

Chapter 2

RECORDS

What This Chapter Is About

Schools keep records on children in special education. Schools have to grant access to these records in a timely way. Parents may view records, may have a representative view them, and may copy them for a nominal fee.

Records are confidential, with some exceptions, and cannot be disclosed without written consent. Juvenile courts have access to school records without consent. Schools must implement safeguards to ensure that records remain confidential.

Parents may ask that incorrect records be changed and may request a hearing if the school refuses to correct them. At the very least, a parent may insert a statement disagreeing with records they think are wrong. Parents may also complain to the federal government if they believe schools are not handling records properly.

Individualized Education Program's (IEPs), evaluations, records of your activity on your child's behalf, letters, and reports are among the records you must keep in order to advocate effectively for your child.

Advocacy Hints in Chapter 2

- ◆ Records include items in paper, electronic, and other formats (Page 2).
- ◆ "Records" do not include all documents about your child (Page 2).
- ◆ You may have access to your child's records unless you no longer have a legal right to participate in his or her educational program (Page 3).
- ◆ You must have custody of your child in order to require the school to create new records about him or her (Page 3).
- ◆ Keep a list of relevant records so you can track them down in the many places within the school district where they may be kept (Page 5).
- ◆ Review your child's records with an administrator so you can get an explanation of why each record is kept (Page 5).
- ◆ Use past IEPs and evaluations to build a case for better services (Page 7).
- ◆ Use IEPs to hold a school responsible for serving your child (Page 7).
- ◆ Keep a notebook with relevant laws, rules, and records (Page 8).

School Records

Local school districts keep records on all students. Each of these records, known as the Cumulative Record File or “CA-60,” contain information such as name, gender, date of birth, address, enrollment dates, exit dates, and types of specialized programs and services being rendered (such as special education, limited English proficiency, career and technical education, and others). Local districts report this information to the state through the Michigan Student Data System (MSDS). The MSDS has a unique identification code for each student in the state. For more information on the Michigan Student Data System, visit http://www.michigan.gov/cepi/0,4546,7-113-986_50502---,00.html.

Local school districts also keep special education records. These records, often kept separately from general education records, may include assessment information, reports, and evaluations, reports from the Individualized Educational Planning Team (IEP Team) meetings, Individualized Education Programs (IEP), and other information pertinent to the provision of special education services.

Intermediate school districts maintain “registry” records that relate to students with disabilities in local districts, including students placed in state and private facilities. **MCL 380.1711(1)(f); MARSE R 340.1861.**

► **Advocacy Hint: Records come in all forms...** *Record* means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche. **34 CFR 99.3.**

Legal rights and obligations covering records are governed by a variety of laws. The most important are Individuals with Disabilities Act (IDEA), the Michigan Mandatory Special Education Act (MMSEA), and the Family Educational Rights and Privacy Act of 1974 (FERPA). **20 USC 1232g.**

► **Advocacy Hint: ... but not everything is a record.**

According to FERPA, “educational records” do not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- (2) Records of the law enforcement unit of a school, created for the purpose of law enforcement.
- (3) Records about school employees that are exclusively related to their role as an employee.
- (4) Certain medical or psychological records regarding adult or postsecondary students.
- (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
- (6) Grades on peer-graded papers before they are collected and recorded by a teacher. **34 CFR 99.3(b).**

In some cases, these items may be available through other laws such as the Freedom of Information Act (FOIA).

Access by Parent

In general, the school must presume that the parent has authority to inspect and review records relating to the child unless the agency has been advised that the parent does not have that authority under the state laws governing such matters as guardianship, separation, and divorce. If this happens, the parent can provide information proving custody or guardianship. **34 CFR 300.613(c).**

► **Advocacy Hint: Right to records access...** The Family Education Rights and Privacy Act allows parents who do not have physical custody of their child but have not had their parental rights limited or terminated, to have access to their child's school records. **34 CFR 99.4.**

Additionally, parents have specific access rights:

- ◆ The school must permit parents to inspect and review any education records relating to their children that are **collected, maintained, or used** by the school.

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- ◆ The school must comply with any request by a parent to view records without unnecessary delay, immediately if requested for use at any Individualized Education Program Team (IEP Team) meeting, hearing or appeal, and never more than 45 days after the request is made.
- ◆ The school must respond to reasonable requests by the parent for explanations and interpretations of the records.
- ◆ The parent has the right to have a representative of the parent inspect and review the records upon presentation of a signed release or permission statement.
- ◆ The parent has the right to obtain copies of the records, if not having copies would prevent the parent from inspecting and reviewing the records. Copying costs can be charged to the parent unless this would prevent the parent from reviewing the records. The school cannot charge a fee to search for or retrieve information. **34 CFR 300.613 and 300.617.**

► **Advocacy Hint: ... but not records creation.** A non-custodial parent cannot require the school to create a record they do not already have. For example, the custodial parent could request that the school provide weekly progress reports as part of a child's IEP. If the school agrees to do this and produces the reports, the non-custodial parent would have access to these reports. The non-custodial parent could not, however, request that the school provide him or her with weekly progress reports if they were not already in existence and were not required by the reporting requirements in the IEP.

