

### Confidentiality of Student Records – Access and Challenge

The District 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 the confidentiality of student records shall 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 legal responsibility to ensure the orderly retention and disposition of the District student records in accordance with Schedule ED-1 as adopted by the Board in Policy 2551.

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 District will execute agreements with third-party contractors in accordance with Education Law § 2-d.

The Superintendent of Schools or his/her designee 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 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, with certain exceptions provided by FERPA and its implementing regulations, including:

- (a) records in the sole possession of the individual who made it and are 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 post-secondary 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.

*Third party contractor:* any person or entity, other than an educational agency, that receives student data or teacher or principal data (as defined in Education Law § 2-d) 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 or audit or evaluation of publicly funded programs.

### **Annual Notification**

At the beginning of each school year, the District will publish a notice that informs parents, guardians and eligible student (18 years or older) currently in attendance of their rights under FERPA and the New York State Law and the procedures for exercising those rights. The notice may be published in a newspaper, handbook, school calendar or other school bulletin or publication. The notice will also be provided to parents, guardians and eligible students who enroll during the school year. The District shall publish the Parents' Bill of Rights on its website and included in any agreements with third-party contractors, as defined above.

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.

In addition, the notice will inform parents, guardians and eligible students:

1. That it is the District 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 or school district in which a student seeks 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, 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 parents or eligible student exercise their right to prohibit release of the information without prior written consent.
5. Of the procedure for exercising the right to inspect, review and request amendment of student records.

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 may also release student education records, or the personally identifiable information contained within, without consent, where permitted under federal law and regulation.

The District will provide translations of this notice, where necessary, to parents, guardians and eligible students in their native language or dominant mode of communication, as well as parents, guardians, and eligible students who are disabled.

In the absence of the parent or eligible 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 four (4) 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
- 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
- Class schedule
- Photograph
- Class roster

Information about a homeless student’s living situation shall be treated as a student educational record, and shall not be deemed directory information.

Once the proper FERPA notification is given by the District, a parent, guardian or eligible student will have fourteen (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 eligible student for the release. Once the eligible student or parent/guardian provides the “opt-out,” it will remain in effect after the student is no longer enrolled in the District or until the eligible student or parent/guardian revokes the “opt-out.”

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

Ref: Family Educational Rights and Privacy Act, 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 185.12 (Appendix I) Records Retention and Disposition, Schedule  
ED-1 for Use by School Districts and BOCES

Adopted 10/21/08  
Revised 12/18/18

## **Data Security and Privacy Plan**

Contractor and/or any subcontractor, affiliate, or entity that may receive, collect, store, record or display any of the District's Protected Data, shall maintain a Data Security and Privacy Plan which includes the following elements:

1. Specifies the administrative, operational and technical safeguards and practices in place to protect personally identifiable information that Contractor will receive under the contract;
2. Demonstrates Contractor's compliance with the requirements of Section 121.3 of Part 121;
3. Specifies how officers or employees of the Contractor and its assignees who have access to student data, or teacher or principal data receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access;
4. Specifies how Contractor will utilize sub-contractors and how it will manage those relationships and contracts to ensure personally identifiable information is protected;
5. Specifies how Contractor will manage data security and privacy incidents that implicate personally identifiable information including specifying any plans to identify breaches and unauthorized disclosures, and to promptly notify the educational agency;
6. Specifies whether Protected Data will be returned to the District, transitioned to a successor contractor, at the District's option and direction, deleted or destroyed by the Contractor when the contract is terminated or expires.

Pursuant to the Plan Contractor will:

1. Have adopted technologies, safeguards and practices that align with the NIST Cybersecurity Framework referred to in Part 121.5(a);
2. Comply with the data security and privacy policy of the District; Education Law § 2-d; and Part 121;
3. Have limited internal access to personally identifiable information to only those employees or sub-contractors that need access to provide the contracted services;
4. Have prohibited the use of personally identifiable information for any purpose not explicitly authorized in this contract;
5. Have prohibited the disclosure of personally identifiable information to any other party without the prior written consent of the parent or eligible student:
  - a. except for authorized representatives such as a subcontractor or assignee to the extent they are carrying out the contract and in compliance with state and federal law, regulations and its contract with the educational agency; or

- b. unless required by statute or court order and Contractor has provided a notice of disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order.
6. Maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable information in our custody;
  7. Use encryption to protect personally identifiable information in its custody while in motion or at rest; and
  8. Not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

In the event Contractor engages a subcontractor to perform its contractual obligations, the data protection obligations imposed on the third-party contractor by state and federal law and contract shall apply to the subcontractor.

Where a parent or eligible student requests a service or product from a third-party contractor and provides express consent to the use or disclosure of personally identifiable information by the third-party contractor for purposes of providing the requested product or service, such use by the third-party contractor shall not be deemed a marketing or commercial purpose prohibited by the Plan.