

# Chapter 148-280 WAC

## FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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 Repealed by WSR 03-20-014, filed 9/22/03, effective 10/23/03.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 Repealed by WSR 03-20-014, filed 9/22/03, effective 10/23/03.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 school for the deaf implements policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Sec. 1232(g) (FERPA), and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1412 (a)(8). These laws establish that the education records of students attending or having attended the 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 72.40.011. 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, address, telephone listing, date and place 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 previous school attended.

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(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 those records, files, documents, and other materials that are:

- (a) Maintained by the school; and
- (b) Directly related to a student.

The term "education records" does not include:

(i) Records of school staff that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(ii) Records created and maintained by school security or the law enforcement unit of the school;

(iii) Records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and which are not available for any other purpose: Provided, That this exception does not apply to records relating to an individual in attendance at the school who is employed as a result of his or her status as a student;

(iv) Records on a student who is eighteen years of age or older that are created and maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity and that are created, maintained, or used only in connection with the treatment of the student; and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice; and

(v) Records that contain only information relating to an individual after he or she is no longer a student at the school.

(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" means the necessity to review educational records in order to fulfill professional responsibility, perform a function related to a student's education or discipline, 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; a list of personal

characteristics that would make the student's identity easily traceable; or other information that would make the student's identity easily traceable.

(8) "School official" includes a person employed by the school as a teacher, administrator, supervisor, counselor, support staff member (including health or medical staff and law enforcement unit personnel), a person serving on the school board of trustees, a person with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist), or a parent or student serving on an official committee or assisting another school official in performing his or her tasks.

[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 shall provide parents and adult students with annual notice of their rights as defined by FERPA by publication in the parent/student handbook.

[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 Education records—Access rights.** (1) A parent, adult student, or representative of the parent has the right to inspect and review the education records of the student.

(2) Where the education record or data 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 parent (or adult student) has the right to obtain copies of the student's education records. Charges for the copies shall not exceed the cost normally charged by the school. However, if the fee effectively prevents the parent (or adult student) from exercising the right to inspect and review the student's education records, the school may provide such copies free of charge.

(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 there is a court order, parenting plan, or legally binding document relating to such matters as dissolution, separation, guardianship, or custody that specifically revokes these rights.

(5) The parent (or adult student) has the right to a response from the school to reasonable requests for explanations and interpretations of the records.

[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 148-280-025 Education records—Access procedures.** (1) 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.

(2) 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).

(3) The supervising administrator K-12 or his/her designee shall respond to reasonable requests for inspection, explanation, and interpretation of education records within forty-five days from the date the request was received and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student. If the supervising administrator K-12 is unable to comply with a request within the above stated period, he or she shall inform the parent (or adult student) of that fact and the reasons in writing.

[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.]

**WAC 148-280-030 Education records—Amendment.**

(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 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. The hearing shall be a brief adjudicative proceeding.

(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 will be conducted by a hearing officer who is a disinterested party. This hearing officer may be a school official. 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 at the hearing by one or more individuals, including an attorney.

(c) The hearing officer will prepare a written decision based solely on the evidence presented at the hearing. The decision will 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 and/or a statement of the parent's (or adult student's) reasons for disagreeing with the decision of the school.

(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 72.40.011, 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 Disclosure of personally identifiable information from education records.** (1) The school shall not disclose information from education records (other than "directory information") without the written consent of the parent (or adult student) except that records may be disclosed without consent when disclosure is to:

(a) School officials who have a legitimate educational interest in the records;

(b) Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. Pursuant to RCW 28A.225.330, records disclosed under this subsection will include disciplinary action, violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. The school shall provide the parent (or adult student), upon request, with a copy of the records disclosed and an opportunity for a hearing to challenge the content of the record;

(c) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federal or state-supported education program, or in connection with the enforcement of or compliance with federal or state legal requirements which relate to such programs;

(d) Organizations conducting studies for, or on behalf of the school, for purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction: Provided, That the study is conducted in such a manner that does not permit the personal identification of parents and students by persons other than representatives of such organizations, and such information is destroyed when no longer needed for the purposes for which it was provided;

(e) Accrediting organizations in order to carry out their accrediting functions;

(f) Any person or entity designated by judicial order or lawfully issued subpoena: Provided, That the school shall make a reasonable effort to notify the parent (or adult student) in advance of compliance, unless such notification and disclosure is specifically prohibited by an order of the court or other issuing agency or the order has been issued *ex parte*.

(i) If the school initiates legal action against a parent or student, the school may disclose to the court, without a court order or subpoena, the education records of the student that are relevant and necessary for the school to proceed with the legal action.

(ii) If a parent or student initiates legal action against the school, the school may disclose to the court, without a court order or subpoena, the student's education records that are relevant and necessary for the school's defense;

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(g) State and local officials or authorities if specifically required by state law adopted before November 19, 1974, or if reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student prior to adjudication;

(h) Appropriate persons in connection with a health or safety emergency if knowledge of such information is necessary to protect the health or safety of a student or other individuals;

(i) Teachers and school officials in other schools and school districts, and teachers, security personnel and other personnel at the Washington school for the deaf who have a legitimate educational interest in the behavior of the student when the information concerns disciplinary action taken against the student for behavior that posed a significant risk to safety or well-being of that student, other students, or other members of the school community, or a history of violent behavior or behaviors listed in RCW 13.04.155. "Disciplinary action" means the investigation, adjudication or imposition of sanctions by the school for an infraction or violation of the student conduct code.

(2) Where the consent of a parent (or adult student) is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released;

(b) The reasons for such release; and

(c) The names of the parties to whom such records will be released.

(3) When a disclosure is made under subsection (2) of this section, if a parent (or adult student) so requests, the school shall provide him or her with a copy of the records disclosed.

(4) Personally identifiable education records released to third parties, with or without parent (or adult student) consent, shall be accompanied by a written statement indicating that the information cannot be subsequently released in a personally identifiable form to any other party without the prior consent of the parent (or adult student).

(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 72.40.011, 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.** (1) The school shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The school shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

(a) The name of the party who had requested or received information;

(b) The date access was given; and

(c) The legitimate interest or purpose the party has in requesting or obtaining the information.

(4) If the party receiving personally identifiable information makes further disclosures of the information on behalf of the school, the record must include:

(a) The names of additional parties to which the receiving party may disclose the information; and

(b) The legitimate interests under WAC 148-280-040 which each of the additional parties has in requesting or obtaining the information.

(5) Subsection (1) of this section does not apply if the request was from, or the disclosure was to:

(a) The parent or adult student;

(b) A designated school official with a legitimate educational interest under WAC 148-280-040 (1)(a);

(c) A party with written consent from the parent or adult student;

(d) A party seeking directory information; or

(e) A party seeking or receiving records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

[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.

(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 72.40.011. 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.]