

WEST VIRGINIA DEPARTMENT OF EDUCATION

DATA ACCESS & MANAGEMENT GUIDANCE



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WEST VIRGINIA DEPARTMENT OF EDUCATION DATA ACCESS AND MANAGEMENT GUIDANCE

This guidance document pertains to the education information system at the West Virginia Department of Education (WVDE), under the authority of the West Virginia Board of Education (WVBE), which contains data on West Virginia schools and districts, including individual student and staff records. This education information system and its data, first implemented in the 1990s, are used for the purpose of supporting data-driven, intelligent decision making and to facilitate state and federal reporting, including data required for the federal *Elementary and Secondary Education Act (ESEA)*. The information system helps school districts maintain more accurate information and manage student data more efficiently.

The education information system is managed by the *West Virginia Department of Education* (WVDE), which adheres to the confidentiality requirements of both federal and state laws including, but not limited to the Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), the Protection of Pupil Rights Amendment (PPRA), the National School Lunch Act (NSLA), and *West Virginia Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data* (see Appendix A). All of these laws and policies are essential to maintaining the confidentiality of student records as they are collected and as they are maintained at WVDE.

This guidance document contains information to ensure the privacy and confidentiality of student records and contains multiple sections as follows:

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THE EDUCATIONAL INFORMATION SYSTEMS AT WVDE

The educational information systems are intended to provide the data to support better decision-making and policies for improving the performance of students, schools, and educators; reduce reporting burden; help to facilitate a seamless transition of students from one district to another; and ensure that high quality data are accessible for reporting, audits, and evaluation.

The educational information systems contain information about all public districts and schools in West Virginia with students in pre-kindergarten programs (all programs for children prior to kindergarten), kindergarten programs, grades 1 through 12, and grades 13 and 14, which are adult learners, and all students receiving special education services through age 21. It also contains information about school personnel.

The purpose for collecting individual student records is to provide access to statistical information that improves the education-related decision making of teachers, administrators, policymakers, parents/guardians, and other education stakeholders as well as the general public. However, personally identifiable student information is disclosed only to those persons with a legitimate educational interest, and who have a WVDE Security Agreement (see Appendix B) form approved, have a current user account, and are an agent of the state.

The educational information systems contain data about individual students that allows for the assignment of a unique student identifier and that provides a district administrator with the capacity to enter transferred students into the system seamlessly. The goal of the state identification system since its inception in the early 1990s is to maintain a unique identifier for every West Virginia student such that:

- 1) only one student is ever assigned a particular number;
- 2) once a student is assigned a number, that number is always associated with that student throughout his or her educational career or until he or she leaves the state; and
- 3) a student is only assigned one number so that the student is not duplicated in the education databases.

RESPONSIBILITIES OF THE WVDE

The Executive Director of the Office of Data Management & Analysis and the Data Governance Manager (both on staff at WVDE) are the designated authorities to establish and maintain a system of data protection for the student information system in accordance with FERPA and other relevant state and federal laws and regulations.

WVDE publishes a [WVDE Data Collection Calendar](#), along with instructions for submission and certification, where applicable, on the Calendar page of the West Virginia Education Information System (WVEIS) website. WVDE provides guidance and assistance to school and district personnel as they complete the reporting requirements.

WVDE is responsible for guaranteeing the security and confidentiality of the data maintained within this system.

The WVDE is responsible for ensuring that the system information is made available to those with a legitimate educational need to access data for his/her job-related duties, and to guard against improper disclosure of the data. (This is also discussed in more detail below.)

WVDE personnel have annual FERPA training led by the Data Governance Manager and assisted by the Data Stewards, who represent WVDE offices. This helps ensure that WVDE personnel comply with all aspects of FERPA, and engage in FERPA-compliant practices including:

- Sending emails that do not include student identifiable information when trying to resolve a data-entry error. Only the student ID is to be used in an exchange about a student's record as a student cannot be identified by his/her student ID number.
- Sharing data files containing student identifiable information for audit, evaluation, or other job-related purposes through WVDE's shared drives, or through a secure File Transfer Protocol (FTP).

The Data Governance Manager uses appropriate measures to protect the confidentiality of student records through training and outreach to WVDE staff and local education agency (LEA) staff.

The Data Governance manager, with the assistance of the WVDE Data Stewards, maintains the Data Dictionary to ensure that it is accurate, up to date, and available to accompany any reports generated. The Data Dictionary contains the metadata (the data about the data) to increase understanding of the data elements themselves during data collection and data reporting. The metadata includes definitions, business rules, formatting information, the Data Stewards that are responsible for defining the element, and justification/reporting requirements for collecting the data element.

WVDE staff with access to student-level information for the purposes of job duties consisting of audits or evaluations must have a Security Access agreement (see Appendix B) on file with the Data Governance Manager. The Security agreement includes the specific aspect of data to which the individual has access, a justification as to the need for access, and his/her supervisor's signature indicating support for access and compliance with FERPA and the Data Access and Management Guidance. This security form with the proper signature sign-offs, is the impetus for the creation of a user account with access to the limited information related to his/her position.

WVDE staff ensures that its online longitudinal data system, ZoomWV, only displays aggregate reports for public views that suppress small cell sizes (as is the current public reporting standard). Data on individual students cannot be accessed by anyone at this read-only level.

WVDE staff shall not create, collect, store, use, maintain, or disseminate private or confidential data on an individual student in violation of federal or state law and the dissemination of such data shall not be used for any purpose other than those already stated. If the WVDE enters into a contract with a private individual or third party to perform any of the system manager functions, that agreement shall require that the data be protected by the same security rules, as well as FERPA and Health Insurance Portability and Accountability Act (HIPAA) protections.

Under this guidance, WVDE personnel do not release private or confidential data except to the following parties or under the following conditions as stated in 34 CFR Part 99.31 Final Regulations for FERPA:

- School officials with a legitimate educational interest;
- Specified officials for audit or evaluation purposes;
- Organizations conducting certain studies for or on behalf of the state;
- Appropriate parties in connection with financial aid to a student;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile system, pursuant to specific state law.

Data are be disclosed in these eight circumstances only on the conditions that: (1) the party to whom the data are released does not disclose the information to any third party without the prior written consent of the Data Governance Manager, the company who provided the student assessment data (if assessment data are being disclosed), or the school district from whom the data were received; (2) only when the data are protected in a manner that does not permit the personal identification of an individual by anyone except the party referenced in the disclosure; and (3) the data are destroyed at the conclusion of the purposes under which the disclosure was granted.

The Data Governance Manager has the responsibility for determining whether a request for access to the student records constitutes a legitimate request for an appropriate usage of student data. If the request does not meet standards established by WVDE for the appropriate release of student data, the request is denied.

In addition, the Data Governance Manager is also responsible for determining if personally identifiable information has been improperly disclosed by a WVDE contractor. If an improper disclosure is made, then the parties will not have access to any WVDE student data for five years as required by FERPA.

RESPONSIBILITIES OF SCHOOLS, DISTRICTS, AND REGIONAL EDUCATION SERVICE AGENCIES RESAS

As the originators of the data, districts (and their schools) are responsible for the accuracy, quality, completeness, and timeliness of the data. The district must inform parents/guardians of their rights regarding the privacy of their students' personally identifiable information (PII), and the district must provide parents/guardians the opportunity to opt out of student directory information being made publicly available. Directory information is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed (see Term Definitions section for a detailed definition). The district is the entity responsible for defining what directory information consists of and for maintaining the privacy and protection of student directory information at the county level. Student PII shall never be released by the district for any reason not specifically required or authorized by state or federal laws, rules, or regulations without the advanced written authorization by the parent/ guardian of a minor, or by the student who is at least 18 years of age.

Districts are required to adhere to the reporting requirements of the WVDE and must follow the WVDE Data Collection Calendar, which is inclusive of the applicable appeals windows, and office-specific data collection calendars.

School and District personnel are required to adhere to FERPA, and to ensure the minimization of data disclosure. Schools must have written permission from the parent/guardian or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

School and district personnel are required to maintain current directory and enrollment information as changes occur. Only individuals who have been authorized by their district administrator are allowed access to make changes and enter data submission information.

Regional Education Service Agencies (RESAs) personnel are required to comply with the same requirement and responsibilities of schools and districts if designated by the district as an authorized user.

PROTECTING CONFIDENTIALITY

To ensure the maintenance of confidentiality of the student records, this guidance includes four privacy and confidentiality protections in place at WVDE and at the school, district, and RESA level. These include assignment of a unique identifier, data security, restricted access, and cell suppression.

- 1) **Assignment of a unique number**, called the West Virginia Universal Student ID, protects the confidentiality of individual student records in the student information system. This ID is NOT directory information.
- 2) **Security** includes the technical measures put into place by WVDE to ensure that records are not lost, stolen, vandalized, illegally accessed, or otherwise rendered useless or compromised.
- 3) **Restricted access** to the data is through Security Agreements and role-specific access, which is consistent with a specific educational purpose as defined in Section 99.31 of FERPA.
- 4) **Cell suppression** is implemented for public reporting purposes so that no student can be identified by process of elimination where a group may include small numbers of students. Aggregate results do not show fewer than ten students. No reports are produced with tables containing small enough cells such that individual students can be identified. Copies of reports are posted through the Data tab on the WVDE website (<http://wvde.state.wv.us/>).

