

Confidentiality & Nondiscrimination Handbook



Revised 08.2011

FAYETTE COUNTY PUBLIC SCHOOLS

Confidentiality & Nondiscrimination Handbook

Tom Shelton, Superintendent
Fayette County It's About Kids Support Services
701 East Main Street
Lexington, KY 40502
Phone 859.381.4000
www.fcps.net

The Fayette County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, sex, genetic information (in employment activities) or disability in employment, educational programs or activities.

Table of Contents

Table of Contents _____	i
Introduction _____	1
STATEMENT OF INTENT _____	1
FUTURE HANDBOOK CHANGES _____	1
Confidentiality _____	2
DEFINITION OF TERMS _____	2
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT _____	5
OPEN RECORDS (ORA) _____	16
PERSONNEL RECORDS _____	17
Nondiscrimination _____	22
BOARD OF EDUCATION POLICY _____	22
SECTION 504 AND THE AMERICANS WITH DISABILITIES ACT _____	23
NONDISCRIMINATION IN EMPLOYMENT PRACTICES _____	24
Frequently Asked Questions _____	28
OPEN RECORDS ACT (ORA) _____	28
FERPA (STUDENT CONFIDENTIALITY) _____	29
DISCRIMINATION _____	30

Introduction

Statement of Intent

All employees and persons having access to District records shall keep information confidential. The purpose of this handbook is to summarize the requirements and safeguards that govern access to, and release of, student and personnel records and other information to individuals, agencies, and organizations within and outside the Fayette County Public School System. This handbook also is intended to communicate key elements of nondiscrimination policies and procedures for the Fayette County Public School System and to assist employees in finding further information related to their job responsibilities. The provisions of this handbook are consistent with the policies adopted by the Fayette County Board of Education and pursuant to State and Federal law.

This handbook is not an all-encompassing document and may not address issues resulting from unusual circumstances. Therefore, it is each employee's responsibility to refer to the Board policies and/or administrative procedures or check with the appropriate staff member for further assistance. If a conflict exists between this handbook and Board policies and/or administrative procedures, the policies and procedures shall govern.

The information in this handbook is subject to change as situations warrant. It is understood that changes in Board policies and procedures or in State or Federal law and regulations may supersede, modify, or eliminate information in this handbook. Every reasonable effort will be made to revise the electronic version of this handbook for such changes in a timely fashion. The electronic version of this handbook is located at www.fcps.net.

Questions regarding this handbook and information contained herein shall be directed to the Superintendent's office.

Future Handbook Changes

Although every effort will be made to update the handbook on a timely basis, the Board reserves the right, and has the sole discretion, to change any provision without notice, consultation, or publication, except as may be required by contractual agreements and law. The District reserves the right, and has the sole discretion, to modify or change any portion of this handbook at any time.

Confidentiality

Definition of Terms

Accessible to Parents -- The parent, eligible student, or an authorized representative may review and inspect information related to the student that is collected, used, or maintained by the Fayette County Public Schools.

- If test protocols and raw data generated by an evaluator in conducting a student evaluation are communicated or revealed to others, the test protocols and raw data become educational records and are accessible to parent(s) if the document contains personally identifiable information about a student.
- Notes or documents in the "sole possession" of the creator are exempt from parent or student access if the following criteria are met:
 - a. It is a private note created solely by the individual possessing it;
 - b. It is a personal memory aid;
 - c. Its contents are accessible to and revealed to no one except the creator's temporary substitute;
 - d. The contents are not used in the student's education.

If another person, such as another teacher, is told of the contents of these notes, then they are subject to review by parent(s) or the eligible student. If the creator orally communicates information from such notes or documents, the documents become accessible to parent(s)/eligible students for review, even though maintained in the sole possession of the creator.

Confidential Employees -- Those persons in positions which, because of the responsibilities of their job, may have access to information that requires the utmost protection.

Confidentiality -- The protection of all personally identifiable data, information, and records collected, used, or maintained by the Fayette County Public Schools.

Directory Information -- Includes student information in categories approved by the Board. (See the *Directory Information* portion of the FERPA section of this handbook.) Directory information is not all inclusive in terms of all attendance centers.

Disclosure -- Refers to permitting access to, or release or transfer of, personally identifiable information contained in a student's education record to any party, by any means, including oral, written, or electronic.

Educational Records -- Refers to records directly related to a student that are maintained by the District or by a party acting for the District. A "record" shall include any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche. Student records include disciplinary records.

Educational records include, but are not limited to:

- Personal and family data;
- Evaluation and test data including aptitude, achievement, intelligence, personality, behavior observation, and other diagnostic information;
- Medical and psychological reports;
- All records of school achievement and progress reports;
- Student portfolios;
- All discipline records;
- Records of conferences with students and/or parent(s);
- Copies of correspondence about the student;
- Any photographs or video recordings of a student;
- Other information or data that is used in working with the student; or
- Email containing personally identifying information about a student.

Eligible Student - One who has reached age 18 or is attending a postsecondary educational institution and does not have a legal guardian appointed by a court.

Legitimate Educational Interest -- A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his/her professional responsibility to the District.

