

27 CONFIDENTIALITY OF RECORDS

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FORMS DISCUSSED IN THIS CHAPTER

The forms references in this chapter, including the DOC-1160, 1163, 1163A, 1860, 1861, 1862, 1923, 2108, 2554, 2555 and 3427, are available in MyDOC via the Forms link. DOC Executive Directive #35 regarding confidentiality of health care information and Internal Management Procedures (IMPS) are also referenced in this chapter.

OVERVIEW

In order to perform their job duties, DJC staff must access, create, use, share, store and dispose of confidential records pertaining to youth under institutional and field supervision. Staff within DJC may share information about a youth such as disciplinary records, treatment progress summaries, mental health and education information and other case specific information as long as the information is needed to perform assigned job duties. Staff may

request, use and disclose the minimum amount of information on a need-to-know basis to perform job duties. A written release of information by the youth, parent or person authorized to disclose information is not needed for information exchanges made under the need-to-know standard. Numerous state and federal laws pertain to confidentiality of records and sharing of records. These laws vary by the type of record and context in which the record is affected. This chapter summarizes relevant law and current DJC policy and practices. It is divided into sections based on type of record and/or use of record, beginning with a general section that is pertinent to all records not covered by other, more specific provisions.

Staff persons with questions pertaining to confidentiality, access and release of a particular record are instructed to review the specific section in this chapter and consult with their supervisor to find the answer. The designated record custodian assigned for the record in question may also be contacted. The list of Records Coordinators is available on MyDOC (Directories/Central Office). Questions not answered in the CMM or by local custodians can be referred to the Central Office record custodian for response or possible referral to Legal Counsel.

GENERAL POLICY ON DOC RECORDS OF DELINQUENT YOUTH

WISCONSIN STATUTES

Unless otherwise specified, the responsibility of DJC to hold juvenile records in confidence and the ability of DJC to release records under certain circumstances is spelled out in s. 938.78, Wis. Stats. Other state and federal laws also govern how DJC education, health, and AODA records must be handled and they will be cited throughout this Chapter. These laws and regulations cover the holders of information, and they apply to those who may be seeking access to the information contained in the records.

Laws governing the confidential handling of information are complex and in many cases will require careful interpretation of the wording in order to correctly apply the regulations. Also, the laws may vary based on the type of record under consideration such as AODA, Education, Psychological, Health or Mental Health information. Because of the complexity of the various rules/regulations and the unique nature of most requests, staff are advised to always consult with their supervisor, the local records custodian or the Central Office record custodian before any information is released. If needed, the Central Office record custodian will coordinate with legal counsel to ensure the proper handling of release and access to DJC records.

Requests for information on active cases will be coordinated with the assigned social worker or agent who will ensure the file material is organized and current, and the local records custodian. Requests for information from closed cases will be handled by the local records custodian or the Central Office custodian.

DEFINITIONS

Access to Records: The process of making a record available for inspection or disclosing the contents of a record to a person or entity permitted to receive the information.

Agency: Means the department, a county department or a licensed child welfare agency per s.938.78 (1).

Agency Records: Records kept or information received by the Department of Corrections (DOC), a county department or a licensed child welfare agency about an individual currently or formerly in its care/legal custody per s. 938.78.

Code of Federal Regulations (C.F.R.): These regulations implement federal law, and they have the full authority of law.

Court Records: Under s. 938.396 (2) include confidential records maintained by courts with jurisdiction under Chapter 48 or 938, and municipal courts with jurisdiction under s. 938.17 (2).

Department of Corrections Records: Under s. 938.54 include information received from the court, date of admission to a JCI, all available data on the person/family, history of the juvenile, results of tests/examinations and history of all placements while a juvenile is under DOC supervision.

Disclosure: Means the release, transfer, provision of access to, or divulging (in any other manner) information outside the entity holding the information.

FERPA: The Family and Education Rights and Privacy Act. This federal act spells out the rights of parents and youth regarding the confidential handling of education records.

HIPAA: The Health Insurance Portability and Accountability Act, Public Law 104-191 enacted in 1996. The law details how covered entities must follow national standards that protect the privacy and security of protected health information.