DISCLOSURE OF DATA TO RESEARCHERS

The WVDE may grant research requests for educational purposes, if the research study meets specific criteria related to scientific merit and feasibility, if the research is research the WVDE would have otherwise conducted itself, if appropriate privacy, confidentiality, and security are ensured throughout the proposed research plan, and if all necessary legal documentation¹ are signed and in place. The WVDE uses a multi-step process to handle such requests. This process involves several staff within the WVDE, but is facilitated chiefly by the WVDE Research Review Committee (RRC), which includes staff from the WVDE Offices of Legal Services, Research, and Data Management and Analysis.

To begin the process, external researchers complete a Data Request Form (See Appendix C). Upon receipt, members from the RRC review the request and determine if the information is already available on the public site. If so, the researcher is contacted, and pointed to the source data. If, however, the request is to conduct a research study that requires data beyond what is available on the public website, the researcher must complete and submit to the RRC a comprehensive *Research Proposal Application* (RPA) (See Appendix D). The RPA includes eight sections, each is described below:

- 1) **Contact Information:** The researcher must designate a principal investigator and provide contact information for future correspondence related to the project.
- 2) **Background Information about the Project:** The researcher must explain the objectives of the study including any hypotheses to be tested, provide anticipated start and end dates for the project, and indicate the source and amount of any funding supporting the project.
- 3) **Purpose of the Proposed Research:** The researcher must submit a narrative that explains why the research study is being conducted, how it will benefit WV's local school systems, the WVDE, educators, policy makers, or other parties, and a description of the benefits to study participants, if applicable.
- 4) **Research Questions and Design:** Researchers must submit their proposed research questions and describe the design of the study. Researchers are required to provide enough detail so that the RRC can gauge the scientific rigor, merit, and feasibility of the study. Researchers are encouraged to attach any formal documentation detailing the study design when applicable (e.g., an approved proposal from a funding organization).
- 5) **Data Requested:** The RPA must contain a list of all requested data elements including the unit of analysis for each element and the school year(s) for which the data are being requested. The information in this section represents only what is initially requested by the researcher and is subject to change prior to approval.

¹ According to FERPA, personally identifiable information about students may be released to researchers authorized by the WVDE to develop, validate or administer predictive tests, administer student aid programs, or improve instruction with the proper legal documentation in place.

- 6) **Proposed Data Collection Instruments/Protocols:** If the researcher is proposing to collect additional data as part of the study (e.g., surveys, interviews, focus groups, administer tests, etc.), each proposed instrument/protocol must be described. Draft copies of the instruments/protocols must be attached to the RPA for the committee’s review.
- 7) **Human Subjects Protection:** The researcher must provide a detailed description of how Institutional Review Board (IRB) approval will be addressed prior to the commencement of the study. Proof of the study’s IRB approval status is required before data are released for analysis. In this section researchers must also describe the training that study investigators/co-investigators have completed and may be asked to provide evidence of their successful completion via any applicable certificates. Researchers must also describe in detail the security procedures that will be utilized to protect the confidentiality of the information provided as part of the project, describing who will have access to the data, how information will be stored, and how the data will be destroyed at the conclusion of the project.
- 8) **Reporting:** Researchers must provide a list of all anticipated reports, the audience for each report, anticipated completion dates and any dissemination plans.

The RRC utilizes a quarterly cycle to consider all completed RPAs. This cycle is used to allow sufficient time to comprehensively evaluate all received RPAs and negotiate all required security agreements prior to data release. The dates for RRC review cycles are as follows:

Cycle	Application Due Date*
Winter Cycle	No later than February 15
Spring Cycle	No later than May 15
Summer Cycle	No later than August 15
Fall Cycle	No later than November 15

**When the due date falls on a weekend or holiday, it is extended to the next available business day.*

Following the application due date, each RPA is considered on a case-by-case basis to determine if the request is in accordance with federal and state laws. The RRC begins the review process by examining the scientific merit and feasibility of the study as proposed by the researcher(s). During this review period, the RRC may contact the researcher for additional details regarding their RPA. Once all committee members have reviewed the proposal, the RRC drafts a *Recommendation Memorandum* for each received RPA. The recommendation memorandum includes: (1) an overview of the proposed project, (2) any special considerations specific to the project (usually related to privacy or level of effort), (3) a summary of the anticipated benefits of participating in the study, (4) the anticipated level of effort on the part of local school systems, schools, and the WVDE if the study were to commence, and (5) a recommendation on whether or not to participate in the study.

The recommendations are then shared with the WVDE Data Governance Committee for review and comment. Once the comments of the Data Governance Committee have been incorporated, the recommendation memoranda are sent to the Human Protections Program Administrator and the Deputy Superintendent of Schools for final approval.

For any proposals that are rejected, the process is terminated. Researchers are notified of their right to resubmit via a letter which explains the reasons for their study's rejection. For all approved RPAs, the RRC then works with the researcher and the WVDE Office of Legal Services to draft a comprehensive *Data Disclosure Agreement* (DDA) (See Appendix E). This document embodies the security components enumerated previously and includes 11 major sections, as follows:

- 1) Data Provided
- 2) Information Subject to the Agreement
- 3) Individuals Who May Have Access to Target Data
- 4) Limitations on Disclosure
- 5) Procedural Requirements
- 6) Security Requirements
- 7) Termination of the Agreement
- 8) Miscellaneous Provisions
- 9) Signature Page
- 10) Research Proposal Application (see above)
- 11) Acknowledgement of Confidentiality Requirements

The DDA is a legally binding document that authorizes the researcher, as an agent of the WVDE, to conduct research on its behalf. The DDA details the researcher's responsibilities with respect to protecting the privacy of the students or staff whose information are being provided as part of the study. This document also includes a signed Acknowledgement of Confidentiality Requirements for all individuals who will have access to the data provided. This document is an assurance from the researcher that they (1) cannot use, reveal, or in any other manner disclose any personally-identifiable information furnished, acquired, retrieved, derived, or assembled by themselves or others for any purpose other than those purposes specified in the RPA for the research project and (2) must comply with FERPA and [*State Board Policy 4350*](#).

A staff attorney is involved in the development all DDAs to ensure legal requirements are met. If during the DDA development process, the WVDE and the researcher cannot come to agreement on critical aspects of the agreement, the project is terminated and does not commence. No data are released until the DDA has been signed by the researcher and all applicable parties at the WVDE. The researcher must sign the DDA first. It is also important to note that the release of student data to researchers outside the agency is considered a loan of data (i.e., the recipients do not have ownership of the data). Researchers are required to validate destruction of the data through the submission of the Data Destruction Assurance (See Appendix F) Form once the research is completed as part of their signed agreements. The end date for the project is indicated in the approved RPA. The Assistant Director in the WVDE Office of Research maintains a copy of all RPAs, DDAs, and associated materials for each external research project. To see the typical steps in the review process of a research request that comes in external to WVDE, please see Figure 1.

Figure 1 Typical steps involved in a research request external to the WVDE

Step	Action	PII Data Request	Non-PII Data Request
1	Researcher requests data for the purposes of research; if research, and if requesting data not publically available, researcher must complete and submit the Research Proposal Application.	✓	✓
2	Research Review Committee is convened at next available submission cycle to consider requests.	✓	✓
3	If there are questions about the study, the RRC requests a meeting with the principal investigator (PI) to discuss the concerns.	✓	✓
4	RRC determines recommendation and writes memo for the WVDE Data Governance Committee (DGC) to consider.	✓	✓
5	The recommendation of the RRC is presented to the WVDE DGC.	✓	✓
6	Based on DGC suggestions, the RRC makes revisions to the memo (if necessary) and sends the memo to the Human Protections Program Administrator and Deputy Superintendent for approval.	✓	✓
7	RRC sends memo notifying PI of study approval status.	✓	✓
8	RRC and PI Develop Data Disclosure Agreement and any other necessary documents (like an MOU if another agency is involved) with the WVDE Office of Legal Services.	✓	
9	PI has initial consultation with the Office of Data Management and Analysis (DMA) and an RRC member.	✓	✓
10	DMA and other applicable offices develop an internal project plan and data fulfillment plan including good faith estimate for data fulfillment cost (where applicable).	✓	✓
11	Payment is received based upon 50% of Good Faith Estimate, if applicable.	✓	✓

Step	Action	PII Data Request	Non-PII Data Request
12	DMA Fulfills the data request in the manner specified in the internal project plan.	✓	✓
13	Data are securely transferred to the researcher.	✓	
14	Payment is received for remaining costs, if applicable.	✓	✓
15	WVDE reviews publications from the researcher prior to dissemination.	✓	✓
16	Data are destroyed at conclusion of project under WVDE Supervision; Data Destruction Assurance Form is completed by the Researcher and submitted to the WVDE for verification.	✓	
17	If the research report is publically available, researcher provides a link for archival on RRC Website.	✓	✓

This process is necessary to

- ensure adherence to FERPA and the protection of student data.
- enter into binding agreements with researchers (and other agencies, if necessary) to ensure the protection of privacy and data.
- ensure that all parties involved are proceeding appropriately as data sharing is a serious and sensitive matter.

DESTRUCTION OF DATA

Under WVDE supervision, the Researchers shall destroy the target data including all copies, whether electronic or paper, when the research described in the Research Proposal Application concludes, or the Data Disclosure Agreement terminates, whichever occurs first. The Researcher must complete the Data Destruction Assurance Form (see Appendix F), and submit it to the WVDE for archival.

THE USE OF DATA FOR INTERNAL WVDE RESEARCH

The WVDE routinely uses data from the state longitudinal data system and additional information collected from individuals via surveys or other methods to conduct ongoing program evaluation and research. This work is conducted by trained staff in the *Office of Research*². The mission of the Office is to provide scientifically rigorous, independent, and objective research and program evaluation services to the WVBE and the offices that make up the WVDE. In so doing, the office works to assist policy makers and program staff in using data during program planning, implementation, and decision-making phases to maximize effectiveness. The Office operates as an independent agency within the Division of Teaching and Learning, and serves as a clearinghouse for all WVDE internal, external, and joint research and evaluation projects.