Parent -- Includes a natural/adoptive parent, a legal guardian, or an individual acting as a parent of a student who lives with the student in the home on a day-to-day basis in the absence of a parent or guardian. **Either** natural parent has authority to exercise the rights inherent in Board policy 09.14 unless the District has been informed and given evidence of state laws or court orders concerning the status of a student. If there is any question whether the information should be provided, contact should be made with the Superintendent's Office.

Personally Identifiable -- Data or information that makes it possible to identify a person with reasonable certainty. The term includes, but is not limited to:

1. Student's name;
2. Name of the student's parent or other family members;
3. Address of the student or student's family;
4. Any personal identifier, such as the student's social security, student number, or biometric record;
5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Personnel Records -- Records, files, documents, tests, letters, transcripts, forms, and other materials that contain information directly related to a specific individual and are maintained by Fayette County Public Schools.

Protection of Records -- Denial of access, release, transfer, or other communication of, educational records or other protected information contained in those records by any means, including oral, written, or electronic means, to any party except as authorized by law.

Records -- Any information or data recorded in any form, including but not limited to: handwriting, print, computer media, Braille, video or audiotape or film, microfilm, microfiche, photographs, or drawings.

School Officials -- Employees, contractors, consultants and volunteers in the District who, as a part of their assigned duties, generate, interpret, record, file, transfer, or otherwise process data contained in the student's education records.

Family Educational Rights and Privacy Act

In order to provide students with appropriate instructional and educational services, it is necessary for the school system to maintain accurate and sometimes personal information about the student and his/her family. In recognition of this confidential nature of student records, no person, agency, or firm seeking information, except those defined within the exceptions of the Federal and State Family Educational Rights and Privacy Act (FERPA) is entitled to access student records except as authorized by law. This consent may be given by the parent(s) or eligible student (s). (See Section on FERPA and Board Policy 09.14 and related administrative procedures.)

Unless dealing with other District staff or other **known** individuals with a right to know (i.e., parent, guardian, etc.), District staff shall not discuss or divulge confidential matters in writing, over the telephone, or via email or by any other means. District staff shall insist that a request for information, other than from other District staff, be made in writing. District staff must authenticate the identity of those requesting protected information.

When District employees are in doubt about what information to release in a judicial proceeding, they should arrange a conference with the Superintendent/designee to explain the dilemma and receive guidance on how to proceed.

Cumulative Record

The student's cumulative record follows a student through school and remains the record of education experience after the student leaves school. Student records are defined to be all official records, files, and data directly related to a child, including all material that is incorporated into each student's cumulative record folder, and intended for school use. Care should be taken to keep the cumulative record accurate, neat, clean, up-to-date, and safe. A student's cumulative record shall not be taken off school property without prior authorization from the Principal.

Counseling Records

Confidential student counseling records, including interview notes, are not considered educational records under FERPA if the records are maintained in the sole possession of the counselor and are not shared with other staff members. If such records are shared with others, the "sole possession" status may be lost and parental access rights may apply.

With respect to access to confidential counseling information or records by parties other than the student or parent, the client of a certified school counselor generally has a privilege that prevents disclosure of confidential communications made for the purpose of counseling the student. The privilege may be superseded by court order. However, reporting statutes relating to child abuse, controlled substances, weapons, and felony offenses on or near school premises state that the counselor/client privilege is not a basis for refusing to make a required report. (KRS 620.050, KRS 158.155, KRS 158.156)

Ethical guideline information from the American School Counselor Association indicates that counseling information should be kept confidential unless reporting is required by law or unless disclosure is required to prevent clear and imminent danger to the student or others. That guidance also advises counselors to seek appropriate professional consultation if an exception is in doubt.

Free and Reduced Price Records

The use or disclosure of students' free and reduced price school status to specific programs or individuals without prior parent/guardian consent may be made only pursuant to applicable law. This does not allow for release of any other information on free and reduced price applications.

Only District employees and contractors designated by the Superintendent/designee and representatives of agencies directly connected with the administration or enforcement of the District's School Nutrition Program shall have access to individual student eligibility information without parental consent.

Law Enforcement Records

Records of the Department of Law Enforcement regarding students are not available for public inspection except upon court order or subpoena.

Students with Disabilities Records

Records for students identified as "disabled" shall be maintained in accordance with all appropriate Federal and State regulations. Access to these records will be restricted to personnel having specific responsibility in this area. A list of all approved personnel having access to these restricted files shall be updated as needed and a current/dated list is to be posted in the central student records location.

Missing Children

Upon notification by the Commissioner of Education of a child's disappearance, any school in which the child is currently or was previously enrolled shall flag the record of the child so that when a copy of, or information regarding, the child's record is requested, the school shall be alerted that the record is that of a missing child. The school shall immediately report to local law enforcement or the Department of Kentucky State Police any request concerning flagged records or any knowledge as to the whereabouts of any missing child.

Upon notification by the Commissioner of Education of any missing child who has been recovered, the school shall remove the flag from the child's record.

Review of Student Records

- An eligible student or his/her parent, if the student is younger than 18 or is the parent's tax dependent, shall have access to the student's records under District supervision during those times the school is normally in session, unless arrangements for another time have been made in writing. The eligible student or parent has the unique right to inspect the academic record and is entitled to an explanation of any information recorded on the record. Examination of the record will be permitted only under conditions which will prevent its alteration or mutilation.
- Staff members *who have a legitimate educational interest* may be allowed information concerning the record of any student. Such use shall be limited to specific needs for providing the student with District services.

