

STUDENT EDUCATION RECORDS AND PRIVACY

~~The District shall comply with all required components of the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA) when maintaining, retaining, granting access to, disseminating, and disposing of student educational records. In addition, the District shall comply with all notification requirements required by these laws.~~ The District believes that while collection and use of student information is necessary to provide education and student support services, the District must implement safeguards to ensure information is appropriately protected and used to serve the best interests of students. The purpose of this policy is to establish such safeguards.

Access

~~The District shall grant access to student educational records to individuals authorized by law. When applicable, appropriate consent will be obtained and/or agreements established to release records and the District will honor opt-out requests. The District shall comply with all recordkeeping requirements related to record access and disclosure as delineated in law.~~

Definitions

1. ~~Directory information: The Board defines directory information as:~~ is defined as personally identifiable information contained in a student education record that is generally considered **not** harmful or an invasion of privacy if disclosed and includes:
 - a. Address;
 - b. Date and place of birth;
 - c. Degrees, honors, and awards received;
 - d. Electronic personal identifier;
 - e. Dates of attendance;
 - f. Grade level;
 - g. Institutional email address;
 - h. Major field of study;
 - i. Most recent educational agency or institution attended;
 - j. Participation in officially recognized activities and sports;
 - k. Photograph;
 - l. A student's name;
 - m. Telephone listing;
 - n. Weight and height of members of athletic teams.
- *Education record* is defined as any record that directly relates to a student and is maintained by the District or by a party acting for the District. This definition excludes law enforcement records and records in the sole possession of the maker used only as a memory aid.¹
- *Eligible student* means a student who has reached the age of 18.²

¹ 34 CFR 99.3

² 34 CFR 99.3

- *FERPA* stands for the Family Educational Rights and Privacy Act.
- *Legitimate educational interest* is defined as access that is needed in order for a school official to fulfill his/her professional responsibility.³

~~School officials with a legitimate educational interest in a student's educational record shall be granted access to the portions of the record that they have a need to know.~~

- Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.
- *Permanent record* is defined as a record containing a student's name, address, phone number, record of grades, years enrolled, courses attended, and grades completed.

~~All components of a student's educational record shall at least be retained for the duration required by state law after which the permanent record will at least be retained. No record will be destroyed for which there is an outstanding request from a parent/student to review.~~

~~Special education records may be retained for a duration longer than required by law at the discretion of the special education director except that, in accordance with law, personally identifiable information in a special education record must be destroyed at the request of the parent(s). Parents of special education students shall be notified and their consent shall be obtained before the non-permanent components of a special education student's educational record are destroyed.~~

- *Personally Identifiable Information* (PII) includes information maintained in the student's education record that could be used alone or in combination to trace a student's identity directly or indirectly and would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
- *Record* means any information recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.⁴
- *School official* is defined as an individual who has a legitimate educational interest in accessing student educational records and is affiliated with the District in one of the following capacities:

- a. An individual employed by the District in an administrative, instructional, or support staff position;

³ https://nces.ed.gov/pubs2004/privacy/section_4b.asp

⁴ 34 CFR 99.3

- b. School board members;
- c. Contractors, consultants, volunteers, service providers, or other party with whom the school or District has outsourced institutional services or functions for which the school or District would otherwise use employees; records provided to these third parties must remain directly under the district's control for purposes of maintenance and use and the third party must agree to comply with 34 C.F.R. 99.33(a). Examples include, but are not limited to, school resource officers, interns, student teachers, the district's attorney, PowerSchool, SLDS, learning management software, hot lunch tracking software, ~~an individual employed by the District in an administrative, instructional or support staff position, school board members, data storage and protection agencies, [Viewpoint],~~ and district alert systems.⁵

The Board approves release of directory information as follows:

- a. Publication on the district's website
- b. To board-approved vendors for purposes of sale of school-related items such as, but not limited to, yearbooks, school pictures, graduation items, district apparel, and book orders
- c. To military and college recruiters in accordance with applicable laws (NDCC 15.1-07-25.1 and 20 U.S.C. 7908)
- d. To official district newspaper for purposes of recognizing student accomplishments and coverage of extracurricular events
- e. To school-affiliated groups for purposes of communicating and fundraising
- f. To school-sponsored student publications including, but not limited to, newspapers and yearbooks
- g. When the Board receives and approves a directory information release request; directory information shall only be released and used for purposes specified in the release request and the Superintendent shall add approved requestors to the district's master list of individuals and entities having access to student information. The Board shall develop criteria in regulations for approving and denying these requests.⁶

Any district employee who wishes to disseminate student directory information to a third party shall contact his/her privacy officer. The privacy officer shall determine if the Board has previously approved such release and, if not, deny the request or submit it to the Superintendent for board approval. ~~Upon board approval, the Superintendent shall instruct the privacy officer to ensure compliance with any opt-out requests made by parents.~~

⁵ 34 CFR 99.31(a)(1) and 06/28/06 FERPA Opinion
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/clarkcty062806.html>

⁶ 34 CFR 99.37(d)

Designation and Responsibilities of Privacy Officers

The Superintendent or designee shall serve as Chief Privacy Officer. In this role, the Superintendent is responsible for submitting to the Board for approval student information sharing requests from third-party individuals/entities other than parties to which the District reports student information under law. The Superintendent shall also maintain a master list of all individuals and entities having access to student information, including school district personnel listed by title. To ensure this list remains current and is manageable to maintain, it shall not contain names of individuals who have access to data.