HUMAN RESEARCH PROTECTIONS PROGRAM, FEDERALWIDE ASSURANCE AND INSTITUTIONAL REVIEW BOARD

In 2011 the WVDE formally established a comprehensive Human Protections Program (HPP) that governs internal research activities. The purpose of the HPP is to protect the confidentiality of individuals who participate in or who are the subject of internally conducted program evaluation or research studies. As part of the HPP, the WVDE has pledged to comply fully with the United States Department of Health and Human Services' (HHS) Regulations for the Protection of Human Subjects as specified in Title 45 Code of Federal Regulations Part 46, *Subpart A ("The Common Rule") and Subparts B - D*³. The WVDE also pledged to comply with the United States Department of Education's Regulations which are codified in *Title 34 CFR Part 97*⁴.

As part of the HPP, the WVDE was required to make an institutional *federalwide assurance*⁵ (FWA00018898). The FWA is a promise that all WVDE staff who engage in research activities involving human participants will adhere to the aforementioned regulations for protecting the confidentiality and rights of those individuals. Among many other critical actions, the FWA required that the WVDE designate an *Institutional Review Board*⁶ (IRB: IORG0007370.)—a diverse group of members that are tasked with ensuring all research activities conducted by the WVDE or its employees adhere to the regulations.

² WVDE Office of Research: <http://wvde.state.wv.us/research/>

³ Title 45 CFR Part 46: <http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html>

⁴ Title 34 CFR Part 97: <http://www2.ed.gov/about/offices/list/ocfo/humansub.html>

⁵ FWA Terms: <http://www.hhs.gov/ohrp/assurances/assurances/filasurt.html>

⁶ WVDE IRB: <http://wvde.state.wv.us/research/IRB/>

The regulations include a detailed list of requirements to which the WVDE IRB must adhere. Detailed among these requirements is the composition of the IRB. The WVDE's IRB must comprise a diverse group of subject-matter experts who are well versed in social science research and who are trained in human subjects protection. Specifically, the *IRB committee* must include⁷:

- At least five members, with varying backgrounds sufficient to promote complete and adequate review of research activities commonly conducted by the organization;
- Both men and women;
- Members representing more than one profession;
- At least one member whose primary concerns are nonscientific;
- At least one member whose primary concerns are scientific;
- One member who is not otherwise affiliated with the institution and who is not part of the immediate family of any person who is affiliated with the institution, and;
- The executive director of the Office of Research or his or her designee, who serves in a nonvoting ex officio capacity.

RESPONSIBILITIES OF THE WVDE IRB

Broadly, the WVDE IRB is responsible for the following activities:

- Reviewing and either approving, exempting, requiring modifications to, or disapproving *all research activities involving human subjects* that are to be conducted by WVDE employees;
- Conducting continuing reviews of ongoing projects at least annually, but sometimes more frequently, commensurate with the degree of risk to human subjects that is posed by the project;
- Reviewing and approving all requested modifications to ongoing research activities prior to the incorporation of these modifications by investigators;
- Requiring informed consent as part of the proposed research activities;
- Requiring or waiving the documentation of informed consent or the entire informed consent process in rare cases when it is appropriate
- Notifying investigators and the institution in writing of its decisions to either approve or disapprove proposed research activities and/or informing investigators of the modifications necessary to secure approval (If a research activity is disapproved, the IRB must provide written notification to the investigators that includes the reason(s) for the disapproval, and then allow the investigator to reply in person or in writing.);
- Monitoring and requiring additional safeguards when vulnerable populations (i.e., minors, mentally incompetent individuals, prisoners, economically disadvantaged individuals, or pregnant females) are included in research activities;
- With the exception of expedited and exempt reviews, reviewing all proposed research activities at convened meetings of the IRB;
- Approving research at convened meetings only with a majority of IRB members votes (a quorum);

⁷ WVDE IRB Membership: <http://wvde.state.wv.us/research/IRB/MEMBERS.html>

- Reporting to the WVDE's Human Protections Program administrator and to the Office of Human Research Protection (OHRP) any continuing or serious matters of noncompliance by investigators with the requirements and determinations by the IRB; and
- Suspending or terminating approval of research that is not in compliance with the IRB's determinations or has been associated with unexpected harm to subjects.

A comprehensive overview of the WVDE IRB's membership, responsibilities, activities, and requirements can be found in the [WVDE IRB Manual](#)⁸.

WHAT WORK IS SUBJECT TO IRB REVIEW?

All WVDE staff (both full- and part-time) who involve *human subjects* or use identifiable private information about human subjects to conduct *research* within the course of their job responsibilities must complete the necessary [education requirements](#)⁹ to work with this information. Furthermore, these staff must secure approval for their research projects from the WVDE IRB before initiating the work. Projects that involve research and human subjects must be reviewed and approved regardless of funding source (federal, state, or other).

In congruence with the regulations, the WVDE defines the term *research* as any systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of the Health and Human Subjects (HHS) regulations, whether they are conducted or supported under a program that is considered research for other purposes. The WVDE defines the term *human subject* as a living individual about whom an investigator (whether professional or student) conducting research obtains (a) data through intervention or interaction with the individual or (b) identifiable private information. Information about what types of projects are subject to IRB review can be found on the [WVDE IRB Website](#)¹⁰.

⁸ WVDE IRB Manual: <http://wvde.state.wv.us/research/IRB/PDF/WVDEIRBManual2013.pdf>

⁹ WVDE IRB Education Requirements: <http://wvde.state.wv.us/research/IRB/EDUCATION.html>

¹⁰ Is My Project Subject to IRB Review: <http://wvde.state.wv.us/research/IRB/ISMYPROJECTSUBJECT.html>

TERM DEFINITIONS

The following definitions are derived from these and other related documents.

Access means to view, print, download, copy, or otherwise retrieve data from a computer, computer system, or computer network.

Confidential data means information that would tend, by itself or with other information, to identify particular person(s). Confidential data includes information which is intended for the use of a particular person/group and whose unauthorized disclosure could be prejudicial to the individual it identifies.

Confidentiality refers to an agency's obligation not to disclose or transmit information about individual students to unauthorized parties. Confidentiality consists of the measures used by an authorized agency to protect how personally identifiable information is collected and maintained and when consent by the student or his or her parent/guardian is required to release information.

Data governance is the processes and systems that govern the quality, collection, management, and protection of data to ensure a single source of the truth. The WVDE Data Governance Structure, which supports the development and implementation of data governance, is composed of:

- The Data Policy Committee – WVDE leadership and stakeholders external to WVDE including representatives from WorkForceWV, Birth to Three, Education and the Arts, Higher Education Policy Commission, and the legislature
- The Data Governance Committee – WVDE division and office leads as well as county-level representatives
- The Data Steward Task Teams – WVDE staff members from each office

The WVDE Data Governance structure:

- ensures data security and privacy of student data
- adheres to FERPA, state, WVBE, and WVDE guidelines regarding data privacy and security.

Directory Information, as defined by FERPA, is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, “directory information” includes information such as name, address, telephone listing, participation in officially recognized activities and sports, and dates of attendance. A school may disclose “directory information” to third parties without consent if it has given public notice of the types of information which it has designated as “directory information,” the parent's/guardian's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent/guardian or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as “directory information.” The means of notification could include publication in various sources, including a newsletter, in a local

newspaper, or in the student handbook. The school could also include the “directory information” notification as part of the general notification of rights under FERPA. The school does not have to notify a parent/guardian or eligible student individually. (34 CFR § 99.37.) Directory information does not include a student’s: (1) Social security number; or (2) Student identification (ID) number, except when a student ID number, user ID, or other unique personal identifier is used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

Disclosure means to permit access to, release, transfer, or otherwise communicate personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.

Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents/guardians the right to have access to their children’s education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents/guardians to the student (“eligible student”). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides federal protections for individually identifiable health information held by covered entities and their business associates and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.

Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities.

National School Lunch Program (NSLP) is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946.

Personally identifiable information (PII) includes, but is not limited to: the student's name; the name of the student's parent/guardian or other family member; the address of the student or student's family; a personal identifier, such as the state student identifier; personal characteristics or other information that would make the student's identity easily traceable. A small set of this information is used for assigning identifiers and for identifying students who have transferred from another district within the state or who have returned to the state who already have identifiers.

Privacy refers to an individual's right to freedom from intrusion due to disclosure of information without his or her consent.

Privacy Technical Assistance Center (PTAC), a branch of the U.S. Department of Education, offers technical assistance to State educational agencies, local educational agencies, and institutions of higher education related to the privacy, security, and confidentiality of student records. PTAC was created to respond to the need for clarification for states and other education stakeholders on policy, technical/data security, and legal issues about student privacy. For additional information, FAQs, and other resources, please visit PTAC's website: <http://ptac.ed.gov>.

Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. § 1232h; 34 CFR Part 98) applies to programs that receive funding from the U.S. Department of Education (ED). PPRA is intended to protect the rights of parents/guardians and students in two ways:

- It seeks to ensure that schools and contractors make instructional materials available for inspection by parents/guardians if those materials will be used in connection with an ED-funded survey, analysis, or evaluation in which their children participate; and
- It seeks to ensure that schools and contractors obtain written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation that reveals information concerning:
 - 1) Political affiliations;
 - 2) Mental and psychological problems potentially embarrassing to the student and his/her family;
 - 3) Sex behavior and attitudes;
 - 4) Illegal, anti-social, self-incriminating and demeaning behavior;
 - 5) Critical appraisals of other individuals with whom respondents have close family relationships;
 - 6) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or
 - 7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

West Virginia Department of Education (WVDE) is the state educational agency for which this guidance document applies.

