



## Confidentiality of Student Records

There are two important federal laws concerning the confidentiality of students' educational records: the Family Educational Rights and Privacy Act (known as FERPA") and the Individuals with Disabilities Education Act (known as "IDEA"). Both FERPA and IDEA apply to charter schools and district public schools. FERPA covers all education records of students enrolled in a charter school; the confidentiality provisions of IDEA mainly concern a subset of education records of students with disabilities.

In order to help your charter school comply with FERPA and the confidentiality provisions contained in IDEA, the following is a summary of their most essential requirements.

The Institute has also prepared a series of forms that you may find helpful in implementing your school's policies and procedures. **These forms are samples only.** While a school may use them as part of its policy, it should feel free to use its own, so long as those forms capture the information that the law requires you to collect. Please note that these forms are available on request from the Charter Schools Institute in electronic form.

Throughout the overview, and for your reference, citations are made to pertinent provisions of the FERPA statute or the FERPA and IDEA regulations. References to the FERPA regulations follow the format, 34 C.F.R. § 99\_\_; references to the IDEA regulations follow the format 34 C.F.R. § 300.\_\_\_; references to FERPA follow the format 20 U.S.C. § 1232g\_\_\_. Please note that C.F.R. is the abbreviation for Code of Federal Regulations; U.S.C. is the abbreviation for United States Code.

The statute and regulations can be found at the following web pages:

- FERPA, 20 U.S.C. § 1232g *et seq.*, Family educational and privacy rights: <http://www4.law.cornell.edu/uscode/20/1232g.text.html> (from the Cornell Law School, Legal Information Institute).
- FERPA Regulations, 34 C.F.R. Part 99 *et seq.*: <http://www.gpoaccess.gov/cfr/index.html>. (Note: you may have to search both the most recent and prior years to find a particular section.)
- IDEA Regulations, 34 C.F.R. Part 300 *et seq.*: [http://www.access.gpo.gov/nara/cfr/waisidx\\_98/34cfr300\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/34cfr300_98.html).

## **Overview**

Important Note: The following is only a summary of FERPA and the relevant IDEA regulatory provisions. While it captures their most important provisions, it is not comprehensive and does not cover every provision. *Accordingly, in implementing your school's confidentiality policies and procedures, you may use this memo (and the attached forms) as a starting point; however, the Institute highly recommends that your policies and procedures be reviewed by a knowledgeable attorney to ensure that they are complete and correct in all respects.* If you or your school's attorney has any questions regarding these requirements, please contact the Institute's Office of Counsel.

## **Family Educational Rights and Privacy Act (FERPA)**

FERPA's purpose is to ensure that parents and students have meaningful access to their own education records (and that those records are accurate) while at the same time limiting access and release of such records to others. FERPA carries out its purposes by requiring all schools that receive federal funds to:

- gain prior written consent of parents before releasing the education records of their children (or any personally identifiable information contained in those records), except in certain circumstances specified in the statute;
- allow parents to inspect, review, and obtain copies of the education records of their children;
- allow parents to challenge the contents of such records on the basis that they are inaccurate, misleading or in violation of the student's privacy rights; and
- allow parents to object to the publication of directory information by requiring a school to give parents notice and a reasonable time to object to publication.

## **Individuals with Disabilities in Education Act (IDEA)**

Though the primary thrust of IDEA is to ensure a free and appropriate public education for disabled students, IDEA also requires additional safeguards for records relating to students with disabilities. Many of these safeguards overlap and are intertwined with the more general requirements of FERPA.

## **Important Procedures and Records to be Established by Schools Under FERPA and the Confidentiality Provisions of IDEA**

### **A. Procedures for granting access to records to parents/guardians or their authorized representatives.**

Parents/guardians have the right to inspect and review all records relating to their child that the charter school collects, maintains, or uses regarding the identification, evaluation,

and educational placement of the child. (20 U.S.C. § 1232g(a)(1)(A)). Parents of disabled children also have the explicit right to have a representative inspect and review the records. (34 C.F.R. § 300.562(b)(3)). In addition, parents of disabled children have the right to obtain explanations and interpretations of their children's education records, so long as such requests are reasonable. (34 C.F.R. § 300.562(b)(1)).