Release of Student Records (without parent/eligible student consent)

District personnel must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the District discloses personally identifiable information from education records.

NOTE: All references to § designations in the following section refer to Section 34 of the Code of Federal Regulations.

The District may disclose personally identifiable information from an education record of a student without consent of a parent/eligible student if the disclosure meets one (1) or more of the following conditions:

1. The disclosure is to other school officials, including teachers, within the District whom the District has determined to have legitimate educational interests.
A contractor, consultant, volunteer, or other party to whom the District has outsourced its services or functions may be considered a school official under this paragraph provided the outside party:
 - a. Performs a function for the District;
 - b. Is under the direct control of the District with respect to the use and maintenance of education records; and
 - c. Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

The District must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. The District uses effective policy, physical or technological access controls to ensure it remains in compliance with the legitimate educational interest requirement.

2. The disclosure is subject to inclusion in the District's Annual Public Notice to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.
3. The disclosure is subject to the requirements of §99.35, to authorized representatives of:
 - a. The Comptroller General of the United States;
 - b. The Attorney General of the United States;
 - c. The Secretary (of the U.S. Dept. of Education); or
 - d. State and local educational authorities.
4. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
 - a. Determine eligibility for the aid;
 - b. Determine the amount of the aid;
 - c. Determine the conditions for the aid; or
 - d. Enforce the terms and conditions of the aid.

As used in above paragraph, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

5. The disclosure is to State and local officials or authorities to whom this information is specifically--
 - a. Allowed to be reported or disclosed pursuant to a State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or
 - b. Allowed to be reported or disclosed pursuant to a State statute adopted after November 19, 1974, subject to the requirements of §99.38 (i.e., if such reporting concerns the juvenile justice system's ability to effectively serve the student prior to adjudication).

Nothing in this section prevents the State from further limiting the number or type of State or local officials to whom disclosures may be made under the previous paragraphs.

6. The disclosure is to organizations conducting studies for, or on behalf of, the District to:
 - a. Develop, validate, or administer predictive tests;
 - b. Administer student aid programs; or
 - c. Improve instruction.

The District may disclose information to organizations conducting studies only if--

- The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization that have legitimate interests in the information;
- The information is destroyed when no longer needed for the purposes for which the study was conducted; and
- The District enters into a written agreement with the organization that--
 - (1) Specifies the purpose, scope, and duration of the study or studies and the information to be disclosed;
 - (2) Requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement;
 - (3) Requires the organization to conduct the study in a manner that does not permit personal identification of parents and students, by anyone other than representatives of the organization with legitimate interests; and
 - (4) Requires the organization to destroy or return to the District all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

The District is not required to initiate the study or agree with or endorse the conclusions or results of the study.

If the Family Policy Compliance Office (FPCO) determines a third party outside the District to whom information is disclosed under condition (6) violates provisions of this section, the District may not allow that third party access to personally identifiable information from education records for at least five (5) years.

For the purposes of this section, the term “organization” includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

7. The disclosure is to accrediting organizations to carry out their accrediting functions.

8. The disclosure is to parents, as defined in §99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.
9. The disclosure is to comply with a judicial order or lawfully issued subpoena.

The District may disclose information to comply with a judicial order or lawfully issued subpoena only if the District makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with:

- a. A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;
- b. Any other subpoena issued for a law enforcement purpose and the 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; or
- c. An *ex parte* court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

If the District initiates legal action against a parent or student, the District may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the District to proceed with the legal action as plaintiff.

If a parent or eligible student initiates legal action against the District, the District may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the District to defend itself.

10. The disclosure is in connection with a health or safety emergency, under the conditions described in §99.36.
11. The disclosure is information the District has designated as "directory information," under the conditions described in §99.37.
12. The disclosure is to the parent of a student who is not an eligible student or to the student.

Record Retention

Education records must be retained as long as they are needed for educational purposes. They also must be retained for the minimum required number of years after completion of any activity for which applicable grant or subgrant funds are used, and for as long thereafter as State law requires retention of each type of education record.

The Kentucky recordkeeping requirements are set out in the Kentucky Department of Archives Retention and Disposal Schedule. The Schedule for public school districts may be accessed at:

<http://kdla.ky.gov/records/retentionschedules/Documents/Local%20Records%20Schedules/PublicSchoolDistrictRecordsRetentionSchedule.pdf>

Records of inspection/disclosure must be kept as long as the law requires retention of education records.

Each student's official school record shall include, but not be limited to, the following:

RECORDS TO BE RETAINED PERMANENTLY:

- Name and address of parents
- Dates and record of attendance
- Course enrollment and grades
- Achievement test data
- Date of graduation or withdrawal
- Special education demographic information
- Other records as specified in the state Records Retention/Public School District Schedule

RECORDS OF VERIFIABLE INFORMATION TO BE RETAINED DURING THE STUDENT'S SCHOOL CAREER:

- Medical/health data
- Individual psychological/intelligence evaluation (gathered with written consent of parents)
- Other verifiable information to be used in educational decision making
- Due process records for children with disabilities
- Teacher data folders for classroom monitoring
- Discipline files
- Other records as specified in the state Records Retention/Public School District Schedule

Maintaining Student Records

- Transcripts of the scholastic record shall contain only true factual information. The school shall confine its record-keeping to tasks with clearly defined educational ends.
- Those records listed under “to be retained during student's school career” shall be retained during the student's school life and may be destroyed only when allowed by the state Records Retention/Public School District Schedule and Board Policy.
- Teacher and staff comments on student records shall be confined to matters related to the student’s educational performance and needs.
- Student records will be considered as current educational tools and will be available only for use as such unless the parent or eligible student consents to other use.

