

# Regulation

## Confidentiality of Student Records - Access and Challenge

The Family Educational Rights and Privacy Act (FERPA) and the associated regulations govern the access to student education records. 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) years of age, and a student who is eighteen (18) years of age or older or who is attending an institution of post-secondary education ("eligible student"), have a right to inspect and review any and all education records maintained by Eastern Suffolk BOCES.

### DEFINITIONS

#### ESBOCES Employee

For the purposes of this regulation, an ESBOCES employee is defined as:

1. a person employed by ESBOCES as an administrator, supervisor, instructor, or support staff member;
2. a person elected to the Board;
3. a contractor, consultant, volunteer, or other party to whom ESBOCES has outsourced a service or function if the individual:
  - a. performs a service or function that would otherwise be performed by an employee;
  - b. is under the direct control of ESBOCES with respect to the use and maintenance of education records; and
  - c. is subject to FERPA's rules regarding redisclosure of personally identifiable information from education records.

#### Authorized Representative

The term "authorized representative" is defined as 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

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 educational 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 ESBOCES, 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.

"Education records" do not include the following:

1. personal notes made by teachers or other employees 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;
4. records created and maintained by a law enforcement unit of the educational agency for law enforcement purposes; and
5. an employment record which is used only in relation to a student's employment.

### **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.

### **Disclosure of Records**

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 who 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(s)/guardian(s) 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 at ESBOCES, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7. information requested by a person whom ESBOCES reasonably believes knows the identity of the student to whom the education record relates.

### **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 social security number or student identification (ID) number.

### **Limited Directory Information Disclosure**

"Limited Directory Information Disclosure" means that ESBOCES may limit disclosure of its designated directory information to specific parties, for specific purposes, or both. The intent is to allow 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.

### **PARENT/GUARDIAN ACCESS RIGHTS**

ESBOCES shall, upon request of a parent/guardian, permit the parent/guardian to inspect and review any education record relating to the child or children of that parent/guardian when such record is collected, maintained, or used by ESBOCES. ESBOCES shall fulfill the request within forty-five (45) days after the request is received.

If a parent/guardian requests copies of education records from ESBOCES, ESBOCES 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(s). No cost shall be charged to a parent/guardian for the search for or retrieval of records.

A parent/guardian shall have the right to request a list of the types and the location of the child's education records collected, maintained, or utilized by ESBOCES.

At the discretion of ESBOCES and for verification and recordkeeping purposes only, ESBOCES may require all parents/guardians to put into writing:

1. their oral requests to inspect, review, copy, or receive copies of education records;
2. their oral designation of a representative; and
3. their oral requests for a list of the types and location of records.

### **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/Guardians 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), ESBOCES may disclose education records to an eligible student's parents/guardians, without the student's consent:

1. if the student is claimed as a dependent for Federal income tax purposes by either parent/guardian;
2. in connection with a health or safety emergency; or
3. if the student attends an institution of post-secondary education; is under twenty-one (21) years of age; and the disclosure is regarding the student's violation of law, institutional rule, or policy governing the use of alcohol or a controlled substance at that institution.

### **DISCLOSURE OF EDUCATION RECORDS**

#### **Consent Requirement**

Under FERPA, unless otherwise exempted in accordance with law and regulation, ESBOCES will release personally identifiable information contained in student education records only with a "signed and dated written consent" from a parent/guardian or eligible student except when such release is authorized under FERPA and its regulations. "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.

#### **Consent Not Required**

Under FERPA, consent is not required for disclosures made in the following circumstances:

1. to ESBOCES employees who have a legitimate educational interest in the records; ESBOCES shall use reasonable methods to ensure that employees obtain access to only those education records in which they have legitimate educational interests;

An ESBOCES employee has a legitimate educational interest if he/she is:

- a. performing a task that is specified in his or her appointment, position description, or by an agreement;
  - b. performing a task related to a student's education;
  - c. performing a task related to the discipline of a student; or
  - d. providing a service or benefit to the student or the student's family, such as healthcare, counseling, or job placement;
2. to officials of another school, upon their request, in which a student seeks or intends to enroll or where the student is already enrolled, provided the disclosure is for purposes related to the student's enrollment or transfer. These disclosures could include disciplinary records and records created as a result of a student receiving special education services under Part B of IDEA. Parental consent is not required for transferring education records if the ESBOCES annual FERPA notification indicates that such disclosures may be made. In the absence of information about disclosures in the annual FERPA notification, ESBOCES must make a reasonable attempt to notify the parent/guardian or eligible student about the disclosure, unless the parent/guardian initiated the disclosure. The parent/guardian or eligible student, upon request, shall be given a copy of the record that was disclosed. The parent/guardian or eligible student shall, upon request, be given an opportunity for a hearing;
  3. to authorized representatives of the Comptroller General of the United States, the US Secretary of Education, or State and local education authorities in connection with an audit or evaluation of a State or Federally supported education program or in compliance with legal requirements related to those programs;
  4. in connection with a student's request for or receipt of financial aid, as necessary to determine the eligibility, amount, or conditions of the financial aid, or to enforce the terms and conditions of the aid;
  5. if required by a State law requiring disclosure that was adopted before November 19, 1974;
  6. to organizations conducting certain studies pursuant to a written agreement for or on behalf of ESBOCES. The written agreement, among other things, shall specify and contain:
    - a. the purpose, scope and duration of the study;
    - b. that education records' information may only be used for the study's purpose;
    - c. that information cannot be redisclosed in a manner which would allow identification of the parents/guardians or students;
    - d. a requirement for the destruction or return of all personally identifiable information; and
    - e. the time period for the destruction or return of the information;