The Superintendent may designate privacy officers at the district and building level. These privacy officers are responsible for:

1. Maintaining a list of school personnel by title who have access to student information; this list shall be provided to the Superintendent each time it is updated;
2. Submitting to the Superintendent for board approval new requests to share student information with third-party individuals and entities other than parties to which the District reports student information under law;
3. Ensuring that access to student information is granted only to the extent there is a legitimate educational interest and in accordance with this policy and any applicable agreements;
4. Enforcing this and other applicable district confidentiality and data protection policies;
5. Providing a list of students who have opted-out of directory information to classroom teachers and other district staff who have a need to know.

~~This list of school officials shall be included in the district's annual FERPA notification.~~

~~School officials will receive appropriate training and information on privacy to ensure records are not misused. The District shall put reasonable methods in place to ensure that school officials only obtain access to educational records or portions of educational records in which they have a legitimate educational interest.~~

Review and Amendments

Information Release Safeguards

1. Access by Parents and Eligible Students

To ensure compliance with parental and eligible student access requirements under FERPA:

- a. The District shall comply with a request by a parent or eligible student to access education records within a reasonable period of time, not to exceed 45 days after receipt of a request.
- b. The Board shall develop procedures for a parent/guardian/student to review and amend educational records. These procedures shall include procedures to verify the identity of a requesting parent/eligible student. The regulations shall be delineated in

board approved regulations ~~and disseminated annually in accordance with law.~~⁷ shall be available upon request.

Record Dissemination

- ~~1. Other schools: When a student enrolls, intends to enroll, or has enrolled in another school, the District shall forward a copy of the student's educational record, including disciplinary records involving suspension and/or expulsion to the new school district without prior consent so long as disclosure is for enrollment or transfer purposes. The District shall retain the original student record.~~
- ~~2. The District may disclose directory information ~~release this information~~ without a parent/guardian/ authorized eligible student's consent if it has given parents/eligible students a reasonable amount of time to opt-out of directory information release unless the parent/guardian/authorized student has requested to opt-out. Opt-out notices should be provided at the beginning of the school year and when a student otherwise enrolls in the District. These notices shall contain a reasonable deadline of at least 10 days for parents/eligible students to opt out.⁸ Opt-out notices will be disseminated in accordance with law. The Board shall approve a list of entities to which directory information may be disseminated. The District shall provide applicable directory information to entities granted authorized to access directory information under FERPA and North Dakota law unless a parent/authorized student has opted out.~~
3. ~~The District may release the contents of a student's educational record for reasons permitted by law, such as, but not limited to, health and safety reasons after taking into account the totality of circumstances and determining an articulable and significant threat to the health and safety of the student or others exists.~~
- ~~4. The District may, or, when required by law, shall release students' personally identifiable information from student educational records to authorized representatives, as defined by FERPA, in accordance with PII disclosure agreement requirements and other safeguard procedures mandated by FERPA regulations.~~
- ~~5. De-identified information may be released upon request if the request meets conditions permitting release of such information under law.~~

2. Personally Identifiable Information (PII)

Any third party requesting or receiving access to student PII must receive board approval unless the third party is required to receive PII under state or federal law.⁹ Any school employee who wishes to share PII with a third party shall contact his/her privacy officer. The privacy officer shall determine if the Board has previously approved such release and, if not, deny the request or submit it to the Superintendent for board approval. Upon board approval of any PII release request, the applicable privacy

⁷ 34 CFR 99.7 and 99.10

⁸ 34 CFR 99.37

⁹ SB 2326

officer shall inform the requestor of any parental consent requirements (see #7) and ensure the requestor complies with such requirements.