Law Enforcement Records: Under s. 938.396 (1) are confidential records of juveniles maintained by a law enforcement agency that must be kept separate from records of adults.

Privacy Rule: As required by HIPAA, the Privacy Rule was promulgated by the federal Department of Health and Human Services (HHS) in 2003, and it establishes privacy standards for the use and disclosure of patient's Protected Health Information.

Protected Health Information (PHI): Means any information about health status, provision of health care or payment for health care that can be linked to an individual.

Social Welfare Agency: A social welfare agency is an agency that exists to enhance the problem-solving and coping abilities of people and to link them to resources, services and opportunities to improve relationships and daily living. Social welfare agencies are typically private agencies that DJC may contract with to provide services for youth. Examples include agencies such as Boys and Girls Club, Running Rebels, Big Brothers/Big Sisters, and Operation Fresh Start. Note: Social Welfare Agency is a term used in s. 938.78 (b) 1, but no formal definition of it is provided in statute.

Record: A record means all information about a youth that is compiled, received and stored in any format. A record includes information that is written, typed, verbal, digital and stored on a computer. It includes photographs, tape recordings, computer tapes and printouts, and CDs. It includes any and all types of records that DJC creates, possesses and maintains such as medical, psychological, treatment, education, behavioral, social services, and field services. It includes both records initiated by DJC and any information received by DJC from others.

CONFIDENTIAL EXCHANGE OF RECORDS

DJC records may not be disclosed orally or in writing to anyone outside of the Department except as permitted by law. According to s. 938.78 (2), “No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody”. The law does grant certain exceptions to this basic rule of confidentiality, so it is important to know if a particular request for information or disclosure may be granted as an exception outlined in the law.

The type of record will determine how requests for inspection or disclosure will be handled. For example, education, psychological, AODA, health or mental health records may have different requirements for inspection or disclosure, so it is always necessary to consult with the Records Coordinator before taking action on a request for inspection or disclosure of a juvenile’s record. Generally, when other statutes or regulations conflict with s. 938.78, the more restrictive law governs how the record must be handled. For example, educational records are covered by FERPA and AODA records by 42 C.F.R. Part 2. These laws, which must be followed, are more restrictive on requirements to obtain informed consent prior to disclosure. See pages 27:10 and 27:12 regarding how to handle these records.

BEST PRACTICE GUIDELINES FOR HANDLING CONFIDENTIALITY

- Assume that confidential information cannot be shared in any manner without a written authorization from the youth, or the person authorized to act on behalf of the youth if he/she is not able sign an authorization because of age or other legal requirements.
- Obtain a valid written authorization whenever possible to avoid having to find a legal exception or obtain a court order.
- Review any written authorization received in DJC to ensure its validity before disclosing information.
- Be prepared to cite the legal authority that permits the request, use or disclosure of confidential information when an authorization has not been granted.
- Seek a court order when the law requires an authorization, but it cannot be obtained and no legal exception applies to the situation.
- Fines and other penalties for violating a privacy law can be severe.
- Stay apprised of professional code of ethics and other practice standards on confidentiality that may apply to you as a licensed social worker, mental health counselor, psychologist or other professional.
- Consult with records custodians and legal counsel whenever in doubt.

PATHWAYS TO LEGALLY DISCLOSE INFORMATION OUTSIDE OF DOC

There are three pathways which permit DOC, the record holder, to legally disclose confidential information outside of the department.

- **Written Authorization-** The subject of the information, or a person authorized to consent to disclosure on behalf of the subject, has the legal right to authorize disclosure of confidential information about himself or herself to others named in a written authorization.

- **Legal Exceptions-** Confidentiality laws may identify specific exceptions to the requirement for written authorization.
- **Court Orders-** An individual or agency that wishes to obtain information may apply to the court for an order. Any order granted pertains only to the specific information identified in the court order. Some content areas such as AODA, at 42 C.F.R Part 2, contain precise procedures to which a judge must adhere prior to issuing an order regarding disclosure of AODA information.