7. to accrediting organizations to carry out their functions;
8. to comply with a judicial order or lawfully issued subpoena. Before compliance, ESBOCES will make a reasonable effort to notify the parent/guardian or eligible student of the order or subpoena unless it is a Federal grand jury subpoena or a subpoena issued for law enforcement purposes and the court has ordered the contents not to be disclosed or it is an ex parte order obtained by the US Attorney General for certain purposes;
9. to appropriate parties, including parents/guardians, in a health or safety emergency. If ESBOCES determines that there is an articulable and significant threat to the health and safety of a student or other individuals, ESBOCES may release information from records to appropriate parties, including, but not limited to, parents/guardians, law enforcement officials, and medical personnel. An ESBOCES 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. ESBOCES must record the articulable and significant threat that formed the basis for the disclosure and must maintain this record for as long as the student's education records are maintained;
10. the disclosure is information the Board has designated below as "Directory Information" or
11. the disclosure is about a student who is required to register as a sex offender in the State.

In addition, education records may be released without consent if all personally identifiable information has been removed. Information removed shall include other information that, alone or in combination, is linked or linkable to a specific student and which 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.

### **Audit/Evaluation Exception**

The audit or evaluation exception allows for the disclosure of personally identifiable information 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, personally identifiable information 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).

ESBOCES may, from time to time, disclose personally identifiable information from education records without consent to authorized representatives of the entities listed above. ESBOCES may also, from time to time, designate its own authorized representative who may access personally identifiable information without consent in connection with an audit or evaluation of an education program within ESBOCES. As an example, ESBOCES might designate a university as its authorized representative in order to disclose, without consent, personally identifiable information 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 ESBOCES to evaluate how effectively ESBOCES prepared its students for success in postsecondary education.

### **Studies Exception**

This exception allows for the disclosure of personally identifiable information 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.

ESBOCES may, from time to time, disclose personally identifiable information from education records without consent to such organizations conducting studies for ESBOCES, in accordance with its obligations under FERPA.

In addition, other entities outside of ESBOCES may, from time to time, disclose personally identifiable information from education records that ESBOCES has previously shared with that entity, to organizations conducting studies on behalf of ESBOCES. For example, a State Education Agency (SEA) may disclose personally identifiable information from education records provided by ESBOCES 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, ESBOCES shall enter into a written agreement with organizations conducting studies for ESBOCES, or, with its designated authorized representatives in connection with audits or evaluations of education programs within ESBOCES. In the event that ESBOCES discloses personally identifiable information from education records to its own designated authorized representative in connection with an audit or evaluation of an educational program within ESBOCES, it shall use reasonable methods to ensure to the greatest extent practicable that its designated authorized representative complies with FERPA and its regulations.

### **Directory Information**

Unless specifically requested in writing by the parent/guardian or eligible student, ESBOCES employees may not release directory information (name, address, telephone number) of present or former students.

The release of student directory information is not to be confused with the release of names, addresses, and telephone listings of certain students (i.e., a student seventeen (17) years of age or older or in the eleventh grade (or its equivalent) or higher) to military recruiters. In compliance with the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) and the National Defense Authorization Act, ESBOCES shall notify parents/guardians that, by law, it routinely releases this information to military recruiters upon request, subject to a parent's/guardian's/eligible student's request not to disclose such information with written parental verification of such request.

ESBOCES shall honor a former student's opt out request made while the student was in attendance.

### **Record of Request for Disclosure**

ESBOCES 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 access the records. ESBOCES will use reasonable methods to identify and authenticate the identity of those to whom it discloses information. The access record shall be maintained as long as the student's education records are maintained.

A parent/guardian or eligible student shall have the right to inspect the access record.

### **MAINTENANCE OF RECORDS**

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

1. at least on an annual basis notify parents/guardians and eligible students 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; and
3. provide inservice training to all employees in the implementation of Federal and State record access and confidentiality policies.

### **CORRECTION OF EDUCATION RECORDS**

Parents/guardians or eligible students have the right to ask to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Parents/guardians or eligible students must ask ESBOCES to amend the record. In doing so, they should identify the part of the record they want changed and specify why they believe it is inaccurate, misleading, or in violation of the student's privacy or other rights.

If ESBOCES decides not to comply with the amendment request, ESBOCES will notify the parents/guardians or eligible student of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights.

### **Hearing to Challenge Education Records**

If a hearing to challenge education records is requested, the following procedures will be followed:

1. within a reasonable time after receiving the request, ESBOCES will arrange for a hearing and notify the parent/guardian or eligible student, in writing and reasonably in advance, of the date, place, and time of the hearing;
2. the hearing shall be conducted by a party who does not have a direct interest in the outcome of the hearing; however, the hearing officer may be an official of ESBOCES;
3. the parent/guardian or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues; and

4. the parent/guardian or eligible student may, at the hearing, be assisted or represented by persons at his/her choice at his/her own 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 a student, ESBOCES shall amend the education records accordingly and so inform the parent/guardian or eligible student 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 a student, ESBOCES shall inform the parent/guardian or eligible student 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 or eligible student regarding the information in the education records or reasons for disagreeing with the decision of the Hearing Officer or both written comments and reasons.

The statement of the parent/guardian or eligible student shall be appended by ESBOCES to the education records so long as the record or the contested portion thereof is maintained by ESBOCES.

If the education records of the student or the contested portion thereof are released by ESBOCES to any party, the statement of the parent/guardian or eligible student shall also be released to the party.

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

### **References:**

- [Family Educational Rights and Privacy Act \(FERPA\) \(20 USC §1232g; 34 CFR Part 99\)](#)
- [Individuals with Disabilities Education Act \(IDEA\)](#)
- Board Policy 6420 - Confidentiality of Student Records - Access and Challenge

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