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EXPLANATION: STUDENT RECORDS

This policy was revised for clarity and to incorporate changes made to the regulations to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The confidentiality of student records is regulated by state and federal laws, and it is impossible for this policy and associated procedure to completely outline all of the law. However, MSBA hopes that these documents will give school districts and their employees some guidance on legal issues associated with student records.

There are two particular issues that the district should consider carefully when reviewing this policy:

1. *How does your district want to define directory information?* The FERPA regulations were recently revised to allow districts to limit the release of directory information to specific persons or for particular purposes. Previously, if a type of information, such as a student's grade level or address, was included in directory information, the information was available to anyone in the public. The U.S. Department of Education has recognized that while districts may be willing to provide information to some groups, such as booster clubs or the Parent Teacher Association (PTA), most districts would feel uncomfortable releasing the same information upon request to an unknown member of the public. The new FERPA regulations allow districts to designate disclosure to specific groups.

The story does not end with FERPA, though. Missouri courts have recognized that if information is included in "directory information," that information is available to the public under the Missouri Sunshine Law. *Oregon County R-VI School District v. LeMon*, 739 S.W.2d 553 (Mo.Ct.App. 1987). This has required districts to think long and hard about what information is included in directory information. It is unclear how Missouri courts will interpret the Sunshine Law now that the FERPA regulations have changed. Will the courts only require disclosure to the groups designated by the district in this policy, or will the courts consider the information completely open once any person or group outside the school system has access to the information? MSBA simply does not have an answer to this question.

MSBA would argue that FERPA already allows disclosure to some entities (DESE, the Office for Civil Rights), and those exceptions do not automatically open the information to the public at large. For this reason, MSBA has taken a chance and redefined directory information in this policy to allow for limited disclosure, but MSBA encourages the district to discuss this issue with a private attorney. MSBA also recommends that your district review the definition of directory information in this

policy closely with administrative staff and perhaps parents to ensure that it aligns with the district's current practices and that it accurately reflects the expectations of the community.

Districts that wish to keep the previous definition of directory information certainly may do so; however, MSBA encourages districts to review the new definition in this policy since it contains information that the district may want to consider including in its definition of directory information, even if the previous format is retained.

If the district does change its definition of "directory information" or limits who may access this information, the district needs to also change the annual notification it gives parents and students. Most districts include this notice in a student handbook, but some districts will include it in newsletters or other information sent home with students or mailed to parents.

2. *Does the district want to recognize a law enforcement unit within the district?* FERPA allows the district to designate a "law enforcement unit" in the school district. Once designated, records created and maintained by the law enforcement unit for a law enforcement purpose are not protected educational records under FERPA and may be disclosed to other persons, such as the police, prosecutors or others, without first obtaining parental consent or qualifying for other exceptions under FERPA. While records such as discipline reports or grade cards cannot be designated as law enforcement unit records because they are created for school purposes rather than law enforcement purposes, records such as security camera recordings could fall under this exception.

Please note that a "law enforcement unit" does not have to actually include a school resource officer or other member of law enforcement. This term is defined in FERPA to include "any individual, office, department, division or other component" of the district that is officially authorized or designated by the district to enforce law or refer information to the appropriate authorities for enforcement of the law. A law enforcement unit does not lose its designation if the person or department also performs other functions for the district. For example, if a district does not have a school resource officer or a security director, the district could still designate an assistant superintendent, principal or both to be the law enforcement unit for the district.

By designating a law enforcement unit, the district could improve communication with local law enforcement. For example, if the law enforcement unit is directed to operate, maintain and review the district's security cameras, then information obtained from those cameras is not considered a student education record even if it shows identifiable

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students. The law enforcement unit may release this information directly to law enforcement without first requiring a subpoena.

The downside to this designation is that it may open up these images or other records maintained by the law enforcement unit to the public. It is currently unclear if a court would consider these records closed or open under the Sunshine Law. It is also unclear how confidential individual police and sheriff offices would consider a recording once they receive it. Obviously, districts do not want to see bus security recordings replayed on the local news. For this reason, MSBA recommends that the district discuss this issue with its private attorney before designating a law enforcement unit. The district should also discuss the issue with local law enforcement.

If the district is interested in designating a law enforcement unit in this policy, MSBA recommends that the district add the following language after the "Law Enforcement Access" section:

Law Enforcement Unit Exception

The Board designates the *[school resource officer, high school principal, security director, assistant superintendent of student services, etc.]* as a law enforcement unit under the Family Educational Rights and Privacy Act (FERPA). Records created and maintained by the law enforcement unit for a law enforcement purpose may be disclosed to local, state and federal juvenile justice, law enforcement and social services agencies without parental consent or a subpoena.

MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

	Board Secretary	X	Business Office	X	Coaches/Sponsors
	Facility Maintenance		Food Service		Gifted
	Human Resources	X	Principals		Library/Media Center
X	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

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STUDENT RECORDS

In order to provide students with appropriate instruction and educational services, it is necessary for the district to maintain extensive and sometimes personal information about students and families. These records must be kept confidential in accordance with law, but must also be readily available to district personnel who need the records to effectively serve district students.

The superintendent or designee will provide for the proper administration of student records in accordance with law, will develop appropriate procedures for maintaining student records and will standardize procedures for the collection and transmittal of necessary information about individual students throughout the district. The **superintendent and building principals** shall ~~assist the superintendent in developing the~~ **will develop a student records system; that includes protocols for releasing student education records.** Principals are responsible for maintaining and protecting the **student education records in his or her building and developing protocols for releasing student education records each school.** The superintendent or designee will make arrangements so that all district employees are trained annually on the confidentiality of student education records, as applicable for each employee classification.

Definitions

Eligible Student – A student or former student who has reached age 18 or is attending a postsecondary school.

Parent – A biological or adoptive parent of a student, a guardian of a student, or an individual acting as a parent or guardian in the absence of the student's parent or guardian.

Student – Any person who attends or has attended a school in the school district and for whom the district maintains education records.

Health Information

Student health information is a type of student record that is particularly sensitive and protected by numerous state and federal laws. Student health information shall be protected from unauthorized, illegal or inappropriate disclosure by adherence to the principles of confidentiality and privacy. The information shall be protected regardless of whether the information is received orally, in writing or electronically and regardless of the type of record or method of storage.

Parent and Eligible Student Access

All parents may inspect and review their student's education records, seek amendments, consent to disclosures and file complaints regarding the records as allowed by law. These rights transfer from

the parent to the student once the student becomes an eligible student; however, under the Missouri Sunshine Law, parents maintain some rights to inspect student records even after a student turns 18. The district will extend the same access to records to either parent, regardless of divorce, custody or visitation rights, unless the district is provided with evidence that the parent's rights to inspect records have been legally modified.

If a parent or eligible student believes an education record related to the student contains information that is inaccurate, misleading or in violation of the student's privacy, the parent or eligible student may use the appeals procedures created by the superintendent or designee to request that the district amend the record.

The district will annually notify parents and eligible students of their rights in accordance with law.

Directory Information

Directory information is information contained in an education record of a student that generally would not be considered harmful or an invasion of privacy if disclosed without the consent of a parent or eligible student. The district will designate the types of information included in directory information and release this information without first obtaining consent from a parent or eligible student unless a parent or eligible student notifies the district in writing as directed. Parents and eligible students will be notified annually of the information the district has designated as directory information and the process for notifying the district if they do not want the information released.

Even if parents or eligible students notify the district in writing that they do not want directory information disclosed, the district may still disclose the information if required or allowed to do so by law. For example, the district may require students to disclose their names, identifiers or district e-mail addresses in classes in which they are enrolled, or students may be required to wear, publicly display or disclose a student identification card or badge that exhibits information that is designated as directory information.

The school district designates the following items as directory information:

General Directory Information – The following information the district maintains about a personally identifiable student may be disclosed by the district to the school community through, for example, district publications, or to any person without first obtaining written consent from a parent or eligible student:

Student's name; date and place of birth; parents' names; grade level; enrollment status (e.g., full-time or part-time); student identification number; user identification or other unique personal identifier used by the student for the purposes of accessing or communicating in electronic systems as long as that information alone cannot be used to access protected

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educational records; participation in district-sponsored or district-recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees, honors and awards received; artwork or course work displayed by the district; schools or school districts previously attended; and photographs, videotapes, digital images and recorded sound unless such records would be considered harmful or an invasion of privacy.

Limited Directory Information – In addition to general directory information, the following information the district maintains about a personally identifiable student may be disclosed to: school officials with a legitimate educational interest; parent groups or booster clubs that are recognized by the Board and are created solely to work with the district, its staff, students and parents and to raise funds for district activities; parents of other students enrolled in the same school as the student whose information is released; students enrolled in the same school as the student whose information is released; governmental entities including, but not limited to, law enforcement, the juvenile office and the Children's Division (CD) of the Department of Social Services:

The student's address, telephone number and e-mail address and the parents' addresses, telephone numbers and e-mail addresses.

