

(X) Required
(X) Local
(X) Notice

STUDENT RECORDS

NEW NOTE: We have modified this policy to reflect recent state regulations implementing Education Law 2-d regarding data privacy and security. Additionally, due to a changing understanding of the word “shall,” we have replaced “shall” with “will” or “must” or “is” throughout when indicating that an action is required. Changes are shown underlined below.

OLD NOTE: This policy reflects a requirement under the federal McKinney-Vento Act Homeless Assistance Act, as amended by the Every Student Succeeds Act of 2015, that a homeless student’s living situation must not be treated as directory information. Additionally, we have provided the district with optional text to include volunteers among those permitted under FERPA to access student personally identifiable information. This is permitted under FERPA’s implementing federal regulations.

This policy conforms to state law, the Common Core Implementation Act, Chapter 56 of the Laws of 2014, Part AA, Subpart K and Subpart L, and guidance from the State Education Department entitled ‘Parents’ Bill of Rights for Data Privacy and Security’, dated July 29, 2014. The law focuses on protection of student personally identifiable information (PII) when school districts utilize third-party contractors. It also creates new requirements regarding a ‘parent’s bill of rights for data privacy and security,’ and additional notifications.

As with all of NYSSBA’s policies this is not intended to be a recitation or summary of the entire law. The regulation goes into more detail, but in order to understand the full range of district responsibilities, especially requirements applicable to contracts with third parties, NYSSBA recommends consulting with your school attorney.

The Board of Education recognizes its legal responsibility to maintain the confidentiality of student records. As part of this responsibility, the Board will ensure that eligible students and parents/guardians have the right to inspect and review education records, the right to seek to amend education records and the right to have some control over the disclosure of information from the education record. The procedures for ensuring these rights will be consistent with state and federal law, including the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing regulations.

The Board also recognizes its responsibility to ensure the orderly retention and disposition of the district’s student records in accordance with Schedule ED-1 as adopted by the Board in policy 1120.

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. Furthermore, pursuant to Chapter 56 of the Laws of 2014, the district will execute agreements with third-party contractors who collect, process, store, organize, manage or

analyze student personally identifiable information (PII) to ensure that the contractors comply with the law in using appropriate means to safeguard the data.

The Superintendent of Schools is 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 Record: means those records, in any format, directly related to the student and maintained by the district or by a party acting on behalf of the district, except:

- (a) records in the sole possession of the individual who made it and not accessible or revealed to any other person except a substitute (e.g. memory joggers);
- (b) records of the district's law enforcement unit;
- (c) grades on peer-graded papers before they are collected and recorded by a teacher.

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 their professional responsibilities.

Personally identifiable information (PII): as it pertains to students, 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. This term is fully defined in federal regulations at 34 CFR 99.3.

NOTE: Optional text below allows the district to utilize volunteers in ways in which they may access student's personally identifiable information. This is permitted under federal regulations implementing FERPA.

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 their tasks. ~~{Optional text for volunteers: Volunteers may be considered school officials for purposes of access to personally identifiable information if they are under the direct control of the district, are trained in the requirements of law under this policy, have a~~

~~legitimate educational interest, and the district uses reasonable methods to limit access to only the information that is necessary to fulfill their volunteer duties. Volunteers may only access the information necessary for the assignment, and must not disclose student information to anyone other than a school official with a legitimate educational interest. The Building Principal will provide adequate training on confidentiality of student records.]~~

NOTE: The district could prohibit volunteers from accessing student records by using the following text instead of the paragraph above:

“The district prohibits volunteers from accessing student information. The district expects that if volunteers discover any information about students in the course of their volunteer duties, they will not redisclose such information to anyone other than a school official with a legitimate educational interest.”

Third party contractor: is any person or entity, other than an educational agency (which includes schools, school districts, BOCES, or the State Education Department), that receives student or teacher/principal PII from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs. This includes educational partnership organizations that receive student or teacher/principal PII from a school district to carry out responsibilities under Education Law §211-e (for persistently lowest-achieving schools or schools under registration review) and is not an educational agency. This also includes not-for-profit corporations or other nonprofit organizations, other than an educational agency.

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 New York State Law and the procedures for exercising those rights. A ‘Parents’ Bill of Rights for Data Privacy and Security’ will be posted on the district website and included in any agreements with third-party contractors.(see 8635-E) The notice and ‘Bill of Rights’ may be published in a newspaper, handbook or other school bulletin or publication. The notice and ‘Bill of Rights’ will also be provided to parents, guardians, and students who enroll during the school year.