Confidentiality

School records must be confidential. This means that no one may show records or discuss information from the child's records with unauthorized people. This includes records maintained on a computer. Authorized access to a child's records can be gained in two ways: first, the parent may consent to access; second, some school personnel may have access authorized by law.

Consent

Under federal law, the school **MUST** obtain the parents' written consent before disclosure of personally identifiable information to anyone other than school officials. The consent must specify the records to be disclosed, the purpose of the disclosure, and the person to whom the disclosure may be made. The school must provide the parent with copies of any records disclosed if the parent requests them. **34 CFR 300.622(a); 34 CFR 99.30.**

In situations where a child may have committed a crime that is reported by the school, the school is required to provide a copy of the child's special education and disciplinary records to

the court. **34 CFR 300.535.** (Note that this section does not require schools to report crimes, nor does it excuse schools from the responsibility to refrain from criminalizing disability-related conduct).

Authorized Access

Some people have access to records without consent. They include:

- ◆ other school officials, including teachers within the educational institution or local education agency, who have been determined by such agency or institution to have legitimate educational interests;
- ◆ school officials of another school or ISD if the child transfers from one school to another, provided the parent receives notice of the transfer of records;
- ◆ federal and state educational authorities, if it is for auditing purposes required by law and personally identifying information is subsequently destroyed when no longer needed;
- ◆ in connection with a child's application for, or receipt of, financial aid;
- ◆ organizations or individuals conducting studies, if the studies will not permit personal identification of children;
- ◆ accrediting organizations;
- ◆ appropriate people in a health or safety emergency;
- ◆ to victims of violent or non-forcible sex offenses;
- ◆ appropriate parties in order to comply with a court order or subpoena; and
- ◆ appropriate parties when the school is a party to litigation. **20 USC 1232g(b)(1); 34 CFR 99.31.**

Remember, if none of these exceptions apply, the school cannot release or disclose any information maintained in a record until the parent (if the child is under 18 years of age), the child (if 18 years of age or older), or the guardian gives consent.

Safeguards

To protect confidentiality as information is collected, stored, disclosed, or destroyed, each school must appoint a person who is responsible for insuring confidentiality. Each school must also:

- ◆ keep a list of the names and positions of school employees who have access to records;
- ◆ keep a record of all people who have seen the records, noting their name, the date access was given, and the purpose for authorizing the use of the records; and

- ◆ ensure that all persons who collect or use personally identifiable information or computer terminals or microcomputers receive training in procedures for safeguarding the confidentiality of records. **34 CFR 300.623; 20 USC 1232g.**

► **Advocacy Hint: So many files, so little time.** Documents from a child's records may be kept by teachers, evaluators, or administrators in different locations in local and intermediate school districts. Each district must keep a list of the types and locations of educational records (each of these lists must be given to the parent, upon request). **34 CFR 300.616.** It is very useful to have a list of all the records maintained by the school district. You will at least know the location of the records and will have an easier time tracking them down. Once a school decides that information is no longer needed to provide educational services to a child, the school must notify the parent of this. At the request of the parent, the information must be destroyed. However, the school is required to maintain a permanent record including name, address, telephone number, grades, attendance records, classes attended, grade level and year of completion for each child that attends that school. **34 CFR 300.624.**

How to Change Records

Records are one of the primary ways that teachers and other professionals learn about children. Sometimes information included in the records may be inaccurate, misleading, or may in other ways violate the student's privacy or other rights. If such misleading information remains in the file, it may have an effect on the student's present and future educational programs and placements.

► **Advocacy Hint: Ask for an administrator's help.** The parent may request that a school administrator review their child's record with them. The administrator can review each document in the record to let the parent know why each of the documents is being held and the use the school will make of them.

