

Board of Education Policy 4.3600
Administrative Procedure

CONFIDENTIALITY REQUIREMENTS FOR WORKING WITH STUDENTS
WHERE THERE ARE SUBSTANCE ABUSE CONCERNS

A federal law and its implementing set of federal regulations guarantee the strict confidentiality of persons (including students or other minors) receiving alcohol and drug abuse services. The legal citations for the law and regulations are 42.U.S.C. (United States Code) §290dd-2; 42 C.F.R. (Code of Federal Regulations) Part 2. The law and regulations are designed to protect patients' privacy rights and thereby to attract people into treatment.

The federal confidentiality law and regulations protect any information about a student if the student has applied for or received any alcohol or drug abuse-related services – including assessment, diagnosis, counseling, group counseling, treatment or referral for treatment – from a covered program. The restrictions on disclosure apply to any information, whether or not recorded, that would identify the student as an alcohol or drug abuser, either directly or by implication. Any program that specializes, in whole or in part, in providing treatment, counseling an/or assessment and referral services for students with alcohol or drug abuse problems must comply with federal confidentiality regulations. 42 C.F.R. §2.12 (e). The federal regulations explicitly provide that specialized school-based substance abuse programs are subject to the regulations' confidentiality requirements. §2.12 (e) (1).

Alcohol and drug abuse education programs that are not designed to provide individual assessment, diagnosis, counseling treatment or referral are not covered. The federal regulations apply only to programs that are federally assisted, but this includes indirect forms of federal aid such as tax-exempt status, or state or local government funding that originated with the federal government. Virtually all programs in public schools, and many private school programs, will meet this requirement. Coverage under the federal regulations does not depend on the administrative structure of the program. A program that is run by a school district and staffed by school employees must comply with the federal law, as must a free-standing program or a program operated in a school on a contract basis by a community program.

The federal confidentiality law and regulations prohibit all disclosures of information about a student that would identify the student as an applicant for or recipient of alcohol or drug abuse services (either explicitly or implicitly.) The rule applies whether or not the information is recorded and whether or not a person making an inquiry already has the information, has other ways of getting it, enjoys official status, is authorized by state law, or comes armed with subpoena or search warrant. Information that is protected by the federal confidentiality regulations may always be disclosed after the student has signed a proper consent form. The regulations also permit disclosure without the client's consent in several situations, including medical emergencies, child abuse reports, and communications made within a program. All disclosures, and especially those made pursuant to a consent form, must be limited to information that is necessary to accomplish the need or purpose for the disclosure. §2.13(a). The student must always sign the consent form in order for a program to release information, even to his or her parent.

The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are (i) within a program or (ii) between a program and an entity that has direct administrative control over that program. §2.12(c)(3). Disclosures to other school personnel are exempt from confidentiality restrictions only if the disclosure is made (1) to someone who is part of the program or (2) to someone who is in direct administrative control of the program. In both circumstances, disclosures may only be

made if the other person or entity needs the information for the purpose of facilitating the provision of drug or alcohol-abuse related services to the student.

A subpoena, search warrant or arrest warrant, even when signed by a judge, is not sufficient, standing alone, to require or even to permit the disclosure of information. §2.61. “Before issuing an authorizing order, the court must find that there is “good cause” for the disclosure. A court can find “good cause” only if it determines that the public interest and the need for disclosure outweigh any adverse effect that the disclosure will have on the counselor-student relationship. A program may make disclosures to public or private medical personnel “who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of the student or any other individual. The regulations limit “medical emergency” to situations that pose an immediate threat to health and require immediate medical intervention. §2.51.

In 1990, the U.S. Department of Education and the federal Alcohol, Drug Abuse and Mental Health Administration issued a joint opinion to clarify their position about the relationship between the FERPA regulations (34 C.F.R. Part 99) and the federal confidentiality regulations as those two sets of regulations apply to SAPs. FERPA defines “educational records” as information that is recorded in any way that is directly related to a student and is maintained by an educational agency or institution or by a party acting for such an agency or institution. There are a number of exemptions to FERPA’s requirements. First, FERPA does not apply to information that is not written. Second, FERPA exempts records “of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” It is noted, however, that this exemption is strictly construed; notes lose their exempt status if they are shown to any person, including the student.”

Superintendent’s Signature _____ Date _____