ACRONYM REFERENCES

DDA	Data Disclosure Agreement
DGC	Data Governance Committee
DMA	Data Management Analysis
ED	U.S. Department of Education
ESEA	Elementary and Secondary Education Act
FERPA	Family Educational Rights and Privacy Act
FTP	File Transfer Protocol
HHS	Health and Human Services
HIPAA	Health Insurance Portability and Accountability Act
HPP	Human Protection Program
IDEA	Individuals with Disabilities Education Act
IRB	Institutional Review Board
LEA	Local Education Agency
MOU	Memorandum of Understanding
NSLA	National School Lunch Act
NSLP	National School Lunch Program
OHRP	Office of Human Research Protection
PII	Personal Identifiable Information
PI	Principal Investigator
PTAC	Privacy Technical Assistance Center
PPRA	Protection of Pupil Rights Amendment
RESA	Regional Education Service Agencies
RPA	Research Proposal Application
RRC	Research Review Committee
WVBE	West Virginia Board of Education
WVDE	West Virginia Department of Education
WVEIS	West Virginia Education Information System



APPENDICES

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**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

**SERIES 94
PROCEDURES FOR THE COLLECTION, MAINTENANCE AND
DISCLOSURE OF STUDENT DATA (4350)**

§126-94-1. General.

1.1. Scope. - These procedures are applicable to all education agencies and institutions that are under the general supervision of the West Virginia Board of Education.

1.2. Authority. - W. Va. Constitution, Article XII, Section 2, W. Va. Code §18-2-5, 20 U.S.C. §1232g; 34 CFR Part 99, the Family Educational Rights and Privacy Act (as amended), Public Law 108-446, the Individuals with Disabilities Education Act of 2004 (hereinafter IDEA), Public Law 107-110, the No Child Left Behind Act of 2001, Public Law 107-107, the National Defense Authorization Act for the Fiscal Year 2002, and their respective regulations.

1.3. Filing Date. - October 10, 2013.

1.4. Effective Date. - November 12, 2013.

1.5. Repeal of Former Rule. - This procedural rule amends W. Va. 126CSR94, West Virginia Board of Education Policy 4350, "Procedures for the Collection, Maintenance and Disclosure of Student Data", filed August 12, 2010 and effective September 13, 2010.

§126-94-2. Purpose.

2.1. The purpose of these procedures is to set forth the conditions governing the protection of privacy and access of parents and students as it relates to the collection, maintenance, disclosure and destruction of education records by agencies and institutions under the general supervision of the West Virginia Board of Education.

§126-94-3. Definitions.

3.1. As used in these procedures:

3.1.a. "Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and having homebound instruction, and (b) the period during which a person is working under a work-study program.

3.1.b. "Consent" means that (a) the parent has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; (b) the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent.

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3.1.c. "Destruction" means physical destruction or removal of personal identifiers so that the information is no longer personally identifiable.

3.1.d. "Directory information" includes a student's name, address, telephone listing, email address, photograph, date, and place of birth, major field of study, dates of attendance, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

3.1.e. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

3.1.f. "Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

3.1.g. "Educational institution" or "educational agency or institution" means any public or private agency or institution under the general supervision of the West Virginia Board of Education.

3.1.h. "Education records" means those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution. The term does not include:

3.1.h.1. 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 individual except a temporary substitute.

3.1.h.2. Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 126-94-7.

3.1.h.3. Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business; relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. However, records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and are not excepted.

3.1.h.4. Records relating to an eligible student that are:

3.1.h.4.A. Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or assisting in a paraprofessional capacity;

3.1.h.4.B. Created, maintained, or used only in connection with the provision of treatment to the student; and

3.1.h.4.C. Disclosed only to individuals providing the treatment (provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice). For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction at the educational agency or institution.

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3.1.h.5. Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. (An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni).

3.1.i. "Eligible student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

3.1.j. "Exceptional student" means a student having been determined to have an exceptionality in accordance with eligibility criteria under W. Va. 126CSR16, West Virginia Board of Education Policy 2419, "*Regulations for the Education of Students with Exceptionalities*," (hereinafter, Policy 2419) who receives services under an Individualized Education Program (IEP).

3.1.k. "Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

3.1.l. "Institution of post-secondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under state law.

3.1.m. "Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.

3.1.n. "Party" means an individual, agency, institution or organization.

3.1.o. "Personally identifiable" means that the data or information includes, but is not limited to, (a) the name of a student, the student's parent, or other family member, (b) the address of the student or student's family, (c) a personal identifier such as the student's social security number, or student number, (d) a list of personal characteristics that would make the student's identity easily traceable, or (e) other information that would make the student's identity easily traceable.

3.1.p. "Record" means any information or data recorded in any medium including, but not limited to: handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

3.1.q. "Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the U.S. Department of Education acting for the Secretary under a delegation of authority.

3.1.r. "Student" includes any individual who is or has been in attendance at an educational agency or institution, and regarding whom the educational agency or institution collects, maintains, or discloses educational records.

§126-94-4. Parent Rights.

4.1. An educational agency or institution shall give full rights to either parent unless the agency or institution 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 those rights.

§126-94-5. Student Rights.

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5.1. For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parents transfer to the student.

5.2. This policy does not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

5.3. If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

§126-94-6. Annual Notification of Rights.

6.1. Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under this policy.

6.2. The notice must inform parents or eligible students that they have the right to:

6.2.a. Inspect and review the student's education records;

6.2.b. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

6.2.c. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that Section 126-94-16 authorizes disclosure without consent; and

6.2.d. File with the U.S. Department of Education a complaint as described in Section 126-94-27 concerning alleged failures by the educational agency or institution to comply with the requirements of this policy.

6.3. The notice must include all of the following:

6.3.a. The procedure for exercising the right to inspect and review education records;

6.3.b. The procedure for requesting amendment of records under Section 126-94-12;

6.3.c. A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;

6.3.d. Types of information designated as directory information and procedures in Section 126-94-23 for refusing to allow information to be so designated; and

6.3.e. The procedure for disclosure of education records without consent to officials of another school district in which the student seeks to enroll.

6.4. An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.

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6.4.a. An educational agency or institution shall effectively notify parents or eligible students who are disabled.

6.4.b. An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

6.5. Parents of exceptional students, and eligible students who are exceptional, shall receive notice of rights under IDEA, included in the procedural safeguards notice.

§126-94-7. Law Enforcement Units.

7.1. Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:

7.1.a. Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

7.1.b. Maintain the physical security and safety of the agency or institution.

7.2. A component of an education agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

7.3. Records of a law enforcement unit means those records, files, documents, and other materials that are:

7.3.a. Created by a law enforcement unit;

7.3.b. Created for a law enforcement purpose; and

7.3.c. Maintained by the law enforcement unit.

7.4. Records of a law enforcement unit does not mean:

7.4.a. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

7.4.b. Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

7.5. Nothing in this policy prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.

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7.5.a. Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to this policy including the disclosure provisions of Section 126-94-15 while in the possession of the law enforcement unit.

7.5.b. Disclosure by an educational agency or institution of its law enforcement unit records is neither required nor prohibited by this policy.

§126-94-8. Right to Inspect and Review Education Records.

8.1. Each educational agency or institution or state educational agency (hereinafter SEA) and its components shall permit the parent or an eligible student to inspect and review the education records of the student.

8.2. The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

8.3. The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

8.4. When a request is being made regarding records of an exceptional student:

8.4.a. The agency shall comply with Section 126-94-8.2 and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the student, or the provision of free appropriate public education to the student;

8.4.b. The right to inspect and review education records of an exceptional student includes the right to have a representative of the parent inspect and review the records; and

8.4.c. The participating agency shall provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the agency.

8.5. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall:

8.5.a. Provide the parent or eligible student with a copy of the records requested; or

8.5.b. Make other arrangements for the parent or eligible student to inspect and review the requested records.

8.6. The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

8.7. While an educational agency or institution is not required to give an eligible student access to treatment records as defined in Section 126-94-3.1.h.4., the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

§126-94-9. Fees.

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9.1. An educational agency or institution may charge a fee for copies of educational records, which are made for the parent or eligible student, provided that the fee does not effectively prevent the parent and/or eligible student from exercising the right to inspect and review those records.

9.2. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

§126-94-10. Limitations on Right to Inspect and Review Education Records.

10.1. If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information about that student.

10.2. A post-secondary institution does not have to permit a student to inspect and review education records that are:

10.2.a. Financial records, including any information those records contain, of his or her parents;

10.2.b. Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

10.2.c. Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if the student has waived his or her right to inspect and review these letters and statements and the letters and statements are related to the student's admission to an educational institution, application for employment or receipt of an honor or honorary recognition. Provided that a waiver is valid only if:

10.2.c.1. The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

10.2.c.2. The waiver is made in writing and signed by the student, regardless of age.

10.2.d. If a student has waived his or her rights under this section, the educational institution shall:

10.2.d.1. Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

10.2.d.2. Use the letters and statements of recommendation only for the purpose for which they were intended.

10.2.e. A waiver under this section may be revoked in writing with respect to any actions occurring after the revocation.

§126-94-11. Maintenance and Destruction of Education Records.