Forms to be Used

The following forms, which are included in the District’s official administrative procedures, are to be used in releasing information:

09.14 AP.24/Authorization for Release or Inspection of Student Records

09.14 AP.21/Request for Hearing

09.14 AP.22/Student Record Logs

The following guidelines shall be implemented in carrying out the intent of the Federal and State Family Educational Rights and Privacy Acts (FERPA and KFERPA).

Types and Locations of Records

The records that may be inspected and reviewed by parents or eligible students include all official school records, files, and data directly related to students, including all material that is incorporated into each student's cumulative record folder. These records shall be maintained at the sites indicated and shall be in the custody of the person filling the position designated by each item below. Where such records include information on more than one student, the parent of any student (or eligible student) shall be entitled to access only that part that pertains to the student in question.

Records located in the schools shall specifically include, but are not necessarily limited to:

Type of Record	Location	Custodian
Cumulative Records (Present and Former Students) School Principal's Office	Principal's Office	
Health Records	Principal's Office	Principal
Testing Records	Principal's Office	Principal
Due Process and Testing Records for Gifted Student Services	Principal's Office and Dept. of Student Achievement	Principal and Associate Director of Gifted
School Transportation Records	Division of Transportation	Associate Director of Transportation
Due Process and Testing Records for Students with Disabilities	School and Department of Special Education	Principals and Director of Special Education
IEP Monitoring Folder •Curriculum Based Assessment	Special Education Teacher	Special Education Teacher
Free/Reduced Price Meal Applications	Division of Food Service	Associate Director of Food Service
Other Records Not Listed Above	Principal will collect and make available at student's school	Principal

The term "Principal" includes Associate Principal, counselor, or others designated by the Principal.

Inspection of Records

The law requires that schools maintain a log of certain instances of inspections or requests for inspection of student records; therefore, persons, agencies or entities inspecting or requesting inspection of student records or any other person(s) requesting inspection must complete 09.14 AP.22, which becomes a permanent part of the student's records. In the event of a transfer of student records outside the school system, 09.14 AP.22 shall be removed from the folder and kept on file in the Principal's office. According to Federal regulations, this requirement does not apply to: (1) disclosures to a parent of a student or to an eligible student, and (2) disclosures to authorized District employees.

Response to Request to Review

Response to request to review, inspect, or transfer copies of student information should be done as soon as it is feasible and within the mandated legal time frame.

All applicable student records review forms must be completed before any review, inspection, or transfer of copies is accomplished, and the original of all authorization forms shall become a part of the student's educational records.

Release to Third Parties

Federal law requires the following in reference to release of student records information to third parties:

- With respect to this subsection, personal information shall be transferred to a third party only on the condition that such party will not permit any other party to have access to such information without the written consent of a parent of the student or as otherwise allowed by law.
- This simply means that those who use the files must keep the information to themselves, or get written permission to give the information to another person. All individuals, except parents, eligible students, and employees of the FCPS with a legitimate educational interest in the records, shall sign form 09.14 AP.22 immediately prior to inspecting and reviewing the record. Form SRF 118 shall accompany all transfers of student records. Requests by third parties shall be made in writing and directed to the attention of the Superintendent/designee.
- Organizations authorized by the Superintendent to conduct a study for or on behalf of the District that will involve disclosure of personally identifiable information from student records must complete Form 09.14 AP.231.

Right to Review by Eligible Student

When students attain the age of 18 years or are attending an institution of post-secondary education, their parents or guardians no longer have the right to review, inspection, or copying of the students' records. In general, FERPA rights pass to the eligible student upon either of those events. Therefore, all written permission must come from the student for review, inspection, and transfer of copies of information in the student's folder, unless a guardian was appointed by a court after the student turned age 18.

Parents may be provided access to/review of the educational records of an eligible student 18 years old or older without consent of the eligible student if the student is a dependent under Federal tax laws.

Challenge to Content/Accuracy of Records

A parent/eligible student who believes the student's education records contain information that is inaccurate, misleading, or otherwise in violation of the student's privacy or other rights may ask the District to amend the record.

The District shall decide whether to amend the record within a reasonable time, except that the District must respond to a parent of an IDEA (special education) eligible student within ten (10) school days after receipt of the request and inform the parent/eligible student of its decision. (See applicable local Board policies/procedures.)

If the decision of the District is to deny the request to amend the record, the parent/eligible student must be notified of the right to an impartial records amendment hearing. The records amendment hearing must be held within a reasonable time after receipt of the request for a hearing. (See 702 K.A.R. 1:140 for Kentucky public school district timelines.)

The District must give the parent/eligible student notice of the date, time and place of the hearing reasonably in advance of the hearing. The Superintendent will appoint a certified official of the District to serve as hearing officer pursuant to 702 K.A.R. 1.140.

The parent/eligible student must be given a full and fair opportunity to present evidence related to the issues, and may be represented by legal counsel or anyone else s/he chooses at his/her own expense.