These three pathways are the only ways in which the holder/custodian of the records (which includes verbal information) can legally disclose confidential information. Staff should not even verify whether or not a particular youth is at a JCI or on supervision in the community. If there is no signed authorization, no applicable exception in the law, or no court order, a disclosure of confidential information is not possible.

EXCEPTIONS IN WISCONSIN LAW WHICH PERMIT EXCHANGE OF INFORMATION

Certain exceptions to the general rule of confidentiality are granted in s. 938.78 (2) (b). The exceptions allow the confidential exchange of information without authorization from the youth or parent/guardian. These situations include, but are not limited to, the following:

- DJC may confidentially exchange information about a youth on supervision with another social welfare agency, law enforcement agency, victim/witness coordinator, public or private school or a fire investigator. The statute specifies that schools, law enforcement agencies, and social welfare agencies who receive information shall keep it confidential per s.938.78 (2)(b) 1.
- Release of information to parents, guardians or legal custodians of juveniles upon their request **unless** the agency believes that inspection of the record would result in “imminent danger to anyone” per s. 938.78 (2) (ag).
- Juveniles age 14 and older may inspect their record, and they may grant permission to named parties to inspect their record **unless** the agency believes that inspection of a record would result in “imminent danger to anyone” per s. 938.78 (2) (ag). See procedures for youth inspection of records on page 27:8.
- DJC may disclose contents of a record or allow inspection, if a parent, guardian, legal custodian of a juvenile, or a juvenile who is age 14 or over, grants written permission and specifically identifies the record, **unless** the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone per s. 938.78 (2) (am).
- Exceptions to disclosure of contents of a record are granted in s. 938.78 (3) if a juvenile has escaped from a type 1 facility or from supervision, or is absent and has been found in need of protection or services or adjudicated delinquent on the basis of any violation of several crimes outlined in this statute. In the event of an escape when the youth has committed crimes specified in this statute, the Department may release a juvenile’s name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile’s return to the facility, institution, home or jail. The institution Superintendents and Regional Chiefs along with the Department’s Public

Information Officer will handle any release of information to the public concerning an escape.

If a request to share information or inspect a youth's record does not fit the exceptions outlined in s. 938.78, or no other state or federal laws may govern a case situation under consideration, staff must obtain written authorization from the youth or person qualified to act on his/her behalf before sharing any information.

OBTAINING CONSENT TO SHARE INFORMATION OR RELEASE RECORDS

In all situations where s. 938.78 does not grant the exchange of information or include an entity as an exception to the basic rule of confidentiality, it is necessary to obtain a written informed consent from the juvenile, or the parent, guardian or legal custodian, in order to share any information or release any material from a juvenile's record. Specific laws or regulations must allow the sharing of the information under consideration. Consent to share information must be voluntarily given and the person giving consent must be able to understand all information specified on the consent form. Various DOC forms have been developed for release of specific types of information and will be referenced in this Chapter. The forms are available on DOC NET.

Completion of the DOC-1163, Authorization for Disclosure of Non-Health Confidential Information, is required to facilitate most requests for information. The form contains check boxes to identify the type of information being authorized for disclosure including institutional social service, education, community, or other information.

CONFIDENTIALITY FORMS

The Visitor Confidentiality Agreement (DOC-2554) shall be signed by every non-DOC visitor to a JCI who will be in a place where s/he can see JCI youth. The Contractor Confidentiality Agreement (DOC-2555) shall be signed by contractors, including interns, and others who are performing work on behalf of the Department and will have access to records pertaining to youth.

TRANSITION TEAM MEETINGS AND PRE-RELEASE PLANNING

Blanket sharing of information about a juvenile with members of a Transition Team is not permitted since not all members of the Team may be covered under the exceptions outlined in s. 938.78. Sharing of information without a signed release is only possible with team members who are staff of social welfare agencies, county human/social services, private agencies such as residential care centers, law enforcement agencies, staff of public/private schools, or a victim/witness coordinator. If a team member does not fit any of these categories, such as a potential employer, a mentor, or a supportive family relative or friend, the youth or parent should sign an Authorization for Disclosure Form, DOC -1163 prior to including this team member in a discussion about the youth.