When a parent requests a record, it must be provided to him or her no later than 45 days from the date of request. If the request by a parent for a record is connected to a meeting of a committee on special education (CSE) or to an IDEA related due process hearing, a charter school must provide the requested record prior to such meeting or hearing, or within 45 days, whichever period is shorter. (34 C.F.R. § 99.10 and 34 C.F.R. § 300.562(a)).

The school may charge a reasonable fee for copying records requested, unless such fee would effectively prevent the parent from exercising his or her rights under FERPA and/or IDEA. The school may not charge a fee to search for or retrieve records. (34 C.F.R. § 99.11 and 34 C.F.R. § 300.566).

In order to ensure the confidentiality of records as well as a timely response to parental requests for review of records, the school must designate a member of the administrative staff to be in charge of handling all requests for education records (whether those requests come from parents or any other individual or entity). (34 C.F.R. § 300.572(b)).

A sample form ([Form 1 - Request to Review Records](#)) that a school might keep on hand for parents (and others) to request access to their child's education records is attached. A charter school may also wish to consider implementing the following procedures or taking the following actions.

- Grant the staff member designated to oversee compliance with FERPA and the confidentiality provisions of the IDEA exclusive authority to handle requests and to consult as needed with the school's attorney. In light of the sensitivity of student records, the designated staff member should probably be a senior member of the organization;
- require that all requests for review of student records (by parents or anyone else) be received in writing;
- establish a master calendar (with a tickler system) to track each request in order to ensure that requests from parents are handled in a timely fashion and within the 45 day period allotted to schools (or any shorter period prior to a meeting of the CSE or a due process hearing);
- check that individuals who identify themselves as parents or guardians in fact carry such status; and

- make available to staff and others a supply of forms for use in requesting education records.

## **B. Procedures for obtaining parental consent for the release of education records or personally identifiable information**

### (1) Education records and personally identifiable information

With a number of limited exceptions, parents must give their consent before any education records or personally identifiable information can be disclosed by a charter school. (34 C.F.R. § 300.571). NOTE: “Personally identifiable information” means information that includes: (a) the name of the child, parent, or other family member; (b) the address of the child; (c) a personal identifier number (such as the child's social security number or student number); or (d) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. *See*, 34 C.F.R. 300.500(b)(3).

The situations in which a school need not obtain parental consent are specified under FERPA and are quite detailed (20 U.S.C. § 1232g(b)(1)-(2); 34 C.F.R. § 99.30-31). They include, but are not limited to, the following individuals or entities:

- to state and local educational authorities, (34 C.F.R. § 99.31(a)(3)(iii)), including, but not limited to the Charter Schools Institute and State Education Department, subject to the requirements of 34 C.F.R. § 99.35;
- to officials of another school in which the student seeks or intends to enroll (34 C.F.R. § 99.31(a)(2) if certain prior conditions are met as set forth in 34 C.F.R. § 99.34);
- in response to a judicial order or subpoena (though a parent should be notified prior to disclosure in order to permit the parent to seek judicial relief) (34 C.F.R. § 99.31(a)(9)(i)); and
- to other school officials, including teachers, whom the school has determined to have legitimate educational interests. (34 C.F.R. § 99.31(a)(1)).

The school administrator in charge should review those exceptions carefully (and consult with the school’s attorney as necessary) when reviewing a request for access from anyone other than a parent or before disclosing any education records or personally identifiable information.

It is important that the school's administrative staff understand that, even within the school, FERPA restricts access (absent written parental permission) to only those individuals with a legitimate need for access. Accordingly, absent special reason, a faculty member generally should not have access to education records of students to whom she is not providing instruction. A school’s records confidentiality policy and

procedures, if they are to be sound, should ensure limits on access to records not only to individuals or entities unassociated with the school, but to faculty and staff as well. To ensure that school personnel are aware of this requirement, the school may wish to require employees to sign annually a confidentiality agreement, through which they acknowledge their understanding. ([Form 2 – Confidentiality Agreement for School Employees](#)).

Where parental consent is required, the school should ensure that such consent is received in writing. Schools should also ensure that the consent is based on full information, i.e., the parent knows the specific records that are contemplated for release, the reason for the request and to whom the records would be released. (34 C.F.R. § 99.30). Copies of the records that have been requested for release should also be provided to the parents to assist them in making this evaluation if they so request.

