 307). The school district must provide parents on request a list of the type and locations of pupil records collected, maintained, or used by the school district, 34 CFR 300.616 (go to page 265 of 307).