REQUEST BY MEDIA TO INTERVIEW YOUTH

If a representative of the news media requests an opportunity to interview a youth in a JCI, the superintendent may permit the interview consistent with institution needs and program needs of

the youth per s. DOC 379.06, Wis. Adm. Code. The superintendent shall obtain parental or guardian approval for a youth under the age of 18 before the interview. All representatives of the news media who are granted interviews shall sign a prior written agreement not to reveal the identity of any youth or to disclose information that would lead to the youth's identity, nor to photograph any youth in a manner that would reveal the youth's identity, unless:

The youth's parent or guardian gives permission for the youth's identity and/or personally-identifying photograph to be released by the media, and

The Division determines that release of this information will not result in imminent danger to anyone.

In order to document parent/guardian permission or refusal, the following procedure should be used:

Upon learning of the media interview request, the Superintendent or designee forwards the DOC-1862 form to the parent/guardian. The parent/guardian fills out the form to indicate whether s/he gives permission for

The media interview
Release of the youth's name
Publication of the youth's photo

The parent/guardian signs the form in the presence of a witness, who also signs it. The parent/guardian then returns the form to the Superintendent.

The Superintendent reviews the DOC-1862 form and, if the parent/guardian consented to the interview, fills out the DOC-1860 form based on the parent/guardian's wishes as to release of the youth's name and photo. The JCI sends the form to the reporter to complete, sign, witness and return.

At the same time, the social worker fills out the DOC-1861 form and reviews it with the youth so that the youth knows the circumstances of the proposed interview including her/his parent/guardian's decision on release of her/his name and photo. If the youth signs the form indicating her/his consent, the interview is scheduled.

RELEASE OF INFORMATION TO A YOUTH'S COMMUNITY COACH

When the services of a community coach are purchased by DJC, the assigned agent should attempt to get the youth's or parent(s) permission to share information with the coach by use of the DOC-1163. Efforts to obtain the youth's or parent's authorization to share information should be documented. See CMM Chapter 13.

INFORMATION EXCHANGE WITH VICTIMS AND PUBLIC AGENCIES

DJC may exchange information orally or in writing with other social welfare agencies, county human/social services departments, residential care centers, group homes, public and private schools, and law enforcement agencies (local police, county sheriffs, district attorney offices) victim/witness coordinators, and victims.

A victim is a person against whom a delinquent act has been committed per s. 938. 02 (20m). Upon their request, victims have rights to notification of a youth's release or escape from a correctional facility or supervision as outlined in s. 938.51. See CMM Chapter 11 for procedures on how to handle notice to victims and to further communicate with victims about victim impact statements and victim requests for conferences with a youth.

RECORDS CREATED BY NON-DOC AGENCIES CONTAINED IN DJC FILES

Records created by entities other than DJC that may be in a youth's file are confidential and may not be released without proper authorization. Examples of such records or information include AODA, education, medical or mental health records or information including test results and assessments. The confidentiality statute refers to any and all records that DJC maintains or possesses for a juvenile. This includes both records created by DJC **and** records DJC receives from non DOC/DJC entities.

RECORDS IN DIGITAL FORMAT

Juvenile records in digital format are confidential. The rules which govern release of information from a juvenile record in digital format are the same as those regarding juvenile records created and maintained in any other format. The location or medium of the record is not the determining factor when considering release of information.

RELEASE OF INFORMATION TO SUBSTITUTE CARE PROVIDER

Foster parents, treatment foster parents, operators of group homes and residential care centers are entitled to receive specific information from the agency that made the placement of the juvenile or that arranged for the placement of the juvenile. The information to be provided and the timelines for delivering it are outlined in s. 938.371 and include the following provisions:

- Copies of court reports and permanency plans shall be provided at the time of placement or no later than 7 days after the reports have been submitted per s. 938.371 (3).
- At the time of placement, or within 2 working days after receipt of the information, DJC must provide HIV and hepatitis B test results to the substitute care provider.
- Any other medical information concerning the juvenile that is necessary for the care of the youth.
- Any mental, emotional, cognitive, developmental or behavioral disability of the juvenile.
- The religious affiliation or belief of the juvenile.
- Any involvement of the juvenile in any criminal gang as defined in s. 939.22 (9), or the involvement of the juvenile in any activities that are harmful to the juvenile's physical, mental, or moral well-being.
- Any involvement of the juvenile, as victim or perpetrator, in sexual intercourse or sexual contact in violation of the specified laws (sexual assault or sexual assault of a child, or prostitution, among others) in accordance with s. 938.271 (3) (d).