The notice and Parents’ Bill of Rights 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; and/or file a complaint regarding a possible data breach by a third party contractor with the district and/or the New York State Education Department's Chief Privacy Officer for failure to comply with state law.

The annual notice and Parents' Bill of Rights 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. The district will not sell directory information.
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.
7. that the district will provide information as a supplement to the 'Parents' Bill of Rights' about third parties with which the district contracts that use or have access to personally identifiable student data.

NOTE: School districts are not required to provide annual notice of all the exceptions to prior consent.

The district may also release student education records, or the personally identifiable information contained within, without consent, where permitted under federal law and regulation. For a complete list of exceptions to FERPA's prior consent requirements see accompanying regulation 5500-R, Section 5.

The district will 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.

Directory Information

The district has the option under FERPA of designating certain categories of student information as “directory information.” The Board directs that “directory information” include a student’s:

- Name
- ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems (only if the ID cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the student’s identity),
- Address (except information about a homeless student’s living situation, as described below)
- Telephone number
- Date and place of birth
- ~~Major course of study~~
- Participation in school activities or sports
- Weight and height if a member of an athletic team
- Dates of attendance,
- ~~Degrees and awards received~~
- Most recent school attended
- Grade level
- Photograph
- E-mail address
- Enrollment status

***NOTE:** Under federal and state law and regulation regarding homeless students, “information about a homeless student’s living situation” must be treated as an education record and not directory information. Such information would include a student’s address, but could also include other information that would disclose a student’s eligibility for services under McKinney-Vento. However, parents/guardians (and eligible students) could still consent to disclosure in the same way as for other education records under FERPA, but could not be compelled to do so. If further guidance or clarification is received, this policy may be amended.*

In the meantime, districts should take reasonable steps to provide homeless students with beneficial information they otherwise would have received via directory information. The text below, utilizing the McKinney-Vento liaison, is one method. This would be consistent with the liaison’s responsibilities to provide information about educational and related services to homeless students. The district could also allow the parent/guardian to select the school address as the student’s address for purposes of directory information, and act as a pass-through.

Information about a homeless student’s living situation will be treated as a student educational record, and will not be deemed directory information. A parent/guardian or eligible student may elect, but cannot be compelled, to consent to release of a student’s address information in the same way they would for other student education records. The district’s McKinney-Vento liaison will take reasonable measures to provide homeless students with information on educational, employment, or other postsecondary opportunities and other

beneficial activities. The district permits the parent/guardian to select the school's address as the student's address for purposes of directory information.

Social security numbers or other personally identifiable information will not be considered directory information.

~~Students who opt out of having directory information shared are still required to [please specify: wear, display or disclose] their student ID cards.~~

Once the proper FERPA notification is given by the district, a parent/guardian or student will have 14 days to notify the district of any objections they have to any of the "directory information" designations. If no objection is received, the district may release this information without prior approval of the parent/guardian or student for the release. Once the student or parent/guardian provides the "opt-out," it will remain in effect after the student is no longer enrolled in the school district.

The district may elect to provide a single notice regarding both directory information and information disclosed to military recruiters and institutions of higher education.

Cross-ref: 1120, School District Records
4321, Programs for Students with Disabilities Under IDEA and Part 89
4532, School Volunteers
5550, Student Privacy
5151, Homeless Children
8635, Information and Data Security, Breach and Notification

Ref: Family Educational Rights and Privacy Act, as amended, 20 USC 1232g; 34 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 §§ 2-a; 2-b; 2-c; 2-d; 225;
Public Officers Law §87(2)(a)
Arts and Cultural Affairs Law, Article 57-A (Local Government Records Law)
8 NYCRR Part 121 (Data Privacy)
8 NYCRR §185.12 (Appendix I) Records Retention and Disposition, Schedule ED-1 for Use by School Districts and BOCES
"Guidance for Reasonable Methods and Written Agreements,"
http://www2.ed.gov/policy/gen/guid/fpc/pdf/reasonablemtd_agreement.pdf
Parents' Bill of Rights for Data Privacy and Security, July 29, 2014:
<http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>
Family Policy Compliance Office/Student Privacy Policy Office website:
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>

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