If the parents believe that a student's records contain erroneous or misleading information, they may request that the school amend or delete the information. The school must decide whether or not to change the records within a reasonable time after receiving the request. If the school refuses to amend the records, it must inform the parents of the refusal and the right to a hearing. This hearing is different from a hearing on educational programming. **34 CFR 300.618.**

The purpose of a hearing is to decide whether information in a student's record is inaccurate or misleading, or in violation of the child's privacy or other rights. **34 CFR 300.619.** The

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hearing must be conducted according to FERPA rules. **34 CFR 300.621.** These rules require the following:

- ◆ The hearing must be held within a reasonable time after the parents have made a request. The school must notify the parents reasonably in advance about the hearing date, time, and place.
- ◆ A hearing officer must be appointed. The hearing officer may be any person, including a school official, who has no direct interest in the outcome of the hearing.
- ◆ The parent must be given the chance to present evidence, to call and cross-examine witnesses, and to be represented by an advocate or attorney.
- ◆ The hearing officer's decision must be made in writing and be based solely on the evidence presented at the hearing. The decision must include a summary of evidence and the reasons for the decision. **34 CFR 99.22.**

If the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school must amend the information accordingly and inform the parent in writing. If the hearing officer decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school does not have to amend the information. Instead, the school must inform the parents of their right to place a statement in the records commenting on or giving reasons for disagreement with the information. This statement must be maintained by the school as part of the student's records as long as the record or contested portion is maintained by the agency. Further, if the record is disclosed by the school to any party, the parent's statement must be disclosed to the party as well. **34 CFR 99.21; 34 CFR 300.620.**

Complaints About Records

IDEA complaints about records should be directed to the state (see “Problem Solving and Complaints” chapter). In addition, if FERPA rights are being violated, or there is widespread misuse of records, the parent may wish to also file a complaint with the U.S. Department of Education at the address below.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5920

A complaint should include the names of the student, the school and the district, a description of the violation, and your daytime telephone number. Complaints must be timely submitted, not later than **180 days** from the date you learned of the circumstances of the

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alleged violation, and must contain specific allegations of fact giving reasonable cause to believe that a violation has occurred, including:

- ◆ Relevant dates, such as the date of a request or a disclosure and the date the parent learned of the alleged violation;
- ◆ Names and titles of those school officials and other third parties involved;
- ◆ A specific description of the education record around which the alleged violation occurred;
- ◆ A description of any contact with school officials regarding the matter, including dates and estimated times of telephone calls and/or copies of any correspondence exchanged between the parent and the school regarding the matter;
- ◆ The name and address of the school, school district, and superintendent; and
- ◆ Any additional evidence that would be helpful in considering the complaint.

The complaint will be investigated and, if found valid, the school will be ordered to correct its practices and procedures.

For more information on FERPA from the Family Policy Compliance Office, go to:

<http://www.ed.gov/policy/gen/guid/fpc/ferpa/parents.html>

<http://www2.ed.gov/policy/gen/guid/fpc/index.html>

Records to Keep

The most important record for you to keep about your child's education is a copy of his or her current IEP or 504 Plan and his or her behavior support plan (if your child has one). These documents are the record of the plan you and the school agreed to for the student. They record the student's eligibility, program and services and accommodations. They list related services such as therapy, transportation and behavior plans, and tell you specifically what the school is doing to address needs related to your child's disability. Reviewing goals and services in past IEPs and 504 plans will give a long-term perspective on the student's educational progress.

It is also important to keep copies of multidisciplinary and other evaluations which list achievement levels and the evaluator's recommendations. With copies of IEPs, or 504 plans, and evaluations you have a good basis for reviewing the student's educational progress and continuing needs.

► **Advocacy Hint: Read your child’s history.** Reviewing past IEPs and evaluations will provide you with useful information on which to base requests for significant changes in programs or services. It is difficult to argue that program changes are not necessary if the student has had the same goals for several years, or has not changed reading or other skill levels or if decreases in related services have occurred at the same time as stagnating skill levels.

Advocacy Hint: Get it in writing. The IEP or 504 plan is the only record of the agreement between you and the school on your child’s services. Your copy of this document will help you with formal or informal complaints when you believe the school has not followed the student’s plan in providing listed related services such as behavior plans or transportation or other program elements.

There are two other types of records parents and advocates should keep. First, you may wish to keep a notebook or file where you can record telephone calls, conversations, and meetings you have regarding the student. For each conversation or meeting, write down the date and time, the people with whom you talked, and what was said during the conversation or meeting. It does not need to be a word-for-word record as long as you include important points.

Second, you may wish to keep copies of letters or other correspondence you write or receive regarding the student. This is especially important when the law requires you to make requests or respond to the school in writing or when verbal requests have not produced the anticipated result. This file should also include the IEP or 504 plan, evaluations, and other educational records such as:

- ◆ progress reports, grades, or report cards;
- ◆ discipline reports;
- ◆ parent contact notes, progress reports, and teacher reports;
- ◆ informal assessments (tests of motor skills, self-help skills, language development, social and emotional skills);
- ◆ reports from medical doctors and other outside agencies; and
- ◆ notices, or invitations, of IEP Team meetings.

► **Advocacy Hint: Don’t lose this book!** It is a good idea to keep a notebook containing copies of important laws, rules and regulations. A suggested format for keeping records is at the end of this chapter.