Parental/eligible student consent is not required to release PII under the following circumstances:

- a. The District receives information under 42 U.S.C. 14071 and applicable federal guidelines about a student who is a registered sex offender under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), and the District has a need to disclose the student's status as a sex offender for safety purposes¹⁰
- b. In connection with a health or safety emergency under the conditions described in 34 C.F.R. 99.36¹¹
- c. If records have been de-identified by the District; third party individuals and entities that receive de-identified information shall be included on the district's master list of individuals and entities having access to student information¹²
- d. To a school official who has a legitimate educational interest in the education records if the following conditions are satisfied:
 - i. Access shall be limited to only information the school official has a legitimate need to know
 - ii. School officials shall use the information only for the purposes for which the disclosure was made and shall not redisclose the information to any other party without proper consent or legal authority
 - iii. Titles of individuals and entities considered school officials shall be included on the district's master list of individuals and entities having access to student information¹³
- e. To a court without a court order or subpoena when the District initiates legal action against a parent/student or a parent/student initiates legal action against the District¹⁴
- f. To accrediting bodies for purposes of accreditation¹⁵
- g. To an organization conducting a study for the District to develop, validate, or administer a predictive test; administer student aid programs; or improve instruction so long as the organization has entered into a written agreement with the Board in accordance with law; if the organization is conducting a survey of students, the District shall ensure parents are notified in compliance with policy GCC and shall obtain parental consent, if applicable (see #7)¹⁶
- h. To another school in which the student seeks, intends to, or is already enrolled¹⁷
- i. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S.

¹⁰ 34 CFR 99.31(a)(16)

¹¹ 34 CFR 99.36

¹² 34 CFR 99.31(b)(1) and SB 2326

¹³ 34 CFR 99.31(a)(1)

¹⁴ 34 CFR 99.31(a)(9)(iii)(A)

¹⁵ 34 CFR 99.31(a)(7)

¹⁶ 34 CFR 99.31(a)(6)

¹⁷ 34 CFR 99.31(a)(2)

Secretary of Education, and state and local educational authorities for audit or evaluation of federal or state supported education programs or for the enforcement of or compliance with federal legal requirements that relate to those programs¹⁸

- j. To comply with a judicial order or lawfully issued subpoena; the District must make reasonable attempt to contact the parent/eligible student before disclosure unless the court order instructs otherwise¹⁹
- k. To the parents of an eligible student who is also a "dependent student" as defined in IRS Section 152²⁰

The District will take measures necessary to ensure that individuals and entities to which PII is released shall only have access to information necessary to fulfill their responsibilities under law and to the District. Measures may include, but not be limited to, controlling access to computer data through password restrictions, controlled access to paper records, and ensuring that any information access agreements required by law are properly executed by the Board.²¹

3. When Parental Consent is Required

The District must obtain parental/eligible student consent to release student information under the following circumstances:

- a. The Board has approved release of PII to an individual or entity not meeting the definition of school official under law and/or not meeting an exception to the parental consent requirement under FERPA
- b. The Board has approved release of directory information, other than or in addition to name, or PII to an online service provider for commercial purposes and the impacted students are under 13²²
- c. When administering a survey funded in whole or in part by the U.S. Department of Education and concerning any of the following areas:
 - i. Political affiliations or beliefs of the student or the student's parent
 - ii. Mental or psychological problems of the student or the student's family
 - iii. Sex behavior or attitudes
 - iv. Illegal, anti-social, self-incriminating, or demeaning behavior
 - v. Critical appraisals of other individuals with whom respondents have close family relationships
 - vi. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers
 - vii. Religious practices, affiliations, or beliefs of the student or student's parent

¹⁸ 34 CFR 99.31(a)(3)

¹⁹ 34 CFR 99.31(a)(9)

²⁰ 34 CFR 99.31(a)(8)

²¹ 34 CFR 99.31(a)(3)(ii)

²² Children's Online Privacy Protection Act, 16 CFR 312

- viii. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)²³

If the District is unable to obtain this consent, it shall not release the impacted student's information.

504 Plans and Individual Educational Programs (IEPs)

Sharing of student information necessary for developing, amending, or implementing an IEP or 504 Plan and sharing student information needed to determine eligibility for special education or disability services are not subject to board approval requirements in NDCC Ch. 15.1-07-25.3 because the District provides these services in fulfillment of requirements under state and federal law.

Policy Violations

Failure by a district employee or volunteer to comply with this policy, other district confidentiality requirements, or any improper disclosure of student information by a school employee or volunteer shall result in disciplinary action up to and including dismissal in accordance with applicable law. Failure by a third party to comply with this policy, any information-sharing agreements between the District and third party, or any improper disclosure of student information by the third party may result in termination of the third-party's access to student information and termination of the district's agreement with the third party if permitted under the terms of such agreement.

Training

School officials employed or volunteering for the District shall receive information and/or training on confidentiality requirements pertaining to student education records and consequences for breaching confidentiality. The District shall also provide training to applicable school personnel on the procedures for requesting to release student information contained in this policy.

Complementary Documents

- ACE, Violent & Threatening Behavior
- FACB, Transfer & Withdrawal Records
- FGA-BR, Student Education Records Access & Amendment Procedure
- FGA-E, Notice for Directory Information
- FGA-E2, Notification of Rights Under FERPA for Elementary and Secondary Schools
- FGA-E3, FERPA Release Form for Parents

End of Dickinson School District #1 Policy FGA.....Amended: 06/11/12 and 09/12/2016

²³ Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h; 34 CFR Part 98