

Confidentiality

151-020-0075 (1) This Oregon Administrative Rule (OAR) provides information to the recipient and subrecipients when making decisions concerning the disclosure of information from applicant and participant records. The purpose of the OAR is:

- (a) To protect applicants and participants from unreasonable invasions into their privacy;
- (b) To give applicants and participants access to their records; and
- (c) To inform applicants and participants about the reasonable uses of their records for purposes of administering the WIA.

(2) As used in 151-020-0075 the following definitions apply:

(a) "Applicant" means a person applying or registering for services in programs conducted under Title IB of the Act.

(b) "Participant" means a person applying for or receiving services in programs conducted under Title IB of the Act.

(b) "Personally identifiable" means that the applicant or participant records include:

- (A) The name of the applicant or participant, their parents; or
- (B) Other family members;
- (C) The address of the applicant or participant;
- (D) A personal identifier, such as the applicant's or participant's Social Security number or phone number;

(E) A list of personal or physical characteristics which would make the applicant's or participant's identity easily traceable, or

(F) Other information which would make the applicant's or participant's identity easily traceable.

(c) "Surrogate" means an individual who acts in the place of a parent or guardian in safeguarding an applicant's or participant's rights when the parent or guardian is unknown (the parent cannot be identified or ascertained by diligent inquiry), unavailable (after reasonable effort, the whereabouts of the parents cannot be ascertained) or the applicant or participant is a ward of the State. "Surrogate" may also apply to disabled adults who have a designated legal guardian or advocate.

(3) No applicant or participant records shall be released without the express consent of the applicant or participant, their parent or legal guardian or surrogate, except as noted in this rule.

(a) An applicant or participant may provide written consent for the examination or release of his/her records.

(b) An applicant or participant who is under the age of 18 and is not legally emancipated shall not authorize the release of any records pertaining to him/herself without the written consent of their parent, legal guardian or surrogate unless otherwise provided for herein or in OAR 151-020-0080.

(c) Custodial and non-custodial parents share equal access to applicant or participant records unless a court order is presented to the contrary.

(4) Records of applicants or participants, who are at least 18 years of age, shall not be released to anyone, including their parent, legal guardian or surrogate, without the written consent of the applicant or participant unless otherwise provided pursuant to applicable state or federal law.

(5) To the extent otherwise authorized by applicable state or federal law, release of applicant or participant records is authorized for purposes of:

(a) As required to meet emergency medical or other unusual circumstances, but only if the release of such information is necessary to protect the health and safety of the applicant or participant or other individuals;

(b) Among subrecipient staff, and subrecipients and their contractors when necessary for the provision of effective and efficient services or as necessary with other one-stop programs

for which the clients may be eligible and only with a properly executed release of information form;

(c) Pursuant to a court order or lawfully issued subpoena;

(d) To authorized federal, state or local staff, or designee, to determine compliance with nondiscrimination and equal employment opportunity requirements under 29 CFR Part 37;

(e) To public agencies when the applicant or participant has applied to the agency for assistance or service or is receiving such assistance or service only with a properly executed release of information form;

(f) To private auditing firms employed by the subrecipient to carry out monitoring of its programs for internal purposes only with a properly executed release of information form;

(g) To organizations who provide test scoring and/or data analysis provided that the organization has established written policies to preserve the confidentiality of the records, will not send reports containing applicant or participant personally identifiable information to anyone other than the organization requesting the service; and applicant or participant record information will not be disclosed when disclosure would constitute a clearly unwarranted invasion of personal privacy only with a properly executed release of information form;

(g) To organizations, including state and federal workforce development, educational agencies and community colleges and their local boards, conducting studies for or on behalf of employment and training agencies, educational agencies, the State of Oregon Workforce Investment Board for purposes which may include developing, validating, or administering predictive tests, program enhancement or in order to develop statistical and demographic data to facilitate the creation of strategies to improve the education, training and quality of Oregon's workforce provided that:

(A) The information shall be used only for the purposes for which it is made available; and

(B) Personally identifiable information (B) contained in the applicant or participant records has been transformed or otherwise encoded by a staff member from the agency releasing the records to a form usable by the organization conducting the study or, if applicable, to those standards required by the Shared Information System, in order to safeguard the identity of the applicant or participant.

(6) The subrecipients shall establish policies for protecting the confidentiality of applicant or participant records and procedures for releasing or examining such records which will include all of the following:

(a) Hours during which record release or examination may occur;

(b) That a written request for such release or examination must be made;

(c) That the request specifically identify the applicant or participant record to be examined;

(d) That the requestor provide his or her name and address;

(e) The person to whom such requests should be directed (normally the custodian of records);

(f) That the fee schedule for record production not exceed the actual cost of production, including staff time, in locating, reviewing and copying the records; and

(g) A record of each release, for which an applicant or participant, parent, legal guardian or surrogate's written consent is required, shall be maintained. Such record shall include the name of the party seeking access, the date access was granted, and the purpose for which the party requested or was authorized to use the records. The records of disclosure should be kept with, but not released or examined as a part of, the applicant's or participant's records. If participant behavioral records are released, the record of disclosure shall include the name of the individual who explained the behavioral portion of the records.

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Stats. Implemented: ORS 285A.455

Hist.: New