



Subpart C

Protection for the Privacy of Child Records

Standard Operating Procedures

*Aligned with the 2016 Head Start
Program Performance Standards
(Standards 1303.30 -1302.34)*

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SUBPART C – PROTECTIONS FOR THE PRIVACY OF CHILD RECORDS

Establishing procedures (Standard 1303.20)

A Program must establish procedures to protect the confidentiality of any personally identifiable information (PII) in child records.

PROCEDURE

1. The Agency will maintain confidentiality with all PII in child records.
2. Procedures will be updated at least annually or as needed.

PROGRAM PROCEDURES – APPLICABLE CONFIDENTIALITY PROVISIONS (Standard 1303.21)

(a) If a program is an educational agency or institution that receives funds under a program administered by the Department of Education and therefore is subject to the confidentiality provisions under the Family Educational Rights and Privacy Act (FERPA), then it must comply with those confidentiality provisions in this subpart.

(b) If a program serves a child who is referred to, or found eligible for services under, IDEA, then a program must comply with the applicable confidentiality provisions in Part B or Part C of IDEA to protect the PII in records of those children, and, therefore, the provisions in the subpart do not apply to those children.

PROCEDURE

1. The Agency will follow FERPA.
2. The Agency will follow Individuals with Disabilities Education Act procedures for all children with a disability or concern.

DISCLOSURES WITH, AND WITHOUT, PARENTAL CONSENT (Standard 1303.22)

(a) Disclosure with parental consent.

(1) Subject to the exceptions in paragraphs (b) and (c) of this section, the procedures to protect PII must require the program to obtain a parent's written consent before the program may disclose such PII from child records.

(2) The procedures to protect PII must require the program to ensure the parent's written consent specifies what child records may be disclosed, explains why the records will be disclosed. The written consent must be signed and dated.

(3) "Signed and dated written consent" under the part may include a record and signature in electronic form that:

(i) Identifies and authenticates a particular person as the source of the electronic consent; and,

(ii) Indicates such person's approval of the information.

(4) The program must explain to the parent that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive and therefore it does not apply to an action that occurred before the consent was revoked.

PROCEDURE

1. All parents will be notified of the Agency's confidentiality procedures during orientation.
2. All staff will sign a confidentiality statement at the beginning of each school year.
3. Parents will sign a "Consent for Disclosure of Confidential Information" form when they request any PII.
4. The "Consent for Disclosure of Confidential Information" will contain the person requesting the information, the purpose of the request, the signature of both the parent and the staff.

(b) Disclosure without parental consent but with parental notice and opportunity to refuse.

The procedures to protect PII must allow the program to disclose such PII from child records without parental consent if the program notifies the parent about the disclosure, provides the parent, upon the parent's request, a copy of the PII from child records to be disclosed in advance, and gives the parent an opportunity to challenge and refuse disclosure of the information in the records, before the program forwards the records to officials at a program, school, or school district in which the child seeks or intends to enroll or where the child is already enrolled so long as the disclosure is related to the child's enrollment or transfer.

PROCEDURE

1. Parents will be informed when records are transferred to a school district or program that their child will enroll or transfer to.
2. Parent has the right to refuse transfer of the information if done so in writing.
3. If Parent does not refuse, all needed information will be transferred to the requesting school district or program.

(c) Disclosure without parental consent.

The procedures to protect PII must allow the program to disclose such PII from child records without parental consent to:

(1) Officials within the program or acting for the program, such as contractors and sub recipients, if the official provides services for which the program would otherwise use employees, the program determines it is necessary for Head Start services, and the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement;

(2) Officials within the program, acting for the program, or from a federal or state entity, in connection with an audit or evaluation of education or child development programs, or for enforcement of or compliance with federal legal requirements of the program; provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure, except when the disclosure is specifically authorized by federal law or by the responsible HHS official;

(3) Officials within the program, acting for the program, or from a federal or state entity, to conduct a study to improve child and family outcomes, including improving the quality of programs, for, or on behalf of, the program, provided the program maintains oversight with respect to the use, further disclosure, and maintenance of child records, such as through a written agreement, including the destruction of the PII when no longer needed for the purpose of the disclosure;