11.1. An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

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11.1.a. The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 126-94-8;

11.1.b. Explanations placed in the education record under Section 126-94-13 shall be maintained as long as the record or the contested portion is maintained;

11.1.c. The record of access required under Section 126-94-18 shall be maintained for as long as the education record to which it pertains is maintained; and

11.1.d. For records collected for exceptional students under Policy 2419: a) the public agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child; b) the information must be destroyed at the request of the parents; c) however, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

11.2. The following guidelines and requirements apply to the length of time and special consideration for maintaining student records:

11.2.a. Directory information may be maintained in perpetuity;

11.2.b. Academic grades and attendance records may be maintained in perpetuity;

11.2.c. Records to verify implementation of federally funded programs and services and to demonstrate compliance with program requirements must be maintained for five years after the activity is completed;

11.2.d. Other personally identifiable data which is no longer needed to provide education services may be destroyed;

11.2.e. Parents and eligible students must be informed through public notice of any timelines established by the educational agency or institution for maintenance and destruction of student records; and

11.2.f. Files must be maintained in a secured location. Electronic files must be protected through the use of individual user identification and/or passwords. When user identification and/or passwords have been established, an individual is permitted to use only his or her designated identification and password to gain access to education records.

§126-94-12. Request to Amend Education Records.

12.1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading or violates the privacy rights of the student may request the educational agency or institution to amend the record.

12.2. The educational agency or institution shall decide whether to amend the educational records of the student in accordance with the request within a reasonable period of time after it receives the request.

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12.3. If the educational agency or institution decides not to amend the record as requested, it shall inform the parent of the student or the eligible student of the refusal and of the right to a hearing under Section 126-94-13.

§126-94-13. Right to a Hearing.

13.1. An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of a student's education records on the grounds that information contained in the education records of the student is inaccurate, misleading or otherwise in violation of the privacy rights of the student.

13.2. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy rights of the student, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

13.3. If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting on the contested information in the record and/or stating why he or she disagrees with the decision of the agency or institution.

13.4. Any explanation placed in the education records of the student under Section 126-94-13.3 shall:

13.4.a. Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution; and

13.4.b. Be disclosed if the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party.

§126-94-14. Conduct of the Hearing.

14.1. The hearing required to be held by Section 126-94-13.1 shall be conducted according to procedures that shall include at least the following elements:

14.1.a. The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request;

14.1.b. The parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

14.1.c. The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

14.1.d. The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under Section 126-94-12, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

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14.1.e. The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

14.1.f. The decision of the educational agency or institution 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.

§126-94-15. Prior Consent for Disclosure Required.

15.1. An educational agency or institution shall obtain written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Section 126-94-16.

15.2. Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

15.3. The written consent required by Section 126-94-15.1 must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

15.3.a. A specification of the records to be disclosed;

15.3.b. The purpose of the disclosure; and

15.3.c. The party or class of parties to whom the disclosure may be made.

15.4. If a parent or eligible student so requests, the educational agency or institution shall provide a copy of the records disclosed.

15.5. If the parent of a student who is not an eligible student so requests, the educational agency or institution shall provide the student with a copy of the records disclosed.

§126-94-16. Prior Consent for Disclosure Not Required.

16.1. An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

16.1.a. To other school officials, including teachers, within the educational agency or institution who have been determined by the agency or institution to have legitimate educational interest; and

16.1.b. To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements of Section 126-94-20.

16.1.c. Subject to the conditions set forth in Section 126-94-21, to authorized representatives of:

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16.1.c.1. The Comptroller General of the United States;

16.1.c.2. The Secretary of the U.S. Department of Education (hereinafter, Secretary); or

16.1.c.3. State and local educational authorities.

16.1.d. In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

16.1.d.1. to determine the eligibility of the student for financial aid;

16.1.d.2. to determine the amount of the financial aid;

16.1.d.3. to determine the conditions which will be imposed regarding the financial aid;
and

16.1.d.4. to enforce the terms or conditions of the financial aid.

16.1.e. To state and local officials or authorities to whom this information is specifically:

16.1.e.1. Allowed to be reported or disclosed pursuant to state statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

16.1.e.2. Allowed to be reported or disclosed pursuant to state statute adopted after November 19, 1974, subject to the requirements of Section 126-94-24.

16.1.f. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of: a) developing, validating or administering predictive tests; b) administering student aid programs; or c) improving instruction; provided, that the studies are conducted in a manner that will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

16.1.g. To accrediting organizations in order to carry out their accrediting functions.

16.1.h. To parents of a dependent student.

16.1.i. To comply with a judicial order or lawfully issued subpoena; provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action; unless the disclosure is in compliance with:

16.1.i.1. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

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16.1.i.2. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

16.1.i.3. A judicial order or subpoena issued in a court proceeding involving child abuse and neglect or dependency matters in which the parent of the student is a party.

16.1.i.4. If the educational agency or institution initiates legal action against a parent or student and has complied with Section 126-94-16.1.i, it may disclose education records that are relevant to the action to the court without a court order or subpoena.

16.1.j. To appropriate parties in health or safety emergency subject to the conditions set forth in Section 126-94-22.

16.1.k. To an agency caseworker or other representative of a state or local child welfare agency who has the right to access a student's case plan when such agency or organization is legally responsible in accordance with state law for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the state laws and regulations applicable to protecting the confidentiality of a student's education records.

16.1.l. The disclosure is information the educational agency or institution has designated as "directory information".

16.1.m. The disclosure is to the parent of a student who is not an eligible student or to the student.

16.1.n. The disclosure is to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. §16, of the results of any disciplinary proceeding conducted by an institution of post-secondary education against the alleged perpetrator of that crime with respect to that crime.

16.2. This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under this section, with the exception that parents of a student who is not an eligible student and the student must have access.

16.3. For records of special education students, each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may access personally identifiable information.

§126-94-17. Disciplinary Information.

17.1. If a student transfers to another school in the state, the principal of the school from which the student transfers shall provide a written record of any disciplinary action taken against the student to the principal of the school to which the student transfers, (W. Va. Code §18A-5-1a) subject to requirements of Section 126-94-20.

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17.2. The educational agency includes in the records of a student with a disability under Policy 2419 a statement of any current or previous disciplinary action that has been taken against the student and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled students.

17.2.a. The statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information related to the safety of the student and other individuals involved with the student.

17.2.b. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action that has been taken against the student.

17.3. A public agency reporting a crime committed by a student with a disability under Policy 2419 shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime, but only to the extent permitted by this policy's provisions regarding disclosure of education records.

§126-94-18. Record of Disclosure Required to be Maintained.

18.1. An educational agency or institution shall for each request for access to and each disclosure of personally identifiable information from the education records of a student maintain a record kept with the education records of the student that indicates:

18.1.a. The parties who have requested or obtained personally identifiable information from the education records of the student;

18.1.b. The date access was given; and

18.1.c. The legitimate interest these parties had in requesting or obtaining the information.

18.2. If an educational agency or institution discloses information with the understanding that the party receiving the information may make further disclosures, the record of disclosure must include the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and the legitimate educational interests each of the additional parties has in requesting the information.

18.3. Section 126-94-18.1 does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials, or to disclosures of directory information, or to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

18.4. The record of disclosures may be inspected:

18.4.a. By the parent of the student or the eligible student;

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18.4.b. By the school official and his or her assistants who are responsible for the custody of the records; and

18.4.c. For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in Section 126-94-16.1.a. and Section 126-94-16.1.c.

§126-94-19. Limitation on Redisclosure.

19.1. An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that:

19.1.a. The personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

19.1.b. An educational agency or institution may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if the parties meet the requirements of Section 126-94-16 and required records of disclosure under Section 126-94-18.

19.2. Section 126-94-19.1 does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas, to disclosures of directory information or to disclosures to a parent or student. Except for these disclosures, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

19.3. If the Family Policy Compliance Office determines that a third party improperly rediscloses personally identifiable information from education records, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

§126-94-20. Conditions for Disclosure to Officials of Other Schools and School Systems.

20.1. An educational agency or institution transferring the education records of a student to officials of another school, school system or institution of post-secondary education where the student seeks to enroll shall:

20.1.a. Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, unless:

20.1.a.1. The transfer of records is initiated by the parent or eligible student at the sending agency or institution, or

20.1.a.2. The agency or institution includes in its annual notice that it forwards education records on request to other agencies or institutions in which a student seeks or intends to enroll;

20.1.b. Provide the parent of the student or the eligible student, upon request, a copy of the record that was transferred; and

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20.1.c. Provide the parent of the student or the eligible student, upon request, an opportunity for a hearing under these procedures.

20.2. If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of Section 126-94-20.1.

§126-94-21. Disclosure to Certain Federal and State Officials for Federal Program Purposes.

21.1. The Comptroller General, Secretary or state and local educational authorities may have access to education records in connection with the audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to these programs.

21.2. Except when written consent of the parent of a student or an eligible student has been obtained for disclosure, or when the collection of personally identifiable information is specifically authorized by federal or state law, any information collected under Section 126-94-21.1 shall be protected in a manner that does not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

§126-94-22. Conditions for Disclosure in Health and Safety Emergencies.

22.1. An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

22.2. The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

22.2.a. The seriousness of the threat to the health or safety of the student or other individuals;

22.2.b. The need for the information to meet the emergency;

22.2.c. Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

22.2.d. The extent to which time is of the essence in dealing with the emergency.

22.3. Nothing in this policy shall prevent an educational agency or institution from:

22.3.a. Including in the educational records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

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22.3.b. Disclosing appropriate information maintained under Section 126-94-22.3.a. to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

22.3.c. Disclosing appropriate information maintained under Section 126-94-22.3.a. to teachers and school officials in other schools who have been determined to have legitimate educational interests in behavior of the student.