The hearing officer's decision must be provided to the parent/ eligible student in writing within a reasonable time after the hearing. (See 702 K.A.R. 1:140 for Kentucky public school district timelines.)

The hearing officer's decision must be based solely upon evidence presented at the hearing, be in writing, and include a summary of the evidence and the reason for the decision.

If the decision of the hearing officer is to not amend the record, the parent/eligible student must be informed of the right to add a statement to the record commenting on why he/she disagrees with the decision not to amend the record. The added statement must be maintained as part of the student's education record for as long as the record is maintained, and must be disclosed whenever the contested record to which it relates is disclosed.

Directory Information

"Directory Information" shall be released, upon written request, to the news media, athletic associations, military recruiters, higher education providers, scholarship or college entrance committees, or official organizations only if the need for data is connected with student help activities. "Directory Information" shall be released, unless the parent or eligible student specifies in writing, within 30 days of the date of the annual notice to parents or within 30 days of enrollment if after that date, that all or part of the data relating to the student be withheld.

The request to withhold must be in writing and shall be filed in the office of the Principal. Directory information may be released only after approval if granted by the Superintendent. Requests for release of directory information shall clearly describe the reason and the purpose for which the information shall be used. Any information released by the Superintendent shall be used specifically for the purpose stated in the approved request and none other.

As designated by the Board, directory information is:

- Student's name, address, telephone number, and date and place of birth
- Major field of study
- Student's participation in officially recognized activities or sports
- Photograph/picture
- Grade level
- Weight and height of members of athletic teams
- Student's dates of attendance
- Degrees and awards received
- Name of last educational institution or agency student was enrolled in prior to enrollment in Fayette County Public Schools

NOTE: Unless the parent/guardian or eligible secondary school student requests in writing that the District not release such information, the student's name, address, and telephone number (if listed) shall be released to Armed Forces recruiters upon their request.

Informing Parents/Students of Rights

The Board shall publish in the Student Code of Conduct an annual notification to all parents and to students 18 years of age and older, of rights as set out in District Administrative Procedure 09.14 AP.111.

Open Records (ORA)

The Board acknowledges its obligation under the Kentucky Open Records Act to provide the public with access to public records that are maintained by the District.

For specific information on the Open Records Act ("ORA"), please refer to Board policies 02.423 and 10.11, as well as KRS 61.870 and statutes that follow.

Subject to exceptions set out in the ORA (most of which will be listed below), records that are prepared, owned, used, possessed, or retained by the District are public records and are subject to disclosure under the Open Records Act, on request. The term "public records" includes all such records even if they fall within an exception, and generally applies to records maintained by the District in electronic form.

Exceptions

The Open Records Act permits the Fayette County Public Schools to withhold certain records from release. Exceptions that most often apply to school districts include:

- Records containing information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;
- Real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency in the course of acquiring property, until all of the property has been acquired;
- Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again, except as required by FERPA;
- Records of law enforcement agencies or agencies involved in administrative adjudication if disclosure of the records would harm the agency by premature release. Such records may be inspected after enforcement action is completed or a decision is made to take no action, unless they were compiled and maintained by a county or commonwealth's attorney or unless another exception applies;
- Preliminary documents, including drafts, notes, correspondence with private individuals, recommendations, and memoranda in which opinions are expressed or policies formulated;
- Public records that are prohibited from disclosure by State or Federal law;
- Records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act, as defined in the exemption, and limited to eight precisely described categories of records;

In general, employees may inspect records maintained by the District that relate to them, unless the records are part of an ongoing criminal or administrative investigation.

Personnel Records

Confidential Information and Disclosure of Personnel Information

Orderly administration of the District requires the compilation of information about all employees. The Board recognizes that personnel files are confidential and must be considered privileged, except for those documents subject to release under the Open Records Act.

A personnel file will be available online for examination:

1. At any time by the Superintendent or the supervisory personnel he/she designates; and
2. During regular business hours, a CD, with the individual's personnel file (exception for references), will be made available to the employee or his/her personally authorized representative, within 5 business days after the request has been made in writing to Human Resources.

A personnel file will not be made available to others except as required by law.

Individual Board members have no authority, even when the Board is in session, to review personnel files, except in the performance of a duty authorized by law.

Distribution of Personnel Directories

The distribution of personnel directories in which the home address of employees is listed is restricted. They will be distributed only in a manner that makes a significant contribution to the operation of the District. No directory shall be distributed without approval of the Superintendent. Under no circumstance shall a directory be released for political, solicitation, sales, or commercial purposes. Directories will be numbered and distributed only to administrative supervisory personnel or others as designated by the Superintendent. Directories will be prepared and distributed by the Office of the Superintendent each year. New directories will be distributed upon return of the old directory. Old directories are to be discarded in the most secure and efficient manner as determined by the Superintendent.

The school system will not give the home address of employees to anyone unless law or a ruling of the Attorney General so mandates. All supervisory personnel are to advise all personnel having access to home addresses of this policy.

Employees or former employees may authorize the release of employment-related information to specific businesses and lending institutions. If such authorization has not been given to the Office of the Superintendent, requests for this information shall be answered to the effect that it shall not be released until the employee has given written permission.