(4) Appropriate parties in order to address a disaster, health or safety emergency during the period of the emergency, or a serious health and safety risk such as serious food allergy, if the program determines that disclosing the PII from child records is necessary to protect the health or safety of children or other persons;

(5) Comply with a judicial order or lawfully issued subpoena, provided the program makes a reasonable effort to notify the parent about such subpoenas and court orders in advance of the compliance therewith, unless:

(i) A court has ordered that neither the subpoena, its contents, nor the information provided in response be disclosed;

(ii) The disclosure is in compliance with 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. 23332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(iii) A parent is a party to a court proceeding directly involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the program is not required; or

(iv) A Program initiates legal action against a parent or a parent initiates legal action against a program, then a program may disclose to the court, also without a court order or subpoena, the child records relevant for the program to act as plaintiff or defendant.

(6) The Secretary of Agriculture or an authorized representative from the Food and Nutrition Service to conduct program monitoring, evaluations, and performance measurements for the Child and Adult Care Food Program under the Richard B. Russell National School Lunch act or the Child Nutrition Act of 1966, if the results will be reported in an aggregate form that does not identify and individual: provided, that any data collected must be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary of Agriculture and any PII must be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements;

(7) A case worker or other representative from a state, local, or tribal child welfare agency, who has the right to access a care plan for a child who is in foster care placement, when such agency is legally responsible for the child's care and protection, under state or tribal law, if the agency agrees in writing to protect PII, to use information from the child's case plan for specific purposes intended of addressing the child's needs, and to destroy information that is no longer needed for those purposes; and,

(8) Appropriate parties in order to address suspected or known child maltreatment and is consistent with applicable federal, state, local and tribal laws on reporting child abuse and neglect.

PROCEDURE

1. PII in a Child's file can be released without the parental consent in the following situations: Contractors/Providers, School Districts, Audits, Federal Review teams, Federal or State Entity conducting a study on Child and Family Outcomes, Emergency Situations, Judicial Orders, USDA/CACFP, or CPS cases.
2. If allowed, Parent/s will be notified, in advance, of any subpoenaed records.
3. Any information collected by an outside agency listed above must be destroyed when no longer needed for the purpose of disclosure.
4. Parents will be notified of agencies that may request information, without their prior consent, in the parent handbook and during the parent orientation.

(d) Written agreements.

When a program establishes a written agreement with a third party, the procedures to protect such PII must require the program to annually review and, if necessary, update the agreement. If the third party violates the agreement, then the program may:

(1) Provide the third party an opportunity to self-correct; or,

(2) Prohibit the third party from access to records for a set period of time as established by the programs governing body and policy council.

PROCEDURE

1. MOU and Interagency agreements will contain information regarding the FERPA procedures.
2. MOU and Interagency agreements will reviewed annually and updated as needed.
3. The Agency will address violations on a case-by-case basis.

(e) Annual Notice.

The procedures to protect PII must require the program to annually notify parents of their rights in writing described in this subpart and applicable definitions in part 1305 of this chapter, and include in that notice a description of the types of PII that may be disclosed, to whom the PII may be disclosed, and what may constitute a necessary reason for the disclosure without parental consent as described in paragraph (c) of this section.

PROCEDURE

1. Parents will receive notification of FERPA and confidentiality procedures in the parent handbook.
2. The handbook is available electronically or in a hard copy version.

(f) Limits on disclosing PII.

A Program must only disclose the information that is deemed necessary for the purpose of the disclosure.

PROCEDURE

1. Only information requested will be disclosed.

PARENTAL RIGHTS. (Standard 1303.23)

(a) Inspect record.

(1) A parent has the right to inspect child records.

(2) If the parent requests to inspect child records, the program must make the child records available within a reasonable time, but no more than 45 days after receipt of request.

(3) If a program maintains child records that contain information on more than one child, the program must ensure the parent only inspects information that pertains to the parent's child.

(4) The program shall not destroy a child record with an outstanding request to inspect and review under this section.