- ▶ ~~**Students in kindergarten through eighth grade**— Student's name; parent's name; date and place of birth; grade level; bus assignment; enrollment status (e.g., full-time or part-time); participation in school-based activities and sports; weight and height of members of athletic teams; dates of attendance; honors and awards received; artwork or coursework displayed by the district; most recent previous school attended; and photographs, videotapes, digital images and recorded sound unless such photographs, videotapes, digital images and recorded sound would be considered harmful or an invasion of privacy.~~

- ▶ ~~**High school and vocational school students**— Student's name; parent's name; address; telephone number; date and place of birth; grade level; bus assignment; enrollment status (e.g., full-time or part-time); participation in school-based activities and sports; weight and height of members of athletic teams; dates of attendance; degrees, honors and awards received; artwork or coursework displayed by the district; most recent previous school attended; and photographs, videotapes, digital images and recorded sound unless such photographs, videotapes, digital images and recorded sound would be considered harmful or an invasion of privacy.~~

Parent and Eligible Student Access

All parents will have the right to inspect their child's education records as allowed by law. As used in this policy, a "parent" includes a biological or adoptive parent, a guardian or an individual acting as a parent in the absence of a natural parent or guardian. The district will extend the same rights to either parent, regardless of divorce, custody or visitation rights, unless the district is provided with

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~~evidence that the parent's rights to inspect records have been legally revoked. The rights of the parent transfer to the student once the student turns 18, or attends an institution of postsecondary education, in accordance with law.~~

~~If a parent or eligible student believes the education records related to the student contain information that is inaccurate, misleading or in violation of the student's privacy, he or she may ask the district to amend the record by following the appeals procedures created by the superintendent or designee.~~

~~The district will annually notify parents and eligible students of their rights in accordance with law.~~

Law Enforcement Access

The district may report or disclose education records to law enforcement and juvenile justice authorities if the disclosure concerns law enforcement's or juvenile justice authorities' ability to effectively serve, prior to adjudication, the student whose records are released. The officials and authorities to whom such information is disclosed must comply with applicable restrictions set forth in 20 U.S.C. § 1232g (b)(1)(E) **federal law**.

If the district reports a crime committed by a student with a disability as defined in the Individuals with Disabilities Education Act (IDEA), the district will transmit copies of the special education and disciplinary records to the authorities to whom the district reported the crime **as allowed by law**.

Law enforcement officials also have access to directory information and may obtain access to student education records in emergency situations as allowed by law. Otherwise, law enforcement officials must obtain a subpoena or consent from the parent or eligible student before a student's education records will be disclosed.

Children's Division Access

The district may disclose education records to representatives of the ~~Children's Division (CD) of the Department of Social Services~~ when reporting child abuse and neglect in accordance with law. Once the CD obtains custody of a student, CD representatives may also have access to education records in accordance with law. CD representatives may also have access to directory information and may obtain access to student education records in emergency situations, as allowed by law.

Military and Higher Education Access

The district will disclose the names, addresses and telephone numbers of secondary school students to military recruiters or institutions of higher education as required by law unless the parent or student notifies the district in writing not to disclose the information to those entities.

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Note: *The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.*

Adopted: FIELD(AdoptDate)

Revised:

Cross Refs: BBFA, Board Member Conflict of Interest and Financial Disclosure
EFB, Free and Reduced-Cost Food Services
EHB, Technology Usage
EHBC, Privacy Protection
GBCB, Staff Conduct
IGBA, Programs for Students with Disabilities
IGBE, Students in Foster Care
IGDB, Student Publications
IIAC, Instructional Media Centers/School Libraries
IL, Assessment Program
KB, Public Information Program
KBA, Public's Right to Know
KDA, Custodial and Noncustodial Parents
KI, Public Solicitations/Advertising in District Facilities
KKB, Audio and Visual Recording
KNAJ, Relations with Law Enforcement Authorities

Legal Refs: §§ 167.020, .022, .115, .122, .123, 210.115, .865, 452.375, .376, 610.010 - .028,
RSMo.
Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213
Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g
Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h
Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 - 1417
No Child Left Behind Act of 2001, 20 U.S.C. §§ 6301 - 7941
The Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794
34 C.F.R. Part 99
Oregon County R-VI School District v. LeMon, 739 S.W.2d 533 (Mo.Ct.App. 1987)

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