The school should ensure that education records should be stored in a central location and that location should be secured and access limited to designated members of the administration. Exceptions to central storage include those records kept by individual teachers that are used by that teacher only, e.g., a grading book or required personal copy of an Individualized Education Program (IEP), IEPs kept by Special Education Coordinators and health records kept by the School Nurse. These may be kept in individual classrooms or other areas as long as they are secured. In addition, all records covered by FERPA and the IDEA must be stored with a record of access or log discussed in section D, below.

A sample form ([Form 3 - Consent for Release of Student Information](#)) which a school may use to obtain consent from a parent prior to releasing an education record or personally identifiable information, is attached. (NOTE: A school should be aware that certain of the exceptions in FERPA to obtaining parental consent are not applicable to personally identifiable information that is contained in a student's special education records. (34 C.F.R. § 300.571). When information of this type is requested to be released or accessed, your school's designated staff member should consult with the school's attorney.

## (2) Directory Information

In contrast to general education records (which cannot be disclosed in most instances without the affirmative consent of a parent), FERPA permits the disclosure of certain categories of what is known as "directory information," i.e., name, age, address, etc., without specific permission from the parents having been obtained. (NOTE: The regulations to FERPA define "directory information" as that information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. (34 C.F.R. 99.3).)

However, while permission is not required, the school must give a parent the opportunity to object or opt out. A sample form ([Form 4 - Notice of Intent to Disclose Directory](#)

**Information**), which a school might use to give parents the required opportunity to object to disclosure, is attached.

### **C. Annual FERPA notification**

Each charter school is required to notify annually parents/guardians of their legal rights under FERPA, as well as the right to file a complaint for failure to comply with FERPA. (34 C.F.R. § 99.7). The notice must include the following:

- notice that the parent has the right to inspect and review his or her child's education records and the procedures for so doing, including the name, address and work location of the school's contact person, whether or not copies of records will be made available (as opposed to access), and, if so, the cost per copy;
- notice that the parent has the right to request an amendment of a misleading or incorrect record (or a record that otherwise violates the child's privacy rights) and the procedures for so doing;
- notice that the parent must consent to disclosures of personally identifiable information contained in a student's education records (except where, under FERPA, prior permission is not required);
- if the school has a policy of disclosing personally identifiable information to other school officials, the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest; and
- information regarding the right to file a complaint against the school for failure to comply with FERPA.

A sample form (**[Form 5 - Annual Notification](#)**) for providing the required information to parents/guardians is attached. *Please note that this form may be required to be modified depending on the school's policies and procedures and thus cannot be simply copied verbatim.* Before sending notification, the school may wish to review the form with its attorney to ensure consistency with school policies and procedures. In order to ensure that the notification is made annually, the school should include this notice in its mailings to all enrolled students prior to or at the start of the school year.

### **D. Records of access (Logs)**

Under FERPA and IDEA, each charter school must maintain a record indicating all individuals and organizations (other than school officials) that have requested and/or obtained access to a student's education records and indicating the legitimate interest each had in obtaining access to the records ("record of access"). The only exceptions to this are for school officials who the school has determined have a legitimate educational interest, parents requesting records of their children and a party seeking access pursuant

to a secret order/subpoena of a grand jury or other law enforcement subpoena. The record of access must be maintained with the education records of each student.

This record of access is itself confidential and is only available to parents, the school's custodian of records and assistants thereto, school officials, and authorized representatives of certain designated governmental officials who are charged with auditing the record keeping system. (34 C.F.R. § 99.32 and 34 C.F.R. § 300.563).

A sample form ([Form 6 -- Record of Access](#)) for recording individuals who have had access to a student's education records is attached.

### **E. Requests for Amendments to Records**

If a parent believes the information in their child's records is inaccurate or misleading or that information in the records violates the child's right to privacy or other rights, the parent may request that the charter school amend it. The charter school must then decide, within a reasonable period of time, whether to amend the information. If the charter school decides to not to amend the information as requested, it must inform the parent of this decision, and advise the parent of the parent's right to a hearing. (34 C.F.R. § 99.20 and 34 C.F.R. § 300.567).

### **F. Other Record Keeping Requirements**

There are two additional record keeping requirements that a school should ensure are covered by its policy and procedures.

