

Confidentiality - 4.12 Hearing and Hearing Results

State Performance Plan (SPP):

(See Overview in the Introduction for more information on the SPP.)

Intent:

To ensure that a hearing process is in place for parents of a child with a disability who believe the information contained in the child's education records is misleading, inaccurate or a violation of privacy or other rights of the child.

REQUIREMENT

3301-51-04

(J) Opportunity for a Hearing

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(L) Hearing procedures

A hearing held under this rule must be conducted according to the procedures in 34 C.F.R. 99.22 (July 1, 2005). The records hearing shall be held within a reasonable period of time after the school district, county board of MR/ DD or other educational agency has received the request.

- (1) The parents shall be given notice of the date, time, and place reasonably in advance of the hearing;
- (2) The records hearing shall be conducted by any individual, including an official of the school district, county board of MR/ DD, or other educational agency who does not have a direct interest in the outcome of the hearing;
- (3) The parents shall be afforded a full and fair opportunity to present evidence relevant to the child's education records and the information the parent believes is inaccurate or misleading or violates the privacy or other rights of the child.
- (4) The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including an attorney;
- (5) The school district, county board of MR/ DD or other educational agency shall make its decision in writing within a reasonable period of time after the hearing.
- (6) The decision of the school district, county board of MR/ DD or other educational agency 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.

(K) Results of hearing

- (1) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
- (2) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (3) Any explanation placed in the records of the child under this rule must:
 - (a) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
 - (b) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

GUIDANCE

Hearing

- When parents request a records hearing, the district may mutually agree on the date, time and location for the hearing with the parents or may set the date, time and location for the hearing and provide notice to the parents. A district representative or other person who does not have a direct interest in the outcome is appointed to conduct the hearing and make a ruling. The parents are notified of the date, time and location of the hearing. They are invited to present evidence relevant to the child's record and any other information that the parents believe is erroneous or misleading or violates the child's privacy or other rights. The parents are also advised that they, at their own expense, may also be assisted by or represented by one or more individuals of their choosing, including an attorney.

Hearing procedures

- At the meeting, the parents are given a full and fair opportunity to present the evidence they believe supports their contention that the content of their child's education records is inaccurate or misleading or violates the rights of the child.

Hearing results

- After the meeting and within a reasonable period of time (usually within two weeks), the agency makes its decision in writing. The agency notifies the parents of the decision and provides a summary of the evidence and rationale for the decision. If the decision is that the record is inaccurate or misleading or violates the privacy or other rights of the child, the information is amended and parents are notified in writing. If the decision is that the record is accurate or not misleading or not otherwise in violation of the privacy or other rights of the child, the parents are informed that they have the right to place in the record a statement commenting on the information or setting forth their reasons for disagreement with the agency's decision. This parents' statement becomes part of the child's record for as long as the agency maintains the record. If the child's record is disclosed to any party, the explanation must also be disclosed to the party.

LEGAL CITATIONS:

Federal Statutes:

20.U.S.C. 1412(a) (8); 1417(c)

20.U.S.C. 1232g(a) (2)

Federal Regulations:

34 CFR §300.619 - .621

34 CFR §99.22

Ohio Revised Code):

3323.08(A)

Operating Standards:

3301-51-04 (J) (K) and (L)

FORMS (* = required)