Confidential Employees

Positions of Confidential Employees include:

- Those employees who report directly to, or who are evaluated by, the Superintendent, including Directors, Internal Auditor, and their respective staff;
- All administrative/supervisory personnel and their respective staff.

Protected information may be shared with other confidential employees or administrators as specifically approved by the confidential employee's supervisor. No unauthorized release of confidential information shall be permitted. Examples of inappropriate release of protected information include: discussions of the information with non-confidential employees; casual or intentional release of information to family, friends or acquaintances; or mishandling of confidential documents. Any unauthorized release of confidential information may result in employee discipline, including termination.

Official Personnel File

It is the policy of the Board that the official personnel file of all persons employed by Fayette County Schools be maintained and located in the Department of Human Resources, Payroll Office, and Insurance Office located in the Central Office Building. The official evaluation file is maintained under the custody of the immediate supervisor. The official personnel file is recognized as that which contains all Board-approved forms and necessary documentation of education, licensure, skill level, correspondence, payroll items, evaluations, and other requirements needed for employment. See 03.15 AP.1 for a listing of information contained in personnel files.

Because of the necessity for evaluators to have frequent and immediate access to previous performance evaluation records, those records shall continue to be held by the employee's immediate supervisor (evaluator).

If any portion of an employee's personnel record is subpoenaed, the Department of Human Resources will be notified by the Superintendent's Office to reproduce the documents subpoenaed. If an employee requests to review his/her personnel file, he/she must be informed that performance evaluation records are kept separate from the remainder of his/her personnel records. It is mandatory that the employee be informed that records in both parts of the file are open to inspection by him/her or his/her designee. Files shall be reviewed in the presence of a Department of Human Resources, Payroll Office employee, or Principal's designee.

Evaluators shall:

1. Respond immediately to a request from the Department of Human Resources for a performance evaluation file to be reproduced and provided to that office.
2. Upon transfer of an employee, immediately forward his/her performance evaluation file to the new supervisor.

Employees may request a copy of their personnel files by submitting a completed 03.15 AP.21 form.

Review and Security Procedures

1. Personnel files are maintained online and remain under the supervision for review in the Department of Human Resources. District Form 03.15 AP.22 is to be completed each time a personnel file is reviewed. The employee's immediate supervisor, employee's potential immediate supervisor (return from leave of absences and transfers), the employee, and other authorized staff may review the official personnel file.
2. Official personnel files may be reviewed online only by authorized staff. Those positions are: Superintendent, Directors, and Human Resources Administrators. Other confidential employees may view files only at the direction of the Human Resources Administrator or the Superintendent.

3. The official personnel file must be maintained in an orderly and careful manner. The logical and sequential order of the items placed in the file must be observed. All written entries or documents are to be legible and are considered a part of the legal permanent records.
4. The payroll-related data is maintained in a supplemental file located in the Office of Payroll Services. Those items are considered a part of the official personnel file and are to be made available for review subject to the above-described conditions.

Health Insurance Portability and Accountability Act (HIPAA)

For information concerning the District's procedures for the protection of the privacy of protected health information, please refer to the "HIPAA Privacy Procedures Handbook" maintained by and available from the Privacy Official at IAKSS. The Privacy Official also maintains any and all forms relating to the HIPAA privacy procedures. The procedures and forms are also available from the District's Health Care Components.

Custodian of the Public Records

The Custodian of Public Records should be contacted in writing by anyone wishing to review or receive copies of an official Fayette County Public Schools public record at the following address:

Supt. Stu Silberman

Fayette County Public Schools
It's About Kids Support Services - Room 101
701 East Main Street
Lexington, Kentucky 40502

Cost of Reproduction of Records

Charges made for access to public records comprised in any form other than up to standard size pages or in standard electronic form, or other similar record-keeping systems, will be set after consultation with the market. In setting charges, due consideration will be given to the expense involved in providing the public records, making every effort to match the charges with the actual cost of providing the records. The costs of providing the records will be in an amount that reasonably includes the actual costs related to providing the record(s) and shall not include the cost of labor.

Students presently attending, District graduates, and/or alumni may receive one (1) copy of their transcript free of charge. Students presently attending District schools shall be charged a fee of fifty cents (\$.50) for each additional copy. Copies of any transcripts that are mailed shall cost one dollar (\$1.00) for each diskette.

A fee of ten cents (\$.10) per page shall be charged for copies of records, other than transcripts, when the copies are to be picked up. When copies are to be sent by mail, postage costs shall be charged in addition to the copy fee. Schools are responsible for the expense of mailing copies of their records.

Public records will be furnished without charge or at a reduced charge if the Board determines that waiver or reduction of the fee is in the public interest because furnishing the information would be considered as primarily benefiting the general public.

Information requested under the Open Records Act may be provided on computer diskette or other electronic format at no charge when the requester provides the diskette, etc. If the medium is not provided, the charge shall be the actual cost of the diskette or other format to the District.

Section

2

Nondiscrimination

Board of Education Policy

All school districts must have a policy of nondiscrimination. The policy for Fayette County Public Schools is as follows:

The Board of Education of Fayette County does not discriminate on the basis of race, color, national origin, sex, genetic information (in employment activities), disability, or age in its programs and activities.