22.4. Sections 126-94-22.1 and 126-94-22.3 shall be strictly construed.

§126-94-23. Conditions for Disclosure of Directory Information.

23.1. An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if it has given notice that information has been designated as directory information.

23.2. An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under Section 126-94-23.3.

23.3. In order to designate directory information, an educational agency or institution shall give public notice of the following:

23.3.a. The categories of personally identifiable information the institution has designated as directory information;

23.3.b. The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information, including the right of the parent to refuse to permit the designation of names, addresses, and telephone listings of their children as directory information for purposes of providing the information to military recruiters as set forth in Section 126-94-30; and

23.3.c. The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

23.4. All county boards of education shall, at a minimum, establish that the names, addresses, and telephone listings of secondary school students are designated as directory information for the purposes of providing the information to military recruiters as set forth in Section 126-94-30. Further all county boards of education shall, at a minimum, establish that a student's name, address, grade level, date of birth, and photograph be designated and maintained as directory information for each student.

23.5. Once the county board of education establishes directory information, it shall provide access to established directory information to any person or group which makes students aware of educational, occupational, and career opportunities available in the armed services.

23.6. The county board of education may provide access to established directory information to other persons or groups as determined by board action.

§126-94-24. Juvenile Justice System.

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24.1. If reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Section 126-94-16.1.e.

24.2. The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the student.

§126-94-25. Safeguards for Exceptional Students, Information Collected under Policy 2419.

25.1. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

25.2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information collected under Policy 2419 and IDEA.

25.3. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under this policy and Policy 2419.

25.4. Each participating agency shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information of identified special education students.

25.5. A complaint may be filed with the West Virginia Department of Education, Office of Special Programs, if it is alleged that the confidentiality of personally identifiable information regarding an exceptional student in accordance with the requirements of this policy and Policy 2419 has been violated. This is in addition to the right to file a complaint with the U.S. Department of Education, as described in Section 126-94-26.

§126-94-26. Enforcement Authority.

26.1. For the purpose of this ~~part~~ section, "Office" means the Family Policy Compliance Office, U.S. Department of Education. The Secretary designates the Office to:

26.1.a. Investigate, process, and review complaints and violations under the Family Educational Rights and Privacy Act (hereinafter FERPA), and applicable federal regulations, 34 C.F.R. Part 99; and

26.1.b. Provide technical assistance to ensure compliance with FERPA and applicable federal regulations.

26.2. The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under FERPA to enforce it with respect to all applicable programs. 34 CFR § 99.60(c). The term "applicable program" is defined in the General Education Provisions Act, 20 U.S.C. §1221(c).

26.3. If an education agency or institution determines that it cannot comply with FERPA or applicable federal regulations due to a conflict with state or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

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26.4. The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under FERPA and applicable federal regulations.

§126-94-27. Complaint Procedure.

27.1. A parent or eligible student may file a written complaint with the Office regarding an alleged violation under FERPA and applicable federal regulations. The Office's address is, Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5920.

27.2. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA or applicable federal regulations has occurred.

27.3. The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of FERPA or applicable federal regulations.

27.4. A timely complaint is defined as an allegation of a violation of FERPA or applicable federal regulations that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

27.5. The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

27.6. The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint. The notice to the educational agency or institution:

27.6.a. Includes the substance of the alleged violation; and

27.6.b. Asks the agency or institution to submit a written response to the complaint.

27.7. The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Section 126-94-27.2.

27.8. The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

27.9. Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

27.10. If the Office finds that the educational agency or institution has not complied with FERPA or applicable federal regulations, the notice under Section 126-94-27.9:

27.10.a. Includes a statement of the specific steps that the agency or institution must take to comply; and

27.10.b. Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

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§126-94-28. Enforcement Procedures.

28.1. If the educational agency or institution does not comply during the period of time set under Section 126-94-27.10.b., the Secretary may, in accordance with the General Education Provisions Act, 20 U.S.C. § 1234:

28.1.a. Withhold further payments under any applicable program;

28.1.b. Issue a complaint to compel compliance through a cease and desist order; or

28.1.c. Terminate eligibility to receive funding under any applicable program.

28.2. If, after an investigation, the Secretary finds that an educational agency or institution has complied voluntarily with FERPA or applicable federal regulations, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

§126-94-29. Collection and Use of Student Social Security Numbers.

29.1. A social security number is personally identifiable information and, therefore, its use must comply with the provisions of this policy, FERPA and W. Va. Code §18-2-5f.

29.1.a. No public or private elementary or secondary school shall display any student's social security number for identification purposes on class rosters or other lists provided to teachers, on student identification cards, in student directories or other listings, on public postings or listings of grades, or for any other public identification purpose unless specifically authorized or required by law.

29.1.a.1. Compliance will be required of Exemption B schools for county board of education approval, W. Va. Code § 18-8-1(b).

29.1.b. The student social security number may be used for internal record keeping purposes or studies.

29.1.c. The student social security number or alternative number is required for enrollment or attendance in public schools.

29.1.c.1. Effective July 1, 2003, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is currently enrolled in the county school system.

29.1.c.2. Effective July 1, 2003, prior to admittance to a public school in the state, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is to be enrolled.

29.1.c.3. The county board of education must inform the parent, guardian, or other responsible person that, if he or she declines to provide the student social security number, the county board of education will assign the student an alternate nine digit number as designated by the West Virginia Board of Education.

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29.1.d. For any student who is attending a public school and for whom a social security number has not been provided, the county board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.

§126-94-30. Release of List of High School Students to Military Recruiters.

30.1. Pursuant to federal law, 20 U.S.C. § 7908, and 10 U.S.C. § 503, all county boards of education are required to provide military recruiters, upon request, with the names addresses and telephone listings of secondary school students unless the parents/guardians have advised the county board of education that they do not want their students' information disclosed without prior written consent as set forth in Section 126-94-23.

30.2. Each county board of education shall provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.

§126-94-31. Severability.

31.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.



*James B. Phares, Ed.D., State Superintendent of Schools
1900 Kanawha Boulevard, East, Building 6
Charleston, WV 25305*

<http://wvde.state.wv.us>

Security Agreement to Access Data

By submitting this form, you agree to treat all data in accordance with the Freedom of Information Act (FOIA), the Privacy Act, the Family Educational Rights and Privacy Act (FERPA), and the WVDE Data Access and Management Guidance. Of particular importance in handling the data is the understanding of statistical cutoffs and restricted access. Every effort must be made to protect the identity of individual students.

Furthermore, you agree to observe the appropriate levels of disclosure when entering, transferring, storing, manipulating, transforming, analyzing, viewing, or otherwise working with these data. You further agree to use considerable care when engaging in the following types of activities that could lead to the disclosure of personally identifiable information:

- discussing, publishing, or otherwise disseminating information gathered or reviewed;
- transferring data or allowing data to be transferred from the WVEIS;
- unsecurely disposing of printed information (which must be avoided).

Justification:

This section should explain why this user needs access to the data specified in the application. Please be specific when describing the user's job and responsibilities, which data he/she will be using, and how the data will be used.

Sample Justification:

For Level 1a Access: "Access is needed to view and provide technical assistance to schools/counties for the Physical Education Data Collection."

Data Access Levels

Level 1: (primarily Data Management and Analysis staff members): System administration rights

Level 1a: View access to named components of WVEIS on the Web (WOW)



James B. Phares, Ed.D., State Superintendent of Schools
1900 Kanawha Boulevard, East, Building 6
Charleston, WV 25305

<http://wvde.state.wv.us>

Security Agreement to Access Data

Please type or print clearly; otherwise, the processing of your form may be delayed. You will receive an email when your form has been processed.

Step 1. For the authorized individual: Enter your name, the details of the access being requested, the justification for your access, and your signature. By signing this security agreement, you agree to observe this level of data security when utilizing WVEIS, WOW, or ZoomWV and their data sets, and further agree to appropriately utilize the data in the strictest of confidence. Sharing of any personally identifiable information with unauthorized parties constitutes an illegal act and is subject to penalties imposed under FERPA. By signing this agreement, you accept the WVDE Data Use and Management Guidance.

Name:	Click here to enter text.	WOW ID (if known):	Click here to enter text.
Phone:	Click here to enter text.	Email:	Click here to enter text.
Justification:	Click here to enter text.		
Data Set(s) Requested:	<input type="checkbox"/> Attendance <input type="checkbox"/> Interventions <input type="checkbox"/> ESEA/Accountability <input type="checkbox"/> Achievement <input type="checkbox"/> Growth <input type="checkbox"/> Discipline <input type="checkbox"/> Graduation Cohort <input type="checkbox"/> Physical Education <input type="checkbox"/> Early Warning System/Attendance <input type="checkbox"/> Other: Click here to enter text.	Data Access Level:	<input type="checkbox"/> Level 1 (system admin) <input type="checkbox"/> Level 1a (view access)
Signature		Date	Click here to enter a date.

Step 2. For the office lead/director: I acknowledge and assure that my office/company will adhere to the conditions set forth in this security agreement when working with any data provided by WVDE, and will immediately notify WVDE if and when a breach in security is evident by my agency or a third-party representative. I further authorize the individual in Step 1 to utilize the data in the course of his/her duties and ensure that he/she has read and agreed to the conditions of this data disclosure.

Lead/Director Name:	Click here to enter text.	Office:	
Signature:		Date:	Click here to enter a date.

Step 3. Deliver this original form to Carla Howe, Data Governance Manager, 1900 Kanawha Blvd East, Suite 825, Charleston, WV 25305. Original signatures are required. You do not need to deliver the instructions page. **Please allow 7-10 business days for processing.**

For Official Use Only

Office of Data Management & Analysis			
Executive Director:			
Signature:		Date:	
Office of Legal Services			
Data Governance Manager:			
Signature:		Date:	

WOW ID:

Date Processed:

Data Request Form

Please email the completed form to zoomwv@access.k12.wv.us.

