

# CONFIDENTIALITY



This workshop on confidentiality is designed to meet requirements for staff training while increasing staff awareness of their responsibilities regarding privacy of client records.

# Confidentiality Laws

1. **FERPA**-Family Education Rights and Privacy Act
2. **HIPAA**-Health Insurance Portability and Accountability Act of 1996
3. **IDEA**-Individuals With Disabilities Education Act, Part C (federal register- CFR 34 300.561-300.572)
4. Early Intervention Regulations 4226 (passed in 2003)



# FERPA: Family Education Rights & Privacy Act

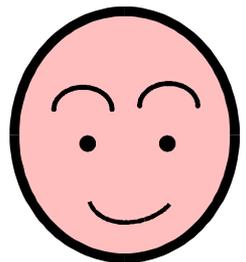
- ❖ Passed in 1974-Also called the “Buckley Amendment”
- ❖ Access on the web at:  
<http://www.ed.gov/policy/gen/reg/ferpa/index.html>
- ❖ Addresses maintenance of confidential records
- ❖ Informs families of their right to review and inspect confidential records
- ❖ Provides families of their right to amend any records they feel are inaccurate or misleading.
- ❖ Notification/Fact Sheet provided to families annually

# **HIPAA:** Offers safeguarding of personally identifiable information through various protections

- ❖ Notice of Privacy Practices provided and signed by parent at Intake
- ❖ Personally identifiable information cannot be sent via unsecure methods such as e-mail communications unless in a password protected document.
- ❖ Specific consent to disclose health information required
- ❖ Obtain consent to leave personal/health info via voice mail
- ❖ Confidential information must be maintained in a closed or locked area where a list of only those personnel authorized to access records is posted- referred to as ‘record of access’

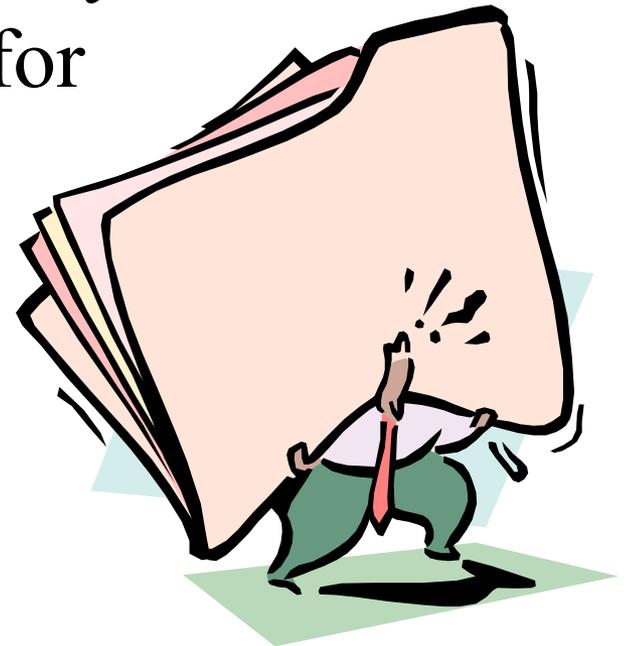
# What is Personally Identifiable Information?

- ❖ Name of child, child's parents or other family member
- ❖ Address of the child or child's family
- ❖ Any personal identifier (SS #)
- ❖ Information which may make it possible to reasonably identify an individual, such as a list of personal characteristics or other indirect references.



# Definition Of Education Records

Records, files, documents and other materials which contain information directly related to a child and are maintained by an educational agency or institution, or by a person acting for such agency or institution.



Education records **not** covered in this section include records of instructional, supervisory and administrative personnel which are in the *sole possession* of the maker and are not revealed or accessible to any other person.

# Sole Possession Records

Sole Possession Records are exempt from parent access if they meet the following:

- Must be a private note created solely by the individual possessing the note
- Must be a personal memory aid
- Not be used to develop a “plan” for the student

AND/OR

- The information in the note must not be accessible or revealed to any other person



# What is Confidentiality?

- ❖ Specific protection of private, identifying information
- ❖ Strict limitations around access, disclosure, retention and safeguarding of records.
- ❖ Specific regulations and professional code of ethics that regulate the disclosure of information-*nothing* can be disclosed without consent for release of information

# Consent for Disclosures

- ❖ Consents must be signed by parent/guardian, or a trained surrogate or (in the event a child is in custody of CYF) a CYF worker.
- ❖ Written consent signed and dated, including
  - description of records disclosed
  - purpose of the release
  - parties to whom disclosure is made
  - Statement of right to revoke request and consent to release



- ❖ Copy of disclosed records provided to parent upon request.
- ❖ Third party disclosure prohibited without written consent of parent, except in specific circumstances.