This version of the nondiscrimination statement should appear on any documents to be mass distributed (more than ten [10]). Specifically, it should be included on:

- bulletins
- school catalogs
- student handbooks
- staff handbooks
- employee and student publications
- informational materials
- newspaper advertisements (shall include name of contact person)
- brochures
- employment applications

This does not include correspondence regarding the day-to-day activities of the District/school.

The following person has been designated to handle inquiries regarding non-discrimination policies:

Name: Barbara Connor, Civil Rights Compliance Officer
 Address: 701 East Main Street, Lexington, KY 40502
 Telephone: (859) 381-4318

The nondiscrimination statement should be on the bottom or back of the front or back cover pages, where feasible. Otherwise, it should appear on the bottom or back of page 1.

The Communications/Community Relations Office shall give annual notification to the public regarding compliance with the nondiscrimination guidelines as required by law.

Section 504 and the Americans with Disabilities Act

Section 504 and the Americans with Disabilities Act (ADA) apply to preschool, elementary, secondary, adult education programs and to all activities in the District.

Students

For purposes of public educational services, a qualified person with a disability is an individual with a disability who is:

- of an age during which persons without disabilities are provided such services;
- of any age during which it is mandatory under state law to provide such services to persons with disabilities; or
- a person for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

Each recipient that operates a Federally assisted public elementary or secondary education program must provide a free appropriate public education to each qualified person within its jurisdiction, regardless of the nature or severity of the person's disability. Recipients that operate a public elementary or secondary education program must also annually attempt to identify and locate unserved children with disabilities who may be eligible for Special Education Services or Section 504 Services.

Provision of an appropriate education is the provision of regular or special education and related aids and services such that:

- Educational services are designed to meet the individual educational needs of children with disabilities as adequately as the needs of persons without disabilities are met.
- Each child with a disability is educated with children without disabilities, to the maximum extent appropriate to the needs of the child with a disability.

- Nondiscriminatory evaluation and placement procedures are established to guard against misclassification or misplacement of students and a periodic reevaluation is conducted of students who are currently receiving special education or Section 504 Services.
- Due process procedures are established so that parents and guardians can review evaluation and placement decisions made with respect to their children and can participate and be represented by legal counsel in any subsequent impartial hearing.

Provision of a free appropriate public education requires recipients that operate a public elementary or secondary education program to provide services without cost to the person with a disability, or to his or her parents or guardians, except for those fees imposed on parents or guardians of persons without disabilities. It also means that, if the District is unable to provide a child with disabilities with an appropriate education and places that child in a program it does not operate, the District is still responsible for the costs of the program, including tuition, room and board, transportation, and non-medical care.

Children with disabilities must also be afforded an equal opportunity to participate in non-academic and extracurricular services and activities such as counseling, physical education, recreational athletics, transportation, health services, District or school sponsored clubs, District employment and assistance in obtaining outside employment. These services must be provided by the recipient in such manner as is necessary to afford students with disabilities an equal opportunity for participation.

Elementary and secondary school Federal funding recipients operating preschool and adult education programs must take into account the needs of qualified persons with disabilities in determining the aid, benefits, or services to be provided under these programs or activities.

For more information and assistance, contact the Director of Special Education Services or the 504 Coordinator, Department of Student Achievement.

Employment under Section 504 and the ADA is covered in the section below (Nondiscrimination in Employment in Practices).

Nondiscrimination in Employment Practices

Title I of The Genetic Information Nondiscrimination Act of 2008 (“GINA”) - prohibits employment discrimination based on genetic information.

Title VI - protects people from discrimination on the basis of race, color, or national origin in any program receiving Federal funds.

Title VII - covers only employment discrimination and includes employment by every kind of employer. Title VII coverage includes religion and sex discrimination.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of sex (gender) in Federally-Assisted Education Programs, including employment.

- The prohibition on discrimination in employment in the Education Department regulation for Title IX encompasses, but is not limited to, recruitment, advertising, hiring, upgrading, tenure, firing, rates of pay, fringe benefits, leave for pregnancy and childbirth, and participation in employer-sponsored activities.
- The law forbids discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- The regulation applies to all FCPS employment decisions, whether made directly or indirectly through contractual arrangements with referral agencies, labor unions, organizations providing or administering fringe benefits, or others.
- Compensation - Under Title IX, recipients of Federal financial assistance cannot establish or enforce policies that result in unequal compensation to employees on the basis of sex in jobs that require equal skill, effort, and responsibility, and that are performed under similar conditions.
- Marital or Parental Status - Under Title IX, Federal recipients may not establish or enforce policies concerning the current or potential marital or parental status of employees or applicants. Also, recipients may not differentiate on the basis of sex over whether a person is the head of a household or the principal wage earner in a family.
- Pregnancy Discrimination - The law forbids discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her the same as any other temporarily disabled employee. For example, the employer may have to provide modified tasks, alternative assignments, disability leave or unpaid leave.

- Sex as a Bona-fide Occupational Qualification - Recipients may take gender into consideration if sex is shown to be a bona-fide occupational qualification for a job. For example, recipients may consider an applicant's sex when hiring for a position in a locker room or toilet facility used only by one gender.
- Employment Tests - If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.
- Pre-employment Inquiries - Marital status inquiries are prohibited. Inquiries about gender are permissible when they are made equally for both sexes and are not used for discriminatory purposes. For example, it is permissible to ask the sex of applicants to develop "applicant flow data" to monitor equal employment opportunity.

