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Bureau of Student Support FY'20 Memo #29

Date: April 15, 2020

To: Superintendents of Schools
Special Education Directors

From: Division of Learner Support
Bureau of Student Support

RE: Amendment of Ed 1102.04 Definitions and re-adoption with amendment of Ed 1119.01 Confidentiality Requirements.

The Bureau of Student Support (Bureau) is providing information relative to changes to the New Hampshire Standards for the Education of Children with Disabilities. Specifically, to the Definition of "parent" in Ed 1102.04 and the re-adoption of Ed 1119.01 Confidentiality Requirements, with respect to the retention and destruction of special education records.

Ed 1102.04 Definitions

The standard now reads:

"(h) "Parent" means a biological or adoptive parent, surrogate parent, or a guardian pursuant to 34 CFR 300.30. Parent does not mean the state when the state has legal guardianship."

Ed 1119.01 Confidentiality Requirements

The standard now reads:

"(a) For the purposes of this section "adult student" means "adult student" as defined in 20 USC 1232g(d).

(b) Each participating agency shall comply with 34 CFR 300.610-300.627, relative to confidentiality of information, including compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232G, (FERPA) and its implementing regulations in 34 CFR Part 99.

(c) Each LEA and private provider of special education shall adopt a policy regarding the retention and destruction of special education records pursuant to RSA 186-C:10-a.

(d) An LEA may retain and store the student's special education records in electronic form or any other form. An LEA shall provide a parent or adult student a written notice of its document destruction policies upon the student's graduation with a regular high school diploma or at the transfer of rights or whichever occurs first. The LEA shall provide public notice of its document destruction policy at least annually.

(e) A private provider of special education may destroy a student's special education records prior to the student's 26th birthday if the private provider of special education has sent all of the student's records or copies of such records to the most recent LEA of record. A private provider of special education may retain and store the student's special education records in electronic form or any other form. A private provider of special education shall provide a parent or adult student a copy of its document destruction policy upon the student's discharge from the private provider of special education.

(f) Each participating agency shall comply with the safeguard provisions of 34 CFR 300.623. The department or the LEA shall provide notice to parents in accordance with 34 CFR 300.612."

These changes took effect on April 10, 2020. The Bureau is encouraging districts to review and revise their special education policies and procedures to ensure compliance with these changes.

For questions about this memo please contact Elizabeth Graichen at Elizabeth.j.graichen@doe.nh.gov or 271-4982