



Warren County Board of DD Agency Policy

Confidentiality, 2.03

A. Confidentiality:

The Warren County Board of Developmental Disabilities (WCBDD) shall ensure and safeguard the confidentiality of individuals served, pursuant to applicable state and/or federal regulations, including Ohio Department of Human Services rule 5101:1-1-03 of the Ohio Administrative Code, the Ohio Department of Education Model Policies and Procedures, Individual Records rule 5123:2-3-13 of the Ohio Administrative Code, Disclosure of Information rule 5126.044 of the Ohio Revised Code, and the Federal guidelines applicable to the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Right and Privacy Act (FERPA). Confidentiality is the basis for all personal relationships, as well as for the respect due personal privacy. It involves intimacy, trust, confidence, and is the key to any and all therapeutic relationships. A breach of confidentiality occurs: when individual information is passed along to a second individual without the individual's/guardian's knowledge; when information can be used against the individual's welfare or services; or when information draws undue attention to the disability, rather than the person's capabilities. The goal of all discussions or information seeking about an individual must be to better serve the person. All information contained in an individual's records is considered confidential. The content of these records is never the subject for discussion except as an official member of an interdisciplinary team. The provisions of this policy shall apply to all Board members, employees, volunteers/interns, and contract services employees of all divisions of the WCBDD. Training will occur as needed. Individuals, parents, guardians and caregivers shall be given annual notice of this policy.

B. Definitions

1. Destruction means physical destruction of a record or removal of personal identifiers so that the information is no longer personally identifiable.
2. Disclosure means permitting access or the release, transfer, or other communication of records of the individual or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.
3. Educational/Habilitation Records mean those records that are directly related to an individual and are maintained by the WCBDD or by a party acting for the WCBDD. The term does not include those records which are excluded under 34 Code of Federal Regulation (CFR), Reg. 909.3.
4. Parent means either biological or adoptive parent. If the parents are separated or divorced, "parent" means the parent with legal custody of the child. At age eighteen, the individual has the right to act in his or her own behalf, unless he/she has a court-appointed guardian. Individuals without guardians may grant access to information to their family members or others they choose.
5. Personally Identifiable Data Includes:
 - a. The name of the individual, the nickname of the individual, or the individual's family member (contact person).
 - b. The address of the individual.
 - c. A personal identifier, such as the individual's date of birth, social security number, or Medicaid number.
 - d. A list of personal characteristics or other information, which would make it possible to identify the individual with reasonable certainty.
6. Record means any information or data recorded in any medium, including but not limited to: photographs, handwriting, print, tapes, film, microfilm, microfiche and automated data bank.

C. Confidentiality Officer:

1. Each Program Division Director shall act as the confidentiality officer of his/her particular division to ensure the confidentiality of information of each individual receiving services from that division.
2. It is the responsibility of the Division Director to see that each individual is adequately represented by his/her natural parent(s), parent(s) having legal custody, legal guardian(s) or custodian(s), or surrogate parent(s).
3. An individual of legal age (eighteen) with no court-appointed legal guardian has the right to act in his/her own behalf in all matters related to confidentiality and records access, consent, maintenance, and destruction. Throughout the remaining policy, "Parent" refers to either the parent if the child is less than 18 years old, the



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individual him/herself when acting in his/her own behalf, duly appointed personal representative, or legal guardian if one has been appointed.

4. The Superintendent shall appoint a HIPAA Privacy Officer to ensure HIPAA rules and regulations are followed and to address any HIPAA Privacy related complaints.

D. Rights to Access:

1. The parent has the right to inspect and review any WCBDD record related to his or her minor son or daughter enrolled in any division of the WCBDD; a court-appointed guardian has the same right with respect to the records of his/her appointee; the individual has the same rights regarding his/her own records. A WCBDD representative may be appointed to assist a parent in his/her review of documents.
2. The WCBDD shall request a copy of the official document stating the parent does not have the authority, under applicable state law, governing such matters as guardianship, separation, and divorce, if the right to access has been restricted or denied.
3. Upon receiving a request in writing, any program divisions shall comply with the parent/guardian/individual requests for access to confidential material, without unnecessary delay and at least within ten (10) days. Requests occurring before an IEP/Individual Service Plan (ISP) meeting, or a hearing related to identification, evaluation, or placement of the individual shall have immediate response. In the case of an individual placed by the LEA, the response time shall be no more than thirty days after the request has been made.
4. The WCBDD may charge a fee for copies of records, which are made for the parent/guardian/individual under this rule if the fee does not effectively prevent that person from exercising the right to inspect and review those records.
5. The WCBDD may not charge a fee to search for or to retrieve individual information.