- Substitute care providers who receive information under these provisions shall keep the information confidential.

See CMM page 10: 38-40 regarding referral of youth to a Type 2 RCC and contents needed in the referral packet.

RELEASE OF NAMES OF REPORTERS OF ALLEGED CHILD ABUSE AND NEGLECT

The name and any other identifying information about a reporter of child abuse and neglect that may be contained in a juvenile's record may not be released in accordance with s. 48.981. This information must be redacted from any record that has been cleared for release.

YOUTH AND FAMILY AUTHORIZED RELEASES AND REQUESTS TO INSPECT RECORDS

WISCONSIN STATUTES

Generally, parents and guardians may make a request to see the confidential records of their juveniles. Because different rules may apply to various records such as AODA, Mental Health, or Education, the exact type of record being requested and its applicable rules will determine the steps to be followed. As outlined in s. 938.78(2)(ag), parents, guardians and legal custodians of juveniles, and juveniles age 14 or older, may inspect their juvenile's records **unless** DJC finds that the inspection of the record would result in imminent danger to anyone.

As allowed in s. 938.78 (2) (am), a parent, guardian, legal custodian, and juvenile age 14 or older may also authorize the release of the juvenile's record to persons specifically named in the permission **unless** DJC finds that the release of the record would result in "imminent danger to anyone".

PROCEDURE FOR REQUESTS BY PARENTS OR YOUTH AT INSTITUTIONS TO INSPECT RECORDS

- Requests by juveniles, or parent/guardians to inspect their youth's records must be submitted on the DOC- 1163.
- The social worker will assist the youth and/or parent to complete the form and submit it to the Corrections Unit Supervisor seven days prior to viewing the file.
- The social worker in consultation with the Corrections Unit Supervisor will review the contents of the record to determine if an inspection by the youth or parent will result in "imminent danger to anyone". Documents may be withheld if DJC staff believes that viewing them would result in such danger. Information that should be considered in making the decision about dangerousness to anyone may include, but is not limited to, documents that reference or identify the juvenile's victim/witness, or those that identify confidential informants, or reporters of allegations of abuse or neglect.

- The Superintendent, Corrections Unit Supervisor or other designated institution staff member will complete the DOC-1160, Record Request Response, and send it to the youth indicating the decision.
- If the juvenile is granted permission to inspect the record, the social worker will schedule a time for the youth to view the record in the presence of a staff member.
- Youth may make a request to view their records once every 90 days or more frequently with the permission of the Superintendent.
- Institution staff processing requests from youth and parents for records inspections or releases will also review applicable Administration Policies and Procedures documents, 1.05 at LHS/CLS.

Procedure for Youth on Community Supervision to Inspect Records

- The assigned agent will assist the youth to complete and sign the DOC-1163 and allow at least 5 working days to process the request.
- The agent will consult with the Field Supervisor and review the record contents to determine if inspection of the record by the youth or parent/guardian will result in imminent danger to anyone.
- The Field Supervisor or agent will complete the DOC- 1160, the Record Request Response form, and distribute it to the parent or youth who made the request.
- If permission to view the record was granted, the agent will schedule a time for the youth to review the record in his or her presence or that of another staff member.

Procedure for Handling Requests to Inspect Records by Parents When the Youth Objects

- Section 938.78 (2) (ag) outlines the general principle that if a parent asks to see a record, DJC may disclose the record to the parent unless the disclosure would result in imminent danger to anyone. However, certain exceptions do apply to the disclosure of **treatment** records which are defined at s. 51.30 (1)(b).
- When a youth objects to a parent's inspection of their treatment records, staff shall consult with their supervisor and the institution clinical treatment director to determine a response to the parent's request.