The data you are looking for may already be available on the WVDE website. Please review the data at the following URL prior to submitting this request for data <http://wvde.state.wv.us/data/>. Data will only be provided from Certified Collection Data. See collection calendar at <http://wveis.k12.wv.us/wveis2004/calendar.htm>.

Requestor's Name:	Dept./Company/Institution:
Requestor's Affiliation:	
<input type="checkbox"/> Media <input type="checkbox"/> Researcher <input type="checkbox"/> Policymaker <input type="checkbox"/> Business/Community <input type="checkbox"/> Parent <input type="checkbox"/> Other: _____	
Phone:	Email:
Date Submitted:	
Description of Data Being Requested. (Please use specific field names when known):	
Reason for the Data Request and How Data will be Used. (Please describe and be specific):	
Reporting/Publication Details (Please select any that apply):	
<input type="checkbox"/> This is an informal information request; the information will not result in a report or be shared with the public.	
<input type="checkbox"/> I will generate a report based on these data.	
<input type="checkbox"/> I will publish or share these data with the public.	
School Year(s) for Which Data Are Requested:	
Type of Data (Please select any that apply):	
<input type="checkbox"/> State Level Data <input type="checkbox"/> District Level Data <input type="checkbox"/> School Data <input type="checkbox"/> Teacher/Administrator Data <input type="checkbox"/> Student Level Data*	
<input type="checkbox"/> Other (please describe):	
Special Considerations/Notes Regarding Your Data Request (Optional):	
Note: For Student Level Data Our Minimum n-size = 10. All cells with less than 10 students will be suppressed to protect student privacy.	
If there are costs involved in the fulfillment of your above request for data, the WVDE will provide you with a time/cost estimate prior to moving forward with the data request.	

Please email the completed form to zoomwv@access.k12.wv.us.

*Student data are only available in aggregate and/or de-identified formats. Pursuant to FERPA, no personally-identifiable information will be released to external parties with prior parental consent except when subject to formal Research agreements where all parties are legally bound to the terms of a Data Disclosure Agreement.



Research Proposal Application

The WVDE Office of Research, the Office of Information Systems, and the Office of Legal Services have collaboratively developed a process whereby external researchers may request extant data from the WVDE to conduct research and program evaluation studies germane to public education. All individuals or organizations requesting access to these data must complete this Research Application and submit it to the WVDE Office of Research and Office of Information Systems for review. If the project is approved and the data requested are available, a Data Disclosure Agreement will be developed and must be signed prior to the release of any potentially identifiable student data. Please complete each section of the application fully. If any fields are left blank, the application will not be considered.

Section I. Your Contact Information

Name of Principal Investigator or Requestor:	
Organization (If applicable):	
Phone Number:	
Email Address:	
Address:	
City:	
State:	
Zip Code:	
Today's Date:	

Section II. Background Information About Your Project

1. What is the title of your study?

2. Provide a brief overview of the objectives of your study (please summarize each objective succinctly). If you have hypotheses you will be testing, please list them here.

3. *When do you anticipate beginning and completing your research project?*

Project Start Date:		Project End Date:	
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4. *If your study is externally funded (e.g., foundation, government contract, or grant), please indicate the source(s) and amount(s) of the funding.*

Section III. Purpose of the Proposed Research

1. *Why is the study being conducted?*

2. *What potential benefits will this study have for the WVDE, our local school systems, educators, policy makers, or researchers?*

3. *What are the anticipated benefits of the proposed study to study participants?*

Section IV. Research Questions and Design

1. Please list your research/evaluation questions below.

1	
2	
3	
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10	

2. *Describe the design of the proposed study and the methodology that will be used to address each of the aforementioned research questions. Use enough detail to ensure the WVDE can assess the extent to which your proposed research project will meet the objectives you have provided in Section II of this application. Describe the population to be studied, data collection, analysis, and interpretation procedures to be used. Use as much space as necessary. You may also include attachments if relevant.*

Section V. Data Requested

1. To the best of your ability, please list the data elements you are requesting in order to complete the proposed research project. For each data element, please also list the unit(s) of analysis for your research (e.g., student, school, district, etc.) and the school year(s) for which you are requesting information.

<u>Data Element</u>	<u>Unit(s) of Analysis</u>	<u>School Year(s) for Which Data Are Being Requested</u>

Section VI. Proposed Data Collection Instruments/Protocols

1. If you intend to deploy additional data collection instruments/protocols as part of your research/evaluation project, please list them below including the audience from whom you intend to collect this information. Draft versions of these data collection instruments, if available, must be attached to this application.

Proposed Data Collection Instruments/Protocols			
	Instrument/Protocol	Audience	Notes
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Section VII. Human Subjects Protection

1. How will Institutional Review Board (IRB) approval be addressed in the proposed research/evaluation study? If your project has already been approved by an IRB or if an IRB has designated your project to be “exempt,” please provide evidence of the IRB’s review. If you do not plan to conduct an IRB review, please indicate why this project does not meet the definition of “research.”

2. *Describe training the study investigators/co-investigators have received regarding the protection of human subjects/confidentiality.*

3. *Describe the security procedures that will be utilized to protect the security of the information provided by the WVDE for this project. Who will have access? How will information be stored and for what period of time? When and how will data be destroyed?*

Section VIII. Reporting

1. For each anticipated report, provide the following information.

<u>Report Title</u> (e.g., Year 1 report, Final Report)	<u>Audience</u>	<u>Anticipated Completion Date</u>	<u>Dissemination Plans</u>

Please submit your completed application to:

Cathy Moles
WVDE Office of Research

Building 6, Suite 825
1900 Kanawha Blvd. E.
Charleston, WV 25305-0330
p. 304.558.2546
f. 304.558.1613
cmoles@access.k12.wv.us

FOR WVDE USE ONLY

Proposal No.		
Reviewer Name		
Review Date		
Approval Status	YES	NO
Signature		

DATA DISCLOSURE AGREEMENT

WHEREAS, the West Virginia Department of Education (WVDE) has collected certain data containing confidential personally-identifiable information (PII) that WVDE is mandated by federal and state law to protect their confidentiality;

WHEREAS, the WVDE is willing to make such data available for research and analysis purposes to improve instruction in public elementary and secondary schools, but only if the data are used and protected in accordance with the terms and conditions stated in this Agreement; and

WHEREAS, The **INSERT NAME OF RESEARCH ORGANIZATION(S) HERE** desire to **INSERT PURPOSE OF RESEARCH STUDY HERE** requiring individual student data from the WVDE.

Now therefore, it is agreed that:

The **INSERT NAME OF RESEARCH ORGANIZATION(S) HERE**, hereinafter referred to as the “Researchers” and the WVDE that:

I. DATA PROVIDED

The WVDE will provide the Researchers with the following data:

INSERT COMPREHENSIVE LIST OF REQUESTED DATA ELEMENTS HERE:

If additional data elements are needed and are available, an addendum to this agreement will be drafted without the need to modify it.

II. INFORMATION SUBJECT TO THIS AGREEMENT

- A. All data containing PII collected by or on behalf of the WVDE that are provided to the Researchers and all information derived from those data, and all data resulting from merges, matches, or other uses of the data provided by the WVDE with other data, are subject to this Agreement (referred to herein as the “target data”). The target data under this Agreement may be provided in various forms including but not limited to written or printed documents, computer tapes, diskettes, CD-ROMs, hard copy, or encrypted files.
- B. The Researcher may use the target data only for the purposes stated in the Research Proposal Application which is attached hereto and made a part of this Agreement as though set forth fully therein (marked as Attachment 1), and is subject to the limitations imposed under the provisions of this Agreement, which is intended to and does comply with the Family Education Rights and Privacy Act (FERPA) and its regulations, attached as an Addendum to this Agreement.

III. INDIVIDUALS WHO MAY HAVE ACCESS TO TARGET DATA

The Researchers agree to limit and restrict access to the target data to the following three categories of individuals:

- A. The Project Leader in charge of the day-to-day operations of the research and who are the research liaisons with the WVDE, whose name is set forth in the Research Proposal Application.
- B. The Professional/Technical staff in charge of the research under this Agreement, whose names are listed in the Research Proposal Application.
- C. Support staff including secretaries, typists, computer technicians, etc., but only to the extent necessary to support the research.

IV. LIMITATIONS ON DISCLOSURE

- A. The Researchers shall not use or disclose the target data for any purpose not expressly stated in the Research Proposal Application approved by the WVDE, unless the Researchers have obtained advance written approval from the WVDE.
- B. The Researchers may publish the results, analysis, or other information developed as a result of any research based on the target data made available under this Agreement only in summary or aggregate form, ensuring that no PII is disclosed. The WVDE has established 10 as the minimal cell size that maybe reported or published.

V. PROCEDURAL REQUIREMENTS

- A. The research and analysis conducted under this Agreement shall be limited to, and consistent with, the purposes stated in the Research Proposal Application.
- B. Notice of and training on confidentiality and nondisclosure.
 - 1. The Researchers shall notify and train each of its employees who will have access to the target data of the strict confidentiality of such data, and shall require each of those employees to execute an Acknowledgement of Confidentiality Requirements.
 - 2. The Researchers shall maintain each executed Acknowledgement of Confidentiality Requirements at its facility and shall allow inspection of the same by the WVDE upon request.
 - 3. The Researchers shall promptly notify the WVDE in writing when the access to the target data by any individual is terminated, giving the date of the termination and the reason for the termination.
- C. Publications made available to the WVDE.
 - 1. Copies of each proposed publication or document containing or based upon the target data shall be provided to the WVDE at least ## days before the publication or document

is finalized. WVDE shall promptly advise the Researchers whether the proposed publication or document discloses target data in a manner that violates this Agreement.