E. Access to Records:

1. An individual's record is removed from a Division's jurisdiction and safekeeping only in accordance with a court order, subpoena, or statute.
2. Each division shall develop a list of the types and locations of records collected, maintained, or used by them and shall provide this list to parents/guardians/individuals on request.
3. Each Division Director shall implement procedures to keep a record of parties obtaining or given access to records except access by parents and authorized employees of the division or other educational agency. For the Accounting for Disclosures, disclosures to the individual, and for Treatment, Payment and Operations need not be included. Each Division Director/designee shall implement procedures to keep a record of parties obtaining or given access to records for the following types of accesses:
 - i. Types of Accesses to be logged.
 - a. Accesses for Treatment, Payment, and Operations are NOT required to be logged.
 - b. Accesses by the Individual/Parent are NOT required to be logged.
 - c. All other accesses, MUST be logged, including but not limited to the following reasons:
 - Pursuant to an Authorization (Note these need not be included on an accounting for disclosures)
 - Required by law
 - Required for public health activities
 - About Victims of abuse, neglect or domestic violence, including all MUI's
 - For judicial and administrative proceedings
 - For law enforcement purposes
 - To coroners or medical examiners, funeral directors, for organ or tissue donation
 - To avert a serious threat to health or safety
 - For specialized government functions
 - For Workers compensation
 - Unlawful and unauthorized disclosures
 - ii. Content of Log. The log shall include the following information:



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- Name of the individual requesting information;
 - Date access was given;
 - Description of information disclosed;
 - Purpose for which the party is authorized to use the data.
4. If any WCBDD record includes information on more than one (1) individual, the parents/guardians of those individuals shall have the right to inspect and review only the information relating to their son/daughter, or to be informed of that specific information.
- F. Amendment of Record at Parent/Guardian/Individual Request:
1. A parent/guardian/individual who believes that information in records is inaccurate or misleading or violates the privacy of other rights of the individual, may request in writing, that the division that maintains the information to amend the information.
 2. The Division Director shall direct the request to the Superintendent, who will decide whether or not to amend the information within thirty (30) days of the request.
 3. If a decision is made not to amend the information in accordance with the request, the director shall inform the parent/guardian/individual in writing of the refusal and advise the parent of the right to a records hearing to challenge information in education/habilitation records, to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual.
 4. A records hearing shall be set up at a parent/guardian/individual's request and will adhere to the following:
 - a. The records hearing shall be held within thirty (30) days after the Division Director has received the request, and the requesting persons shall be given notice of the date, place and time at least ten (10) days in advance of the hearing.
 - b. The records hearing may be conducted by any party, as designated by the Superintendent, who is a professionally licensed individual who does not have a direct interest in the outcome of the hearing.
 - c. The parent/guardian/individual shall be afforded a full and fair opportunity to present evidence relevant to the issues and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney. The hearing representative shall make his/her decision in writing to the Superintendent within ten (10) days after the conclusion of the hearing. The decision shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.
- G. Results of Records Hearing:
1. If, as a result of the records hearing, it is decided that this information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, the Division Director shall amend the information and inform the parent/guardian/individual in writing. The Division Director will in a timely fashion, inform the individual that the amendment is accepted and obtain the individual's identification of an agreement to have the WCBDD notify the relevant persons with which the amendment needs to be shared as set forth below:
 - a. Persons identified by the individual as having received information about the issue and needing the amendment;
 - b. Persons, including business associates that the WCBDD knows has the information that is subject to the amendment and that may have relied or could foreseeably rely, on such information to the detriment of the individual.
 2. If, as a result of the records hearing, it is decided that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, the Division Director shall inform the parent, in writing. This communication will include:
 - iii. The basis of the denial will be identified.
 - iv. The individual will be notified of the right to place in the records the WCBDD maintains on the individual a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the WCBDD.