- A school has the obligation to provide to parents upon request a list of types and locations of education records collected, maintained, or used by the school. (34 C.F.R. § 300.565). A form ([Form 7 - Records Maintained](#)), through which a school can meet this requirement, is attached.
- A school has the obligation to maintain a list, available for public inspection, which contains the names and positions of those employees within the school who may have access to personally identifiable information of any student in the school. (34 C.F.R. 300.572(d)). In compiling this list, it is important to note that the individuals on this list need not have actual access; rather the list should contain the names of those individuals who might reasonably be expected to have access to any student records at some point during the school year. As such, a school should err on the side of being comprehensive.

It is important to remember that this list will differ appreciably from a list of individuals who actually do have access to an individual student's record. As noted above, the individuals who have access to any one student's record should only include those with a legitimate educational need.

## **G. Notice and Other Requirements of the Protection of Pupil Rights Amendment**

The Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h (available at [http://www4.law.cornell.edu/uscode/search/display.html?terms=1232h&url=/uscode/html/uscode20/usc\\_sec\\_20\\_00001232---h000-.html](http://www4.law.cornell.edu/uscode/search/display.html?terms=1232h&url=/uscode/html/uscode20/usc_sec_20_00001232---h000-.html)), and its regulations, 34 C.F.R. Part 98 *et seq.* (available at <http://www.gpoaccess.gov/cfr/index.html>) apply to charter schools receiving federal funds from the U.S. Department of Education. The statute is concerned with student research, experimental programs and testing, and, among other things, regulates student surveys or evaluations related to one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; and
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

By requiring notice and the prior written consent of parents for student participation in any such survey, etc. Annual notice regarding parents' rights under PPRA is mandatory at the beginning of each school year, including notice of written consent, and specific notice is required whenever, for example, a survey regarding one of the identified categories will be administered so that parents may opt out. Schools are also supposed to develop policies regarding surveys and other subjects in conjunction with parents as part of the PPRA.

The PPRA also addresses marketing surveys, parental access to school information, and certain physical examinations of minors. Please consult ([Attachment A – USDOE September 2005 Memo](#)), which provides further information on this and related topics. Please note that parents are entitled to inspect instructional materials associated with any experimental teaching, survey or analysis regulated by the PPRA.



# Sample Form #1

## Request to Review Records

Pursuant to the Family Educational Rights and Privacy Act and/or Part B of the Individuals with Disabilities in Education Act, the following form must be completed whenever a person other than a school official with a legitimate educational interest makes a request to review student records. Persons required to complete this form include parents of students enrolled in the school.

Please note that unless otherwise provided by law, access to student education records will only be granted upon receipt of the written permission of a student's parent or legal guardian.

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### To be completed by requestor:

Date of request: \_\_\_\_\_

Name of student and/or ID number: \_\_\_\_\_

Name of requestor: \_\_\_\_\_

Requestor's affiliation or relationship to student: \_\_\_\_\_

Reason for request: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of records requested to be reviewed: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby agree to keep the information disclosed to me confidential according to all applicable laws and regulations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

***To be completed by school personnel:***

Status of request: Approved  Denied

Reason for approval or denial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

School official approving/denying request: \_\_\_\_\_ (Print Name)  
\_\_\_\_\_ (Signature)  
\_\_\_\_\_ (Date)

Materials reviewed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were copies of materials provided? Yes  No

Is this a request by a parent/legal guardian? Yes  No

If yes, records must be provided within 45 days of the request.

Are these records being requested by a parent/legal guardian or authorized representative in connection with a pending Committee on Special Education meeting or Due Process Hearing? Yes  No

If yes, please indicate the date of the meeting/hearing /\_\_\_\_\_/ and note that the records must be provided prior to the meeting/hearing.

## Sample Form #2

### Confidentiality Policy for School Employees

School Employees are required to preserve the confidentiality of any and all records containing personally identifiable information. Student (and Staff) records may be confidential by virtue of the Family Educational Rights and Privacy Act, the Individuals with Disabilities in Education Act, state privacy laws and other laws and regulations. School Employees may not disclose personally identifiable information about school students or employees unless they are certain that such disclosure is permitted by law.