AODA TREATMENT RECORDS

WISCONSIN STATUTES

Wisconsin law s. 51.47, Stats., Mental Health Act, permits a minor 12 years and older to request and obtain services for AODA without parental consent.

FEDERAL LAW

The Code of Federal Regulations, 42 C.F.R. Part 2 titled "Confidentiality of Alcohol and Drug Abuse Patient Records" provides strict protection to the records of minors and adults. Minors are defined as individuals under the age of 18 years. The regulations at 42 C.F.R. Part 2, subpart B, s. 2.20 dictate that a state law may not authorize or compel any disclosure of records prohibited by the regulations. Violations of these federal regulations may result in a fine of not more than \$500 for the first offense, and not more than \$5,000 for each subsequent offense.

Federal regulations, 42 C.F.R. Part 2, subpart B, s. 2.14 (b), provide that if a state law permits a minor to request and obtain treatment for AODA without parental consent, the minor has sole authority to consent to release of records unless disclosure is specifically permitted by law without a consent.

CONFIDENTIALITY OF AODA INFORMATION- NOTICE TO YOUTH OF LEGAL RIGHTS

Prior to a youth's screening for AODA treatment needs, a social worker shall give the youth a confidentiality notice, the Confidentiality of Alcohol and Drug Abuse Information, DOC- 2108. This form also gives youth notice of their legal rights regarding privacy of their AODA information. The social worker will explain the notice and have the youth sign it. If the youth refuses to sign the notice, the social worker shall note the refusal on the notice, sign and date it. See I.M.P. #13.

WRITTEN CONSENT TO RELEASE AODA RECORDS

- **Youth age 12 or older:** Staff shall obtain the youth's written consent using the Confidential Information Release Authorization (DOC-1163A) when DOC wishes to release AODA records to a specific individual, including a minor's parent(s), legal custodian or guardian, agency or service provider.
- **Youth under 12 years of age, and youth 18 years or older who have a legal guardian:** When DOC wishes to release information to a specific individual, agency or service provider, staff shall obtain written consent from the youth's parent, guardian, or legal custodian by using the DOC-1163A. Only the legal guardian of a youth age 18 or older may sign the consent for release of AODA records.
- **Youth age 18 or older:** All youth age 18 or older have sole control over release of records unless the youth has been found to be legally incompetent and placed under guardianship, or the release of information fits circumstances permitted by law without the youth's consent.

Under certain circumstances, federal regulations permit DJC to release information relating to a youth's AODA status without written consent. Situations include releases to medical personnel to the extent necessary to meet a bona fide medical emergency, and releases to state authorities when information relates to reporting suspected child abuse/neglect. See I.M.P. #13 for more circumstances, and more procedures such as stamping of AODA records prior to release.

PROTECTED HEALTH INFORMATION (PHI)

OVERVIEW

Federal and Wisconsin laws protect the confidentiality of Protected Health Information (PHI) which is created and/or maintained by a health care provider. All past, present and future physical and mental health conditions are covered by the laws. The Department has released staff directives, contained in Executive Directive #35, regarding confidentiality of health care information of offenders and protection of employees and offenders from communicable disease.

DOC POLICY

In accordance with ED #35, DOC employees shall not request, access, use or disclose PHI relating to an offender contained in a DOC record in any format, or communicated verbally, in a manner that violates Wisconsin or federal law, or DOC policy. DOC employees shall have access to, and use and disclose only the minimum PHI necessary to perform their job duties unless a legal exception applies. This policy does not apply to PHI relating to DOC employees.

Non-health services employees of DOC may have access to and use the minimum amount of a youth's PHI necessary to perform a specific job duty such as safely transporting a youth or delivering medications. The "minimum necessary" and "need to know" are standards which control access to and use of a youth's PHI. The "minimum necessary" is the least amount of PHI reasonably necessary to accomplish the purpose of the access, use, request or disclosure of the PHI. "Need to know" permits access to the PHI necessary to allow employees to perform assigned job functions. Only an employee with a need to know PHI in order to perform an assigned job function may request, use or disclose confidential PHI.

