

## **STUDENT RECORDS: ACCESS AND CHALLENGE**

**The Henry Viscardi School shall comply with the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA). Under its provisions, parents or guardians and non-custodial parent(s), whose rights are not limited by court order or formal agreement, of a student under 18, or a student who is 18 years of age or older or who is attending an institution of post-secondary education, have a right to inspect and review any and all education records maintained by the Henry Viscardi School.**

### **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 (34 Code of Federal Regulations (CFR) Section 99.3). 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 a public school district, 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.**

**Personal notes made by teachers or other staff, on the other hand, are not considered education records if they 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.