Appendix 2-1

Parent's Notebook

Purpose: To keep an accurate record of meetings, phone conversations, and letters between you and school personnel and others about your child. The suggested format is:

DATE, TIME, KIND OF COMMUNICATION (telephone, letter, meeting)

WHO

WHAT WE TALKED ABOUT

IMPORTANT DOCUMENTS AND RECORDS

Example:

April 4, 1987, 3:00 p.m., IEP Team Committee Meeting at Smithwick School.

Who: Mr. Dodd, Principal of Smithwick School; Mrs. Jones, Special Education Director of the Blank Intermediate School District; Mrs. O'Hara, Johnny's teacher at Smithwick School; Mrs. Beech, Physical Therapist; John Wainwright; Mr. and Mrs. Wainwright.

What we talked about: An IEP was developed for Johnny (see IEP in file). Johnny will continue in his current placement at the Smithwick School but will no longer receive physical therapy. As parents, we disagreed and said we thought Johnny should continue to receive physical therapy. The IEP-Committee refused to agree to physical therapy because they said they didn't have enough therapists and that Johnny had low priority for physical therapy.

Important Documents:

IEP (in file)

IEP Team Meeting Report (in file)

Tape of IEP Team Meeting (in tape box)

* All materials so designated in this section are taken from *Parent Manual - Education for Your Handicapped Child*, Advocacy Incorporated, Austin, Texas, 1979. Materials have been revised to conform with Michigan law.

Appendix 2-2

Letter Requesting Review of Records

(Be sure to keep a copy for your records.)

[Date]

[Name of Appropriate Person]

[Position]

[Name of School]

[Address of School]

Dear [Name]:

I would like to review my child's, [name of student] complete records. I understand that these records must be made available to me no later than 45 days from your receipt of this letter. I will come to the school office to review these records during the morning of [date 45 days from time you expect the school to get this letter]. I would like to review the records before this date. If this is possible please contact me and we can arrive at a mutually agreeable time for this to take place. I would appreciate your prompt response to my request. If I do not hear from you, I will be in the office on [date] at [time] to review the records.

Sincerely,

[Your Name]

[Your Address]

[Your Telephone Number]

Appendix 2-3

Letter Requesting Copy of Records (parent cannot go to school and review them)

(Be sure to keep a copy for your records.)

[Date]

[Name of Appropriate Person]

[Position]

[Name of School]

[Address of School]

Dear [Name]:

I would like to review my child's, [name of student] complete records. I understand that these records must be made available to me no later than 45 days from your receipt of this letter. [For X reason, or due to X], I am unable to inspect and review these records in person. Therefore, pursuant to 34 C.F.R. § 300.613, I am requesting that you provide copies of the records to me at [Address]. Failure to provide copies would effectively prevent me from exercising my right to inspect and review the records.

I would like to review the records before this date [date 45 days from time you expect the school to get this letter]. I would appreciate your prompt response to my request.

Sincerely,

[Your Name]

[Your Address]

[Your Telephone Number]

Appendix 2-4

Letter Requesting Records from School When a Meeting is Pending

(Be sure to keep a copy for your records.)

[Date]

[Name of Principal]

[Name of School]

[Address of School]

Dear [Name of Principal]:

I am the parent of [name of student], who is a [grade level or special education etc.] student. I am preparing for [student's names] [type of meeting, for example: IEP Team meeting, manifestation determination review, disciplinary hearing] on [date] and I need to review [his or her] records prior to that date. I have tentatively reserved time to review the file in the school office on [date] at [time]. I understand that all [his or her] records may not be in the office file. Please let me know if it is possible to review all the documents in the file at the school office on [date] and if it is necessary to schedule another time to review the remainder of the file. I understand that I have the right to review my child's records prior to the meeting currently scheduled for [date]. I can be reached at [day and evening telephone numbers].

I look forward to hearing from you soon.

Sincerely,

[Your Name]

[Your Address]

[Your Telephone Number]

Appendix 2-5

Letter Requesting A Change in Student's Records

(Be sure to keep a copy for your records.)

[Date]

[Name of Principal]

[Name of School]

[Address of School]

Dear [Name of Principal]:

I am the parent of [name of student], a student in your school. There is a statement in [name of student's] [give name of record. For example, "physical therapy evaluation, performed by Mrs. Wormwood on June 5, 1978"] that I believe is ["misleading," "inaccurate," and/or "in violation of my child's rights"] because (give your reasons).

I request that you change [name of student's] [name of record] records so they will no longer be ["misleading," "inaccurate, "and/or" in violation of my child's rights"].

I look forward to hearing from you soon on this matter.

Sincerely,

[Your Name]

[Your Address]

[Your Telephone Number]