# Conditions Where Prior Consent Not Required

- ❖ Disclosure within agency as per record of access rule
- ❖ Court order (Subpoena alone is not sufficient to disclose without written release)
- ❖ Health and safety emergencies (such as an abuse investigation)



# HIV Considerations

## *Confidentiality of HIV-Related Information Act*

- ❖ Provides very specific protections and limitations on disclosure for any persons with HIV
- ❖ HIV information cannot be shared without a specific signed release with the legal notice that must accompany the disclosure.
- ❖ Legal disclosure prohibits re-disclosure to any other parties –general medical releases are not sufficient to release specific HIV information.

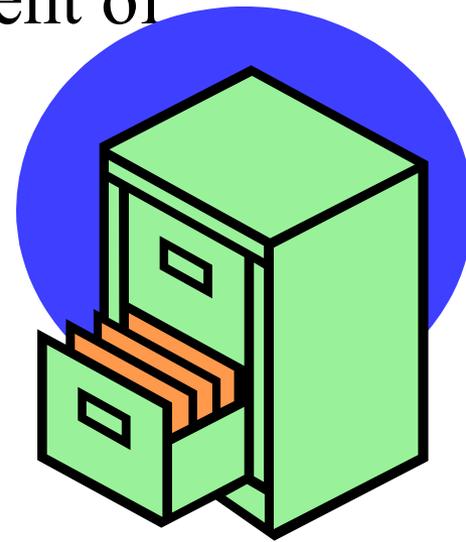
# Parent's Right To Inspect And Review Records

- ❖ Right to review records within a reasonable period of time of written request
- ❖ Right to have representative review records
- ❖ Right to response to requests for explanation and interpretation of records
- ❖ Right to inspect only information related to own child
- ❖ Rights extend to both parents unless otherwise indicated by law
- ❖ Right to obtain copies of records



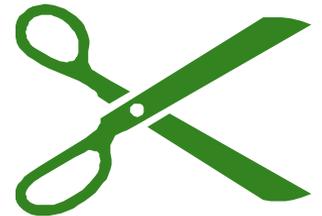
# Amendment Of Records

- ❖ Any parent explanation of disagreement with records must be maintained with record as long as the agency maintains the record & disclosed with the record.
- ❖ Parents are provided with FERPA and a Fact sheet annually which provides notification of right to request amendment of records
- ❖ Parent has the right to request amendment of records if information is inaccurate, misleading or in violation of privacy rights.



# **Destruction Of Information**

- ❖ Records are not destroyed if there is an outstanding inspection request or litigation
- ❖ Information no longer needed destroyed at parents' request
- ❖ Permanent record maintained for a period of four years from date of closure



# Confidentiality In Practice

- ❖ Staff should be aware of confidentiality laws and requirements.
- ❖ Agencies have a responsibility to train all persons annually regarding confidentiality, personally identifiable information and disclosure
- ❖ Staff must not disclose information to others without expressed written release.
- ❖ Staff should be sensitive to violations of confidentiality in verbal exchanges with others.



# Confidentiality May Be Violated

- ❖ When staff discusses a child in inappropriate places or situations
- ❖ When staff repeats gossip or rumors about a child or his family



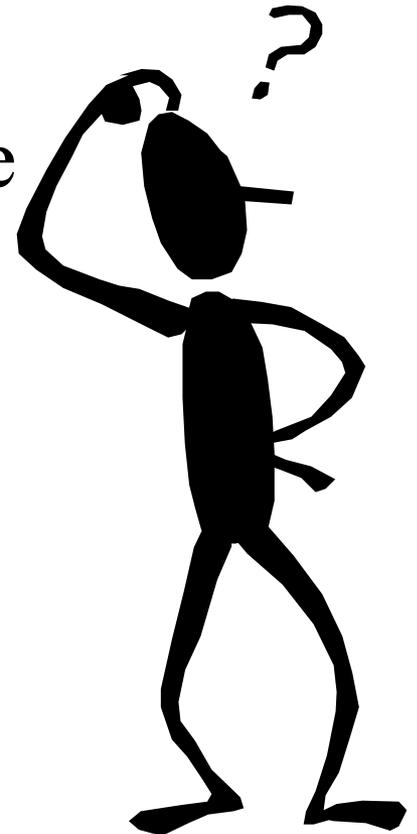
# Gossip vs. Professional Sharing Of Information