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- v. A statement will be made that if the individual does not submit a statement of disagreement, the individual may request that the WCBDD include in the Individual's file the request for amendment and the denial with any further disclosures of file content that is the subject of the denied amendment.
 - vi. A description of the process in which the individual may complain to the WCBDD administrative authority, including name, or title, and telephone number of authority authorized to receive complaints.
 - vii. A description of how to complain to the Secretary of the Federal Department of Health and Human Services as prescribed under the HIPAA Privacy Regulation.
3. If the amendment was denied and the individual has submitted a statement of disagreement, the WCBDD will include the statement, with any subsequent disclosure of individual information to which the disagreement relates.
4. Any explanation placed in the records of the individual shall be maintained by the WCBDD as part of the records of the individual, as long as, the record or contested portion is maintained. If the records of the individual, or the contested portion, are disclosed to any party, the explanation must also be disclosed to the party.

H. Safeguards:

1. All WCBDD personnel collecting, maintaining, using, or otherwise having access to personally identifiable data shall be informed of the confidentiality policies and procedures of the WCBDD and are responsible for implementing them.
2. Each Division Director shall be assigned the responsibility for assuring the confidentiality of any personally identifiable data.
3. Each division shall maintain, for public inspection, a current listing of the names and positions of those employees within the division who may have access to the personally identifiable data.
4. All individual records will be maintained in a secure manner to ensure the safety and confidentiality of the information.

I. Collection of Information:

1. In order to determine an individual's eligibility for services and/or to assist in the identification of appropriate services/supports for the individual, information may be needed from other agencies or professionals that provide or have provided services/supports to the individual.
2. Prior to requesting information from other agencies or professionals, the individual, parent of a minor child, or legal guardian will be asked for permission to obtain the records or reports. The request will specify:
 - a. The reports/records being requested;
 - b. The purpose of the request;
 - c. The expiration date of the consent to disclose information, which will not exceed 365 days.
3. All records and reports that are received from other agencies or professionals, regardless of the means of transmittal, will be placed in the individual's confidential file, along with a copy of the original request for information form.
4. The information contained in the records or reports obtained from other agencies or professionals will only be used for the purposes specified in the request for information.
5. Access to information obtained from other agencies or professionals will be same as specified in Sections D and E of this procedure.

J. Prior Consent for Disclosure:

1. When a request for disclosure of information of an individual is received by any division that information will be sent within ten (10) days of receipt of the request.
3. Each division shall implement procedures to obtain written consent of the parent/guardian/individual before disclosing personally identifiable information from the records of an individual, other than directory



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- information, or as provided in (H) above. The written consent must be signed and dated by the parent/guardian/individual giving the consent and shall include:
- a. to whom the information shall be released and
 - b. the time period the permission is granted for,
 - c. a specification of the records to be disclosed,
 - d. the purpose or purposes of the disclosure, and
 - e. the party or class of parties to whom the disclosure may be made.
3. Personally identifiable information from the records of an individual may be disclosed without the written consent of the parent/guardian/individual if the disclosure is:
- a. To other staff within the WCBDD who have been determined by the Superintendent/designee to have a legitimate educational/habilitation interest. (For treatment, payment and health care operations).
 - b. To officials of school district, or other educational agency in which a school-aged student is to be enrolled.
 - i. When the transfer of records is initiated by the parent at the sending school district or other educational agency.
 - ii. When a school district or other educational agency includes a notice in its policies and procedures that it forwards education records on request to a school district or other educational agency in which a student is enrolled.
 - iii. After a reasonable attempt to notify the parents at their last known address that the transfer of records has been made.
 - c. To school officials of a school-aged individual's local education agency.
 - d. To federal and state officials in connection with the audit and evaluation of federally supported programs, or in connection with the enforcement of or compliance with the federal legal requirements which relate to these programs.
 - e. To a law enforcement officer engaged in investigating a crime report.
 - f. To the individual who is subject of the information.
 - g. An authorization is required for the use and disclosure of psychotherapy notes except for the following uses:
 1. Use by the originator of the psychotherapy notes for treatment
 2. Use or disclosure by the WCBDD in training programs in which students, trainees or practitioners learn under supervision to improve their skills in group, joint, family or individual counseling; and
 3. Use or disclosure by the WCBDD to defend a legal action or other proceeding brought by the individual
 4. Use or disclosure that is required or permitted by the HIPAA Privacy rule with respect to the oversight of the originator of the psychotherapy note.
 - h. Authorization are specifically required before the WCBDD may make any use or disclosure for the purpose of marketing (as defined by the Modification to the HIPAA Privacy Rule), except if the communication is in the form of:
 1. Face to face communication by the WCBDD to an individual
 2. A promotional gift of nominal value provided by the WCBDD.
 - i. The Authorization form must be a separate form and cannot generally be combined with a consent form, except for specific instances such as for research involving treatment. If the individual does not understand what information is covered by the authorization, the use or disclosure is not permitted until the WCBDD or the requesting entity has clarified the request. There are no limitations on the information that can be authorized for disclosure.