If in doubt about either the confidentiality of any record or the legality of disclosing information (including to other personnel within the school), School Employees should consult with their supervisor (who in turn may consult with the school's counsel) before disclosing any student or employee information.

\_\_\_\_\_ **I have received and read a copy of the above policy.**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

# Sample Form #3

*[School Letterhead]*

*[Date]*

## *Inside Address*

Re: Consent For Release of Student Information

Dear *[Name]*:

Pursuant to the Family Educational Rights and Privacy Act, a school cannot release the education records of a student without the prior written consent of the adult student or the minor student's parent/legal guardian (except in certain very specific circumstances not applicable here).

We are therefore writing to let you know that a request was made by *[name of requestor]* on *[date request was made]* to view the following records of *[name of student]*: *[List of records requested]*. The *[name of requestor]* has stated that the reason for this request is *[reason for request to review records]*.

If you consent to the release of these records, please so indicate by filling out the permission slip below and returning it to the school. Please note that you are under no obligation to provide your permission. If you have any questions about this matter, please contact *[name of contact person]* at *[phone number of school]*.

Thank you for your attention to this matter.

Sincerely,

*[Name and title of school official]*

I hereby grant permission for the release of the records indicated above to the person/ organization indicated above.

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_ I request copies of the released records also be sent to me.

## Sample Form #4

*[School Letterhead]*

**TO:** Parents/Guardians of children enrolled in *[name of charter school]*

**FROM:** *[Staff member in charge of student records]*

**DATE:** *[Date of Memo]*

**RE:** Notice of Intent to Disclose Student Directory Information

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Pursuant to the Family Educational Rights and Privacy Act and/or Part B of the Individuals with Disabilities Education Act, adult students and the parents/legal guardians of minor students may request that a school refrain from publishing directory information regarding the student. Directory information, includes but is not limited to name, class, date of birth and home address. If a school provides notice that it intends to publish directory information, it may do so if no written objection is filed with the school after a reasonable period of time after notice is provided.

You are hereby notified that the school intends to publish the directory information indicated on the attached form. If you object to the publication of some or all of this information, please use the attached form to indicate your objection. For those items that you object to being published, please put a checkmark in the space to the right of those items and then return the form to the school office no later than ***[date on which form is due]***. Please also be sure to fill out the information at the bottom of the attached form (student's name, your name, the date and your signature). Please note that if you do not return the attached form to the school by ***[date on which form is due]***, we will assume that you have no objection to the publication of this information.

Thank you for your attention to this matter. If you have any questions, please contact ***[name of designated staff member]*** at ***[school's phone number]***.

Directory information to be published by *[name of school]*  
*[school year]*

Name \_\_\_\_\_

Date of Birth/Age \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Photograph \_\_\_\_\_

Grade \_\_\_\_\_

Height and/or Weight<sup>1</sup> \_\_\_\_\_

Academic Honors \_\_\_\_\_

Participation in Extra-Curricular Activities \_\_\_\_\_

Previous school attended \_\_\_\_\_

Dates of attendance \_\_\_\_\_

Student's Name: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

If you have no objection to the publication of the below information regarding your child, you need not complete this form.

<sup>1</sup> This information will be published for members of athletic teams only.

## Sample Form #5

### Model Notification of Rights under FERPA for Elementary and Secondary Schools

The federal Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. These rights are:

(1) The right to inspect and review the student's education records within 45 days of the day the School receives a request for access. Parents or eligible students should submit to the School **[Insert appropriate school official title, name room number, address and other information so that hand delivered or mailed requests may be received from parents]** a written request that identifies the record(s) they wish to inspect. The **[School official]** will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected. The School will **[not]** make will make copies available to parents **[for free] [\$0.25 per page]**.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading. Parents or eligible students may ask the School to amend a record that they believe is inaccurate or misleading. They should write the School **[principal or appropriate official]**, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the School decides not to amend the record as requested by the parent or eligible student, the School will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests.

A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the School has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such

as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. **[Optional]** Upon request, the School discloses education records without consent to officials of another school district in which a student seeks or intends to enroll. [NOTE: FERPA requires a school to make a reasonable attempt to notify the parent or eligible student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4605

**[NOTE: In addition, a school may want to include its directory information public notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA, otherwise it may do so separately.]**