When talking to a colleague about a student or his family, apply these four tests to see if the discussion may be violating the child's confidentiality rights.



# Four Tests

1. **What** is discussed
2. **Where** the discussion takes place
3. **Who** is listening
4. **Why** the discussion took place



# What Is Discussed

- If the discussion involves personally identifiable information that is confidential (disability, family data, etc.), the parties should be sure that mutual professional interest is involved
- If the discussion involves information that is rumor, opinion, or hearsay, chances are that confidentiality will be in question, and the parties have moved from professionalism to gossip.



# Where The Discussion Takes Place

- If the discussion occurs in a private place (such as a private office or meeting room), there is no problem with confidentiality
- If the discussion occurs in a public place (such as the playground, the halls, the supermarket), there is a good chance that confidentiality could be violated.



# Who Is Listening



1. If the parties to the discussion have a shared professional interest (such as IFSP team members) there is no problem with confidentiality
2. If others are listening who do not have a direct/shared interest (such as a coworker who is eavesdropping) confidentiality may be violated.

# Why The Discussion Took Place

- If the parties have mutual professional interest in a child and are sharing information that will help them work with the child or family, then there is no problem with confidentiality
- If the parties are gossiping to pass time, carrying tales about a child or his family, or for other non-educational reasons, there is probably a concern for violating confidentiality.

# Sample Situations



Two Provider program staff sharing a child, another Provider who does not serve the child walks in, the first two keep talking, the third listens in, adds to discussion

1. What are they discussing?
2. Does the third provider have a legitimate mutual interest in the child?
3. Is the location inappropriate?
4. Why are they discussing the child?

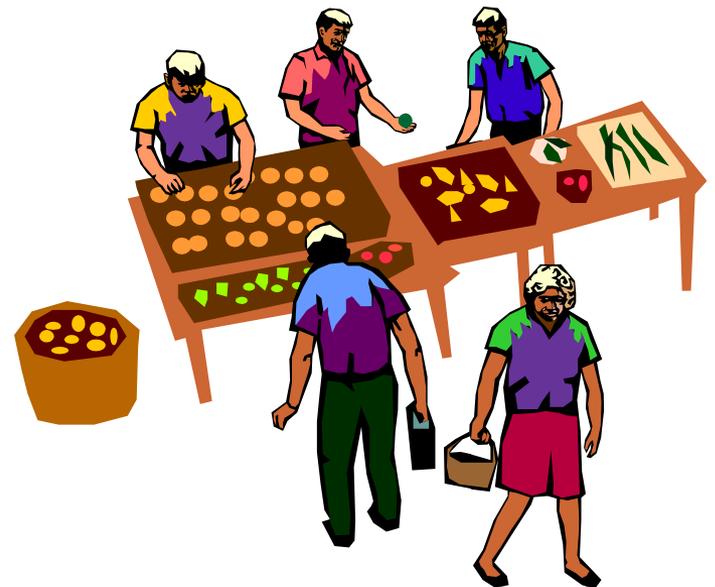


If the providers were discussing the child in private (no other providers in the room or not within earshot of others) and they had a legitimate mutual interest in the child, they were probably not violating the child's confidentiality, but they should monitor what they say if others come in.



Two interventionists see each other in the grocery store, start talking about a child they serve (“I hear the father drinks and beats the mother. No wonder the child has so many problems.”)

1. Inappropriate place
2. Others listening
3. Content not appropriate



# Scenarios



When asked if her confidential files were secured, the teacher replied, “Yes. I keep them in my desk drawer, and when I leave the room, I lock the door to my room.”

Was she correct?