Section 504 and the Americans with Disabilities Act

- The law places strict limits on employers when it comes to asking job applicants to answer medical questions, take a medical exam, or identify a disability.
- For example, an employer may not ask a job applicant to answer medical questions or take a medical exam before extending a conditional job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform specific job functions.

Disability & Medical Exams After A Job Offer For Employment

After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain medical questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam

Disability & Medical Exams For Persons Who Have Started Working As Employees

Once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

Section 504 and ADA regulations prohibit discrimination against qualified persons with disabilities in all employment-related decisions and actions in Federally assisted programs. The prohibition against discrimination in employment includes, but is not limited to, recruitment, hiring, promotion, award of tenure, layoff and rehiring, rates of pay, fringe benefits, leave, job assignment, training, and participation in employer-sponsored activities.

A qualified person with a disability is any person with a disability who, with reasonable accommodation, can perform the essential functions of a job. The employment prohibitions against discrimination apply to decisions and actions made directly by recipients, as well as to those made indirectly through contractual arrangements or other relationships with organizations such as employment agencies, labor unions, organizations providing or administering fringe benefits, and organizations providing training and apprenticeship programs.

Under Section 504 and ADA regulations, reasonable accommodations may include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;

- Job restructuring; part-time or modified work schedules; reassignment to a vacant position, acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters and other similar accommodations for individuals with disabilities.
- Employers are required to provide reasonable accommodation to allow a qualified person with a disability to perform the essential functions of the job. The employer bears the cost of the accommodation.
- The employer does not have to reallocate essential job functions to others, but peripheral job functions may have to be reallocated.

For more information and assistance concerning 504 and ADA issues, contact the FCPS Department of Human Resources:

Melodee M. Parker, Director of Human Resources
Fayette County Public Schools
It's About Kids Support Services - Room 101
701 East Main Street
Lexington, Kentucky 40502

Frequently Asked Questions

Open Records Act (ORA)

- Q1. What are some examples of records covered by the Open Records Act privacy exception?
- A1. The scope of this exception continues to evolve through court cases and Open Records Decisions issued by the Office of the Kentucky Attorney General. Therefore, it is not possible to list all records that would qualify as exceptions. However, some of the most common record information that may be withheld under this exception includes home address, home phone, marital status, race, social security numbers, evaluations of employees, medical information, employee wage deduction information, and application materials from unsuccessful job applicants.
-
- Q2. What are some examples of records which may be withheld under the ORA exceptions that apply to information made confidential under State and Federal law?
- A2. This exception covers education records that are generally made confidential under the Family Educational Rights and Privacy Act of 1974 (“FERPA”) and its state counterpart, KFERPA, KRS 160.700. (See the pertinent section of this handbook for more information on FERPA.) Other examples of records generally made confidential by law include: records submitted to employee retirement systems, private reprimands, certain tax information, juvenile records, and records that fall within the attorney-client privilege. Although this is an illustrative list of items often encountered in schools; it is not an “all encompassing” list.

Q3. What procedures apply to Open Records Act requests?

A3. This issue is addressed in FCPS Board policy and procedure and state law. Refer to Board policy 10.11 and 01.6 AP.2. In general, a party must submit a written application to the District's records custodian describing the records the individual wishes to inspect and copy. The District must generally respond within three (3) business days stating which records will be made available and explaining the application of any exceptions. If any records to be disclosed are not ready for access because they are in active use or storage or not otherwise available, the custodian should provide a detailed explanation for delay in availability beyond the 3-day deadline and should state the earliest date when the records will be available. Copying costs will apply (10 cents a page for hard copies), and these costs and postage may be required to be paid in advance if the requesting party does not reside in Fayette County.

FERPA (Student Confidentiality)

Q1. Why do employees have to be concerned about FERPA requirements?

A1. To name a few reasons, violations can damage students and their families, damages may be awarded in a civil liability situation, the U. S. Dept. of Education can withhold District Federal funding, the Education Professional Standards Board can suspend/revoke a teaching certificate, violations can be considered as insubordination under Board policy.

Q2. Can a custodial parent dictate that a natural, but noncustodial, parent not be allowed access to a student's education records?

A2. No. A natural parent has the right to access the records unless school officials have an official (attested) copy of a court order that specifically states that such rights, or the parental rights, of the noncustodial parent have been terminated.

Q3. When can the District release student record information to outside police officers and social workers?

A3. Such information may be released pursuant to written consent from a parent or eligible student, a subpoena or court order, or in response to an articulable, imminent health or safety emergency. Also, such information may be released if the Board has designated it as directory information, or if the District needs to reveal protected information to report child abuse, neglect, or dependency. (Note this does not open the entire file to the other agency.)

Q4. Are email communications that contain personally identifiable information about a student protected under FERPA?

A4. Generally, yes.

Discrimination

Q1. During an interview, can you ask a female applicant for employment whether she intends to have children?

A1. Such an inquiry is prohibited by law. It is sex discrimination.

Q2. Can you ask a job applicant if there is a history of any type of illness in his/her family?

A2. Federal law prohibits this under the Genetic Information Nondiscrimination Act (GINA).

Q3. May parents be asked by the district to come to school to perform needed health services for their children?

A3. This is prohibited by Federal and State law if the child must have the health service to attend school. The health service must be provided by the school district.