If the issue cannot be resolved informally between the parties, the WVDE will initiate the termination provisions contained in Section VII, B.

The Researchers shall provide the WVDE a copy of each publication containing information based on the target data or other data product based on the target data made available through the WVDE.

- D. The Researchers shall immediately notify the WVDE in writing upon receipt of any request or demand for disclosure of the target data from an individual or entity not authorized by this Agreement.
- E. The Researchers shall immediately notify the WVDE in writing upon discovering any breach or suspected breach of security or of any disclosure of the target data to any unauthorized individual or entity.

VI. SECURITY REQUIREMENTS

A. Maintenance of, and access to, the target data.

- 1. The Researchers shall retain the original version of the target data at a single location and shall not make a copy or extract of the target data available to anyone except individuals specified in paragraph III above.
- 2. The Researchers shall maintain the target data, (whether maintained on a mainframe facility, central server, personal computer, print, or any other medium) in an area that has limited access to authorized personnel only. The Researchers shall not permit removal of any target data from the limited access area. Only those individuals who have executed an Acknowledgment of Confidentiality Requirements shall be admitted to the storage area.
- 3. The Researchers shall ensure that access to the target data maintained in computer files or databases is controlled by password protection. The Researchers shall maintain all printouts, diskettes, or other physical products containing individually-identifiable information derived from target data in locked cabinets, file drawers, or other secure locations when not in use.
- 4. The Researchers shall ensure that all printouts, tabulations, and reports are edited for any possible disclosure of personally-identifiable target data and that cell sizes are 10 or more.
- 5. The Researchers shall establish procedures to ensure that the target data cannot be extracted from a computer file or database by unauthorized individuals.

B. Retention of target data.

1. Under WVDE supervision, the Researchers shall destroy the target data including all copies, whether electronic or paper, when the research that is the target of this Agreement has been completed or this Agreement terminates, whichever occurs first.

VII. TERMINATION OF THIS AGREEMENT

- A. This Agreement shall terminate at the time stated in the Research Proposal Application. The Agreement, however, may be extended by written agreement of the parties.
- B. Any violation of the terms and conditions of this Agreement may result in the immediate revocation of this Agreement by the WVDE.
 1. The WVDE may initiate revocation of this Agreement by written notice to the Researchers.
 2. Upon receipt of the written notice of revocation, the Researchers shall immediately cease all research activity related to the Agreement until the issue is resolved. The Researchers will have 3 business days to submit a written Response to the WVDE, indicating why this Agreement should not be revoked.
 3. WVDE shall decide whether to revoke this Agreement based on all the information available to it. WVDE shall provide written notice of its decision to the Researchers within 10 business days after receipt of the Response. These timeframes may be extended for good cause.
 4. If revocation is based upon the Researchers' improper handling of PII from the target data or improper proposed publication of target data containing PII that the parties have been unable to resolve, the Researchers agree to return the data and not publish or disseminate the proposed article or other document.
 5. If the Researchers publish target data in an article or other document without first submitting to the WVDE for review and the article or other document contains PII, the WVDE reserve the right, in addition to terminating this Agreement, to seek legal redress.

VIII. MISCELLANEOUS PROVISIONS

- A. Attached to this Agreement and incorporated herein are:
 1. FERPA, 20 U.S.C. § 1232g
 2. 34 CFR § 99.31
 3. 126CSR94, State Board Policy 4350, "Procedures for the Collection, Maintenance and Disclosure of Student Data"
 4. Research Proposal Application

IX. SIGNATURE PAGE

By signing below, the official of the Research Organization certifies that he or she has the authority to bind the Research Organization to the terms of this Agreement and that the Research Organization has the capability to undertake the commitments in this Agreement.

1. Location at which the target data will be maintained and analyzed.	
2. Signature of the Official of the Research Organization	3. Date
4. Type/Print Name of Official	5. email
6. Title	7. Telephone
8. Mailing Address	
9. Signature of the Principal Research Analyst	10. Date
11. Type/Print Name of Principal Research Analyst	12. email
13. Title	14. Telephone
15. Mailing Address	
16. Signature of WVDE Office of Information Systems Representative	17. Date
18. Type/Print Name of WVDE Office of Information Systems Representative	19. email
Randall Kirk	rnkirk@access.k12.wv.us
20. Title	21. Telephone
Assistant Director	304.558.8869
22. Mailing Address	
Building 6, Suite 825, 1900 Kanawha Blvd, E. Charleston, WV 25305-0330	
23. Signature of WVDE Office of Research Representative	24. Date
25. Type/Print Name of WVDE Office of Research Representative	26. email
Nate Hixson	nhixson@access.k12.wv.us
27. Title	28. Telephone
Assistant Director	304.558.2546
29. Mailing Address	
Building 6, Suite 825, 1900 Kanawha Blvd, E. Charleston, WV 25305-0330	
30. Signature of WVDE Office of Legal Services Representative	31. Date
32. Type/Print Name of WVDE Office of Research Representative	33. email
Sherri Goodman	sgoodman@access.k12.wv.us
34. Title	35. Telephone
General Counsel	304.558.3667
36. Mailing Address	
Building 6, Room 362, 1900 Kanawha Blvd, E. Charleston, WV 25305-0330	

X. RESEARCH PROPOSAL APPLICATION

Title of Proposed Research Project:	
Research Organization Name(s):	
Address:	
Name of Primary Researcher:	
Title:	
Phone:	E-mail:

Attach a description of the research to be performed, including the research question(s) to be addressed and potential improvements or benefits to West Virginia education of answering the questions; the organization sponsoring the research; research timeline; the specific data variables that will be requested from the West Virginia Department of Education (WVDE); other data that will be collected for the research and from whom; how the data will be used and analyzed;¹ how the analysis will be reported and to whom; the names and titles of the professional and support staff who will conduct the research and analysis;² the estimated time the data from WVDE will be needed; and the desired medium of data release from WVDE (e.g., CD). Also, provide a detailed description of how the data will be kept secure, including computer security, physical handling and storage of data, and transportation of data and the secure destruction of the data.

Fax to: 304.558.1613, Attn: WVDE Office of Research (Include the Acknowledgment of Confidentiality Requirements page below and research staff vitae) **or mail to:**

West Virginia Department of Education
Office of Research
Building 6, Suite 825
1900 Kanawha Blvd, East
Charleston, WV 25305-0330

¹ Data must only be used for purposes associated with the data collection and analysis specified in this research proposal.

² Attach research staff vitae.

XI. ACKNOWLEDGMENT OF CONFIDENTIALITY REQUIREMENTS

I, _____
 hereby acknowledge that I may be given access to confidential, personally-identifiable information as part of this West Virginia Department of Education (WVDE) supported Research Project and I hereby acknowledge that I:

1. Cannot use, reveal, or in any other manner disclose any personally-identifiable information furnished, acquired, retrieved, derived, or assembled by me or others for any purpose other than those purposes specified in the Research Proposal Application for this Research Project; and
2. Must comply with Federal Education Rights and Privacy Act (FERPA) [20 U.S.C 1232g; 34 C.F.R. Part 99] and 126 CSR94, State Board Policy 4350.

I also pledge to adhere to all data security guidelines applicable to this Research Project. I understand that I am subject to disciplinary action by my employer or civil penalties for disclosing this information to any unauthorized individual or entity.

Signature: _____

Printed Name: _____

Title: _____

Organization: _____

Date: _____

Research Project: _____

For information about these forms, please call 304.558.2546.

Fax to: 304.558.1613, Attn: WVDE Office of Research (along with the Research Proposal Application, description of the research for which Personally-Identifiable Student Information is requested, and research staff vitae) **or mail to:**

West Virginia Department of Education
 Office of Research
 Building 6, Suite 825
 1900 Kanawha Blvd, East
 Charleston, WV 25305-0330

Updated 11/19/2013

Data Destruction Assurance Form

Organizations or individuals conducting research on behalf of the West Virginia Department of Education (WVDE) are required to destroy the target data which have been loaned to them during the duration of the project. This includes all copies, whether electronic or paper. These data must be destroyed when the research described in the Research Proposal Application concludes, or the Data Disclosure Agreement terminates, whichever occurs first. In addition, researchers must provide copies of all reports associated with the research project to the WVDE within the time period specified in the Data Disclosure Agreement. As an assurance that these tasks have been completed, the project's principal investigator must complete this Data Destruction Assurance Form, and submit it to the WVDE for archival.

By signing below, I assure, as the Principal Investigator, that:

All data elements loaned to me as listed in the Data Disclosure Agreement for the research project titled, have been destroyed in the manner specified in Section VI. B, *Retention of Target Data*.

Any and all publications associated with this project have been provided to the WVDE in the manner specified in Section V. C, *Publications Made Available to the WVDE*.

Signature: _____ Date:

Name of Principal Investigator or Requestor:	
Organization (If applicable):	
Phone Number:	
Email Address:	
Address:	
City:	
State:	
Zip Code:	

Please submit this completed form to:

Cathy Moles

WVDE Office of Research

Building 6, Suite 825

1900 Kanawha Blvd. E.

Charleston, WV 25305-0330

p. 304.558.2546

f. 304.558.1613

cmoles@access.k12.wv.us



James B. Phares, Ed.D.
State Superintendent of Schools