PROCEDURE

1. At orientation, parents are informed that they are allowed to see their child's record.
2. If parent requests access to their child's record, the parent will sign "Consent for Disclosure of Confidential Information" form.
3. Parents will be given access to the requested information within 45 days after receipt of request.
4. Parents are allowed access to only their child's record.
5. No record will be destroyed with an outstanding request for review.

(b) Amend Record.

(1) A parent has the right to ask the program to amend information in the child record that the parent believes is inaccurate, misleading, or violates the child's privacy.

(2) The program must consider the parent's request and, if the request is denied, render a written decision to the parent within a reasonable time that informs the parent of the right to a hearing.

PROCEDURE

1. Parents are allowed to ask the program to amend information that may be incorrect or may violate the child's privacy.
2. The Agency will consider the parent's request and if a denied will inform the parents in writing within 30 days.

(c) Hearing.

(1) If the parent requests a hearing to challenge information in the child record, the program must schedule a hearing within a reasonable time, notify the parent, in advance, about the hearing, and ensure the person who conducts the hearing does not have a direct interest in its outcome.

(2) The program must ensure the hearing affords the parent a full and fair opportunity to present evidence relevant to the issues.

(3) If the program determines from evidence presented at the hearing that the information in the child records is inaccurate, misleading, or violates the child's privacy act, the program must either amend or remove the information and notify the parent in writing.

(4) If the program determines from evidence presented at the hearing that information in the child records is accurate, does not mislead, or otherwise does not violate the child's privacy, the program must inform the parent of the right to place a statement in the child records that wither comments on the contested information or that states why the parent disagrees with the program's decision, or both.

PROCEDURE

1. Parents are allowed a hearing if they disagree with the decision to amend their child's record.
2. If a hearing is granted, a person that does not have direct interest in the outcome will conduct the hearing.
3. Parent will be allowed to present evidence that is relevant to the issue.
4. If information is found to be inaccurate, misleading, or violates the child's privacy act, the information will be amended or removed from the child's record.
5. If information is found to be accurate, parents must be allowed to make a statement placed in the child's file that states why they disagree with the program's decision.

(d) Right to copy of record.

The program must provide a parent, free of charge, an initial copy of child records disclosed to third parties with parental consent and, upon parent request, an initial copy of child records disclosed to third parties, unless the disclosure was for a court that ordered neither the subpoena, its contents, nor the information furnished in response be disclosed.

PROCEDURE

1. The program will provide a parent with a free copy of any information that is disclosed to a third party with parental consent if requested.
2. Copy of information requested by a court order will not be released to the parent.

(e) Right to inspect written agreements.

A Parent has the right to review any written agreements with third parties.

PROCEDURE

1. Parents will have the right to review any written agreements with third parties.

MAINTAINING RECORDS. (Standard 1303.24)

(a) A program must maintain child records in a manner that ensures only parents, and officials within the program or acting on behalf of the program have access, and such records must be destroyed within a reasonable timeframe after such records are no longer needed or required to be maintained.

PROCEDURE

1. Child's records are kept within a locked filing cabinet in the Family Service Worker's office.
2. The key for the filing cabinet will be located within the Family Service Worker's office but will not be visible to a parent or staff member.
3. Family Service Workers will keep two years of records looked on the campus for review.
4. Older records will be stored in a locked facility until they are destroyed.

(b) A program must maintain, with the child records, for as long as the records are maintained, information on all individuals, agencies, or organizations to whom a disclosure of PII from the child records was made (except for program officials and parents) and why the disclosure was made. If a program uses a web-based data system to maintain records,

the program must ensure such child records are adequately protected and maintained according to current industry standards.

PROCEDURE

1. All staff that access a child record will sign in on the Confidentiality form located in the front of the child's record.
2. Any disclosure of information will be documented on the Confidentiality form.
3. The Agency uses Child Plus to maintain child's records. Child Plus has security settings to ensure that only allowed staff have access to the child's record and Child Plus is password protected requiring frequent password changes.

(c) If a parent places a statement in the child record, the program must maintain the statement with the contested part of the child record for as long as the program maintains the record and, disclose the statement whenever it discloses the portion of the child record to which the statement relates.

PROCEDURE

1. Parent Statements will be disclosed with disputed information.