

## SUBJECT: STUDENT RECORDS: ACCESS AND CHALLENGE

The School District shall comply with the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). Under its provisions, "parents/guardians and noncustodial parent(s), whose rights are not limited by court order or formal agreement, of a student under eighteen (18), or a student who is eighteen (18) years of age or older or who is attending an institution of post-secondary education, have a right to inspect and review any and all education records maintained by the School District.

The District will use reasonable methods to provide access to student educational records only to those authorized under the law and to authenticate the identity of the requestor. The district will document requests for and release of records, and retain the documentation in accordance with law.

The Superintendent of Schools shall be responsible for ensuring that all requirements under law and the Commissioner's regulations are carried out by the district.

### Definitions

Authorized Representative: an authorized representative is any individual or entity designated by a State or local educational authority or a Federal agency headed by the Secretary, the Comptroller General or the Attorney General to carry out audits, evaluations, or enforcement or compliance activities relating to educational programs.

Education Records: defined as all records, files, documents and other materials containing information directly related to a student; and maintained by the education agency or institution, or by a person acting for such agency or institution (34 Code of Federal Regulations (CFR) Section 99.3). This includes all records regardless of medium, including, but not limited to, handwriting, videotape or audiotape, electronic or computer files, film, print, microfilm, and microfiche.

Eligible student: a student who has reached the age of 18 or is attending postsecondary school.

Legitimate educational interest: a school official has a legitimate educational interest if they need to review a student's record in order to fulfill his or her professional responsibilities.

Personally identifiable information: is information that would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Such data might include social security number, student identification number, parents' name and/or address, a biometric record, etc.

School official: a person who has a legitimate education interest in a student record who is employed by the district as an administrator, supervisor, instructor or support staff member (including health or medical staff and law enforcement unit personnel); a member of the Board of Education; a person or company with whom the district has contracted to perform a special task (such as attorney, auditor, medical consultant or therapist); or a parent or student serving on an official committee, such as disciplinary or grievance committee, or assisting another school official performing his or her tasks.

## Education Records

For students who attend a public school district, all records pertaining to services provided under the Individuals with Disabilities Education Act (IDEA) are considered "education records" under FERPA. As such, they are subject to the confidentiality provisions of both Acts.

Personal notes made by teachers or other staff, on the other hand, are not considered education records if they are:

- a) Kept in the sole possession of the maker;
- b) Not accessible or revealed to any other person except a temporary substitute; and
- c) Used only as a memory aid.

Additionally, FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation and not from the student's education records.

Records created and maintained by a law enforcement unit for law enforcement purposes are also excluded.

## Annual Notification

At the beginning of each school year, the district will publish a notification that informs parents, guardians and students currently in attendance of their rights under FERPA and the procedures for exercising those rights. This notice may be published in a newspaper, handbook or other school bulletin or publication. This notice will also be provided to parents, guardians, and students who enroll during the school year.

The notice will include a statement that the parent/guardian or eligible student has a right to:

1. inspect and review the student's education records;
2. request that records be amended to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy rights;
3. consent to disclosure of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent; and
4. file a complaint with the United States Department of Education alleging failure of the district to comply with FERPA and its regulations.

The annual notice will inform parents/guardians and students:

1. that it is the district's policy to disclose personally identifiable information from student records, without consent, to other school officials within the district whom the district has determined to have legitimate educational interests. The notice will define 'school official' and 'legitimate educational interest.'
2. that, upon request, the district will disclose education records without consent to officials of another school district in which a student seeks to or intends to enroll or is actually enrolled.
3. that personally identifiable information will be released to third party authorized representatives

for the purposes of educational program audit, evaluation, enforcement or compliance purposes.

4. that the district, at its discretion, releases directory information (see definition below) without prior consent, unless the parent/guardian or eligible student has exercised their right to prohibit release of the information without prior written consent.

5. that, upon request, the district will disclose a high school student's name, address and telephone number to military recruiters and institutions of higher learning unless the parent or secondary school student exercises their right to prohibit release of the information without prior written consent.

6. of the procedure for exercising the right to inspect, review and request amendment of student records.

The district shall effectively notify parents, guardians and students who have a primary or home language other than English.

In the absence of the parent or secondary school student exercising their right to opt out of the release of information to the military, the district is required to, under federal law, release the information indicated in number five (5) above.

## **Access to Student Records**

The Board directs that administrative regulations and procedures be formulated to comply with the provisions of federal law relating to the availability of student records. The purpose of such regulations and procedures shall be to make available to the parents/guardians of students and noncustodial parent(s) whose rights are not limited by court order or formal agreement, or students who are eighteen (18) years of age or older or who are attending an institution of post-secondary education, student records, and files on students, and to ensure the confidentiality of such records with respect to third parties.

Under FERPA, unless otherwise exempted in accordance with law and regulation, the District may release personally identifiable information (PII) contained in student education records only if it has received a "signed and dated written consent" from a parent or eligible student. Signed and dated written consent may include a record and signature in electronic form provided that such signature:

- a) Identifies and authenticates a particular person as the source of the electronic consent; and
- b) Indicates such person's approval of the information contained in the electronic consent.

## **Exceptions**

### Directory Information and Limited Directory Information Disclosure

Directory information is information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Limited Directory Information Disclosure means that the District may limit disclosure of its designated directory information to specific parties, for specific purposes, or both. The intent is to allow schools the option to implement policies that allow for the disclosure of student information for uses such as yearbooks, but restrict

disclosure for more potentially dangerous purposes. The District shall limit disclosure of its designated directory information as otherwise specified in its public notice to parents of students in attendance and eligible students in attendance.

