

WASHINGTON-SARATOGA-WARREN-HAMILTON-ESSEX
BOARD OF COOPERATIVE EDUCATIONAL SERVICES

ADMINISTRATIVE REGULATION

STUDENT RECORDS: ACCESS AND CHALLENGE

Definitions

Education Records

The term education records is 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. 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.

In addition, for students who attend BOCES, 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.

The definition of education Records does not include the following:

- 1) Personal notes made by teachers or other staff, if these notes 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.
- 2) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
- 3) Grades on peer-graded papers before they are collected and recorded by a teacher.

Attendance

Attendance includes, but is not limited to:

- 1) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
- 2) The period during which a person is working under a work-study program.

Directory Information

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.

Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

Directory information does **not** include a student's: (1) social security number; or (2) student identification (ID) number, except as provided below.

Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

Disclosure

Disclosure is to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Personally Identifiable Information

The term personally identifiable information includes, but is not limited to:

- 1) The student's name;
- 2) The name of the student's parent or other family members;
- 3) The address of the student or student's family;
- 4) A personal identifier, such as the student's social security number, student number, or biometric record;
- 5) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- 6) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- 7) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Biometric Record

Biometric record, as used in the definition of *personally identifiable information*, is a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

Parent/Guardian Access Rights

- 1) The WSWHE BOCES, hereinafter referred to as "the BOCES," shall, upon request of a parent/guardian, permit the parent/guardian to inspect, review, or copy any education record relating to the child or children of that parent/guardian when such record is collected, maintained, or used by the BOCES. The BOCES shall fulfill the request within forty-five (45) days after the request is received.
- 2) The right to inspect, review, or copy education records includes:
 - a. The right of a parent/guardian to request of and receive from the BOCES a reasonable explanation of information contained in the education records of the child;
 - b. The right of a parent/guardian to be provided, on request, with a copy of all or part of the education records of the child; and
 - c. The right of a parent/guardian to designate a representative who will inspect, review, or copy the records.

- 3) If a parent/guardian requests copies of education records from the BOCES, the BOCES may charge the parent/guardian a reasonable cost which will not exceed the actual expense of the duplication. However, no cost shall be charged to a parent/guardian for inspecting and reviewing the record or records. No cost shall be charged to a parent/guardian for the search for or retrieval of records.
- 4) A parent/guardian shall have the right to request a list of the types and the location of the child's educational records collected, maintained, or utilized by the BOCES.
- 5) At the discretion of the BOCES and for verification and record keeping purposes only, the BOCES may require all parents/guardians to put into writing:
 - a. Their oral requests to inspect, review, copy or receive copies of education records;
 - b. Their oral designations of a representative; and
 - c. Their oral requests for a list of the types and location of records.
- 6) **Student access rights**
Whenever a student has attained eighteen (18) years of age or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parent/guardian of the student shall thereafter only be accorded to and required of the student.

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:

- 1) If the student is claimed as a dependent for Federal income tax purposes by either parent;
- 2) In connection with a health or safety emergency;
- 3) If the student is under twenty-one (21) years of age and has violated an institutional rule or policy governing the use of alcohol or a controlled substance; or
- 4) 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.

Access Record

- 1) The BOCES shall keep a record of parties who have obtained access to the education records of a student. The access record shall include the name of the party, the date of access, and the purpose for which the party was allowed to use the records.
- 2) A parent/guardian shall have the right to inspect the access record for the education records of his/her child.
- 3) The BOCES shall maintain, for public inspection, a current list of the names and positions of those employees who are authorized by the BOCES to have access to personally identifiable information.

Maintenance of Records

Officials

The BOCES shall designate an employee of the BOCES as the official who shall be responsible for insuring that the education records confidentiality policies and procedures are enforced and administered. This official shall:

- 1) Notify parents/guardians of the policies and procedures regarding student education records and their rights regarding access.

- 2) Develop the plan for education records, including safeguards which protect the confidentiality of personally identifiable information at the point of collection, storage, release, and destruction.
- 3) Provide inservice training to all staff in the implementation of Federal and State record access and confidentiality policies.
- 4) Maintain the current listing of employees who are authorized to have access to personally identifiable information.

Release of Information

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

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

Parental/Guardian Consent Required

Written parental/guardian consent shall be obtained by the BOCES before education records or personally identifiable information contained therein is released to any party unless:

- 1) Such release is authorized by the Family Educational Rights and Privacy Act, or its implementing regulations;
- 2) The information released is directory information as previously defined herein.

Health and Safety Emergency Exception

BOCES 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. BOCES may release information from records to appropriate parties including, but not limited to, parents, law enforcement officials and medical personnel. A BOCES 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 BOCES 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 BOCES 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.

Records Hearing

The BOCES shall, on parent/guardian request, provide the parent/guardian with an opportunity for a hearing to challenge information in education records if the parent/guardian alleges that such information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. The hearing shall be conducted according to the following provisions:

- 1) The hearing shall be held at a mutually agreed upon time and place within a reasonable time after the BOCES receives the request for a hearing from the parent/guardian.
- 2) The parent/guardian shall be notified in writing of the date, place and time of the hearing.
- 3) The hearing shall be conducted by a party who does not have a direct interest in the outcome of the hearing.
- 4) The parent/guardian shall be afforded a full and fair opportunity to present evidence relevant to the issues.
- 5) The parent/guardian may, at the hearing, be assisted or represented by persons at his/her expense; such persons may include legal counsel.

Decision After Hearing

The Hearing Officer shall render a written decision on the issues presented at the hearing within a reasonable time after the conclusion of the hearing. The decision shall be based solely upon evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

Decision To Amend

If, as a result of the hearing, the Hearing Officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, the BOCES shall amend the education records accordingly and so inform the parent/guardian in writing.

Decision Not To Amend

If, as a result of the hearing, the Hearing Officer decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, the BOCES shall inform the parent/guardian of his/her right to place in the education record of the student a statement which sets forth the written comments of the parent/guardian regarding the information in the education records or reasons for disagreeing with the decision of the Hearing Officer or both written comments and reasons.

- 1) The statement of the parent/guardian shall be appended by the agency to the education records so long as the record or the contested portion thereof is maintained by the BOCES.

- 2) If the education records of the students or the contested portion thereof are released by the BOCES to any party, the statement of the parent/guardian shall also be released to the party.

Nothing in this section shall be interpreted to mean that the parent/guardian and the BOCES may not, by mutual agreement, meet prior to either a parent/guardian request for a hearing or the hearing itself in order to discuss the concerns of the parent/guardian regarding the accuracy or inaccuracy of the records of the student.

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