The fact that a youth is receiving treatment for a diagnosed physical, mental health or AODA condition is considered to be PHI. Federal law defines PHI to include identification of a person by her/his facial appearance. If the members of a treatment group can be seen by visitors, and the visitors know that they are witnessing a treatment group, DOC is disclosing PHI to the visitors. Thus, when persons from outside of DOC tour a JCI, they cannot view or participate in an identified treatment group or activity unless every youth whose PHI would be revealed gives express written consent or the group is being observed as part of an approved research project.

WISCONSIN LAW

A parent or guardian has the sole right to authorize access to and disclosure of Protected Health Information until the person reaches age 18, unless a court has denied the parent or guardian the right to physical placement of the youth per s. 146.83. The DOC-1163A (Authorization for Use and Disclosure of Protected Health Information) meets federal and Wisconsin legal requirements, and staff shall use this form to obtain permission to disclose a youth's PHI.

FEDERAL LAW

The federal laws regarding protection of a youth's health care information, access and disclosure of it are spelled out in HIPAA which was enacted in 1996. Also, 45 C.F.R. Parts 160 and 164 apply. These regulations are listed on the DOC -1163A which staff must use to access and obtain authorization to disclose Protected Health Information.

EDUCATION RECORDS

FEDERAL LAW – FERPA

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. Federal regulations contained in 34 C.F.R. Part 99 implement FERPA. The law applies to all schools that receive federal education funds which includes DJC. FERPA gives parents certain rights regarding their child's education records. These rights transfer to the student when he or she reaches age 18. The rights include the right to inspect and review education records maintained by the school. FERPA also requires annual notification to parents and youth over age 18 of their rights under the law.

FERPA defines two categories of records: directory information and education records. A "record" is any information recorded in any way, including, but not limited to, handwriting, print, computer, media, video or audio tape, film, microfilm and microfiche under 34 C.F.R. s.99.3.

WISCONSIN LAW

Section 118.125, Pupil Records, defines several categories of educational records maintained by Wisconsin school districts. The definition of "record" includes information communicated verbally, unlike FERPA. Because Wisconsin law provides broader privacy protection in the area of records, it supersedes FERPA.

A youth or parent/guardian of a minor youth may review the youth's school progress records and receive a copy of them per s. 118.125(2) (a). Only youth age 18 or older may give consent to release pupil records in accordance with s. 118.125(2) (e).

Pupil records include all records about a pupil that are maintained by a school except notes for personal use by a licensed or certified professional, records of those involved in psychological treatment of a pupil, and law enforcement records per s. 118.125(1)(d).

Wisconsin's educational law at s. 118.125(1)(c) defines Progress Records to mean those pupil records which include the pupil's grades, a statement of the courses the pupil has taken, the pupil's attendance records, immunization and lead screening records, and records of the pupil's extracurricular school activities.

PROCEDURES FOR INSPECTION OR RELEASE OF EDUCATIONAL RECORDS

Youth who wish to inspect their educational records shall sign the DOC-1163. Staff should consult with the Education Director and follow the steps outlined on page 27:8. Note the requirement to remove any material which could result in imminent danger to anyone.

The DOC-1163, Authorization for Disclosure of Non-Health Confidential Information, shall be signed to authorize release of school records of youth age 18 or older. For minor youth under age 18, a parent or guardian must consent to release of school records by signing the DOC-1163.

PROCEDURES FOR FERPA NOTICE OF RIGHTS

FERPA requirements are met in DJC through implementation of steps outlined in IMP #19. Parents of youth in DJC are informed of the requirements relating to the confidentiality of school records. This requirement is met in DJC by annual distribution of the Child Find/FERPA Notice to parents/guardians of all newly enrolled students in the youth's admission packet. The notice contains specific information about the rights of parents and eligible students regarding education records. Also, by October 15th of each year, the Child Find/FERPA Notice is posted on facility bulletin boards accessible to physicians, nurses, psychologists, social workers and administrative staff. All new employees in positions required to make special education referrals and those who work with youth education records receive a copy of the Child Find/FERPA Notice as a part of their job training. See IMP #19.