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- j. An authorization cannot be combined with any other document to create a compound authorization except as follows:
 - 1. An authorization for use and disclosure of individual information for research may be combined with other types of written permission for the same research study;
 - 2. An authorization for use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.
- 4. When a disclosure is made, a division shall, upon request, provide a copy of the record, which is disclosed to the parent/guardian/individual. This accounting will include disclosures made for reasons other than Treatment, Payment or Operations, and not authorized by the individual/guardian.
- 5. Disclosure of information also includes verbal sharing (e.g., meetings, telephone conversations, etc.), which requires written parental consent as outlined above. Records of such disclosure shall be recorded on the access record.
- 6. A release utilized by a division shall not exceed a time period of one year.
- 7. A Division may disclose directory information without prior consent, if the following conditions are met:
 - a. Parents/guardians/individuals are given an annual notice of categories of personally identifiable information, which a Division has designated as directory information.
 - b. Within fifteen (15) days after notification, a parent has the right to refuse to permit the inclusion of personally identifiable information as directory information with respect to his/her son or daughter.
- K. Destruction of Individual's Records:
 - 1. Pursuant to Section 5126.044 of the Ohio Revised Code, the WCBDD will provide notification to any individual, individual's guardian, or, if the individual is a minor, the individual's parent or guardian that records or reports regarding the individual will be destroyed according to the WCBDD's Records Retention Policy and Schedule.
 - 2. Prior to destroying such records or reports, any individual, individual's guardian, or, if the individual is a minor, the individual's parent or guardian may elect to receive records or reports rather than being destroyed.
- L. Rights
 - 1. The following individual rights are stated with respect to the client information files:
 - a. Right to request restrictions on certain uses and disclosures of client information.
 - b. Right to receive confidential client record information communication of client record information.
 - c. Right to inspect and copy.
 - d. Right to amend file
 - e. Right to receive an account of disclosures.
 - f. Right, including an individual who has agreed to receive the notice electronically, to obtain a paper copy of the Notice (of rights) upon request.
 - g. All rights stated in Notice of Privacy Practices.
- M. Revocation of Authorization

An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing except to the extent that:

 - a. The WCBDD has taken action in reliance on the authorization.
- N. Request for Confidential Communications

An individual/guardian is entitled to request confidential communications, including for example, not sending information to their home address or telephoning their home number. These requests will be honored to the extent that they can be reasonable accommodated with the Administrative system. The request should be made in writing to the WCBDD Privacy Officer. The Privacy Officer will contact the individual and request an alternate means of contacting the individual. The Privacy Officer will inform the individual at that time the steps the WCBDD will take



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to implement the request. The Privacy Officer shall document the request and disposition in the individual's permanent file. When needed, the Privacy Officer will make recommendations to the Superintendent of improvements necessary in the computer systems or administrative procedures in order to implement reasonable requests for confidential communications.

1. The WCBDD shall, in all cases, obtain written permission from the individual and/or parent/guardian of a minor prior to releasing information to persons not otherwise authorized to receive such information.
2. The WCBDD shall only transmit information to a requesting person or agency after receiving a properly authorized written request.
3. Educational records shall be made available to the individual and/or parent/guardian of a minor upon written request.
4. Division secretaries shall be responsible for ensuring the safekeeping of records and securing them against loss or use by unauthorized persons.
5. For individuals placed by the LEA, confidentiality procedures shall be in accordance with the rules for education of handicapped children, O.A.C. 3301-51-02.
6. Prior to destruction of any individual records, the permission of the individual and/or the parent/guardian of a minor will be obtained in writing.
7. Individual records shall be accessible to Ohio Department of Developmental Disabilities(ODODD) personnel authorized by the Director of ODODD, parents/guardian of a minor, or the individual.
8. Individual permanent records shall be kept in locked files in areas designated by each division of the WCBDD to assure permanence of the records. All inactive records shall be maintained in a central storage area, that is locked and safe from environmental hazards.
9. Working records shall be located in the facility or building in which the individual is being served.
10. Policies and procedures concerning confidentiality shall be made known to individuals and/or the parents/guardian of a minor.
11. The WCBDD shall review, not less than once a year, the systems and safeguards employed by its staff to preserve confidentiality of information.