### Health and Safety Emergency Exception

School districts must balance the need to protect students' personally identifiable information with the need to address issues of school safety and emergency preparedness. Under FERPA, if an educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records, without consent, to any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals during the period of the health or safety emergency.

School districts may release information from records to appropriate parties including, but not limited to, parents, law enforcement officials and medical personnel. A school district's determination that there is an articulable and significant threat to the health or safety of a student or other individuals shall be based upon a totality of the circumstances, including the information available, at the time the determination is made. The school district must record the articulable and significant threat that formed the basis for the disclosure and maintain this record for as long as the student's education records are maintained.

### Release of Information to Another Educational Institution

The District may disclose any and all educational records, including disciplinary records and records that were created as a result of a student receiving special education services under Part B of IDEA, to another school or postsecondary institution at which the student seeks or intends to enroll, or after the student has enrolled or transferred, so long as the disclosure is for purposes related to the student's enrollment or transfer. Parental consent is not required for transferring education records if the school's annual FERPA notification indicates that such disclosures may be made. In the absence of information about disclosures in the annual FERPA notification, school officials must make a reasonable attempt to notify the parent about the disclosure, unless the parent initiated the disclosure. Additionally, upon request, schools must provide a copy of the information disclosed and an opportunity for a hearing.

### Audit/Evaluation Exception

The audit or evaluation exception allows for the disclosure of PII from education records without consent to authorized representatives of the Comptroller General of the U.S., the Attorney General, the Secretary of Education, and State or local educational authorities ("FERPA permitted" entities). Under this exception, PII from education records must be used to audit or evaluate a Federal or State supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs (audit, evaluation, or enforcement or compliance activity).

The District may, from time to time, disclose PII from education records without consent to authorized representatives of the entities listed above. The District may also, from time to time, designate its own authorized representative who may access PII without consent in connection with an audit or evaluation of an education program within the District. As an example, the District might designate a university as its authorized representative in order to disclose, without consent, PII from

education records on its former students to the university. The university could then disclose, without consent, transcript data on those former students attending the university to allow the District to evaluate how effectively the District prepared its students for success in postsecondary education.

### Studies Exception

This exception allows for the disclosure of PII from education records without consent to organizations conducting studies for, or on behalf of, schools, school districts or postsecondary institutions. Studies can be for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction.

The District may, from time to time, disclose PII from education records without consent to such organizations conducting studies for the District, in accordance with its obligations under FERPA.

In addition, other entities outside of the District may, from time to time, disclose PII from education records that the District has previously shared with that entity, to organizations conducting studies on behalf of the District. For example, a State Education Agency (SEA) may disclose PII from education records provided by the District without consent to an organization for the purpose of conducting a study that compares program outcomes across school districts to further assess the effectiveness of such programs with the goal of providing the best instruction.

### Required Agreements for the Studies or Audit/Evaluation Exceptions

To the extent required by law, the District shall enter into a written agreement with organizations conducting studies for the District, or, with its designated authorized representatives in connection with audits or evaluations of education programs within the District. In the event that the District discloses PII from education records to its own designated authorized representative in connection with an audit or evaluation of an educational program within the District, it shall use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative complies with FERPA and its regulations.

### Challenge to Student Records

Parents/guardians of a student under the age of eighteen (18), or a student who is eighteen (18) years of age or older or who is attending an institution of post-secondary education, shall have an opportunity for a hearing to challenge the content of the school records, to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

### Disclosures to Parents of Eligible Students

Even after a student has become an "eligible student" under FERPA (which is defined as a student who is eighteen (18) years of age or older or who is attending an institution of post-secondary education) an educational agency or institution may disclose education records to an eligible student's parents, without the student's consent:

# POLICY

2017

7240

6 of 6

Students

- a) If the student is claimed as a dependent for Federal income tax purposes by either parent;
- b) In connection with a health or safety emergency;
- c) If the student attends an institution of postsecondary education, is under twenty-one (21) years of age and the disclosure is regarding the student's violation of law, an institutional rule or policy governing the use of alcohol or a controlled substance at that institution; or
- d) If the disclosure falls within any other exception to the consent requirements under FERPA or its Regulations, such as the disclosure of directory information or in compliance with a court order or lawfully issued subpoena.

## Release of Information to the Noncustodial Parent

The District may presume that the noncustodial parent has the authority to request information concerning his/her child and release such information upon request. If the custodial parent wishes to limit the noncustodial parent's access to the records, it would be his/her responsibility to obtain and present to the school a legally binding instrument that prevents the release of said information.

Family Educational Rights and Privacy Act of 1974, 20 United States Code (USC) Section 1232g

34 Code of Federal Regulations (CFR) Part 99

No Child Left Behind Act, 20 USC §7908 (Military Recruiter Access)

10 USC §503 as amended by §544 of the National Defense Reauthorization Act for FY 2002

Education Law § 225

Public Officers Law §87(2)(a)

Arts and Cultural Affairs Law, Article 57-A (Local Government Records Law)

8 NYCRR 185.12 (Appendix I) Records Retention and Disposition, Schedule ED-1 for Use by School Districts and BOC

Adopted: 1/19/17