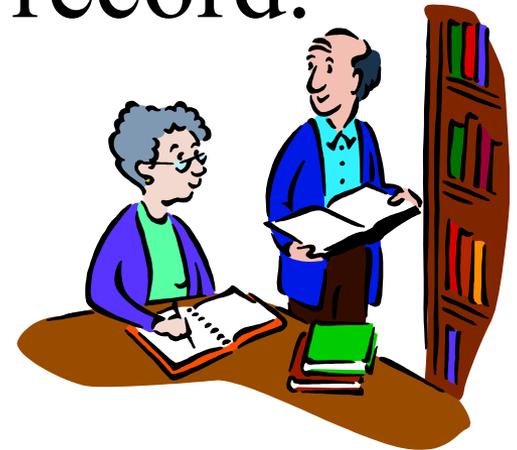
No. Her files are not secure because anyone with a key has access. It is better to have a file cabinet or desk with a lock.



The teacher keeps a folder in which she records notes about the children she serves. As the teacher is making notes in the folder, a parent comes in and, noticing the folder, asks to see notes relating to her child. The teacher refuses on the grounds that her notes are not educational records and, therefore, not accessible by the parent.

**Is the teacher correct in her position?**

Yes, if she does not show or reveal the contents of the notes to anyone, if she uses them as a memory aid, and if they remain her private notes in her sole possession. However, if she shares the information with anyone, it becomes an educational record.



An agency posts on the main office bulletin board a list of all the children served in their birth to three program.

A Service Coordinator hangs a list of children on their caseload above their desk.

**Was confidentiality violated?**

Yes. Any visible list that singles children out violates confidentiality.



- A Service Coordinator was updating a plan and leaves a child's file out on their desk when they leave for the night.
- A provider agency staff person leaves a child's file on the conference room table while she breaks for lunch.



Is there a violation of confidentiality?

Yes. Leaving confidential files out on a desk could lead to a potential for violating confidentiality. Unauthorized persons (such as maintenance staff) who would not be on the record of access could have access to the records. Typically, during business hours only those persons authorized on the record of access would be present – outsiders are asked to sign-in and should not be unattended during their visits.

Files should never be left unattended in shared common space such as a conference room. This is especially a concern for providers who run multiple programs out of a central office where those agency staff working for adult programs would not be authorized to see the Infant Toddler records.

The father of a child requests to see the records of his son who is being served by Early Intervention. The parents are divorced and the son lives with his mother. The agency refused to disclose the boy's record to the father.

Was there a violation of parent access to records?

Yes, unless the agency has been provided with evidence that there is a court order, state statute or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

The secretary in the office has constant access to child information as she files documentation of all children, sends letters to families, etc. All of these records are considered confidential in nature.

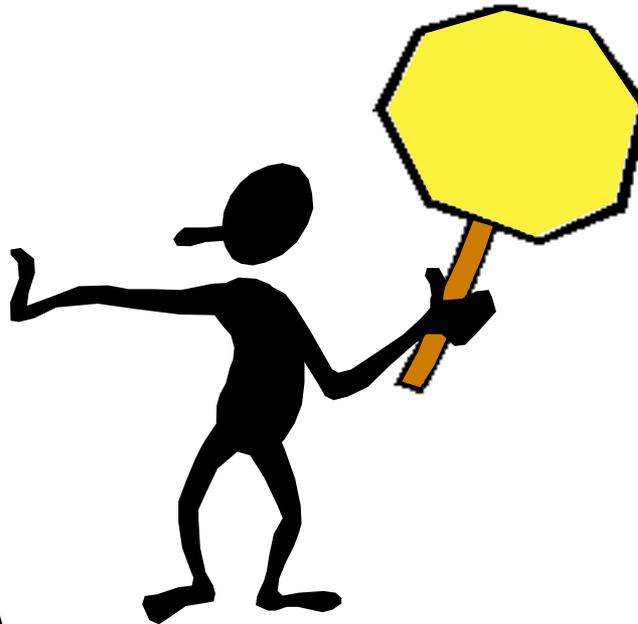
What advice can you offer the secretary concerning information she might access?

Inform her that the information is confidential and contains sensitive information. Since all agencies must protect the confidentiality of personally identifiable information, it is important that all staff having access to such information receive training.

Support staff should also be listed on the record of access.



Please complete the post test to verify that you have read and reviewed this Power Point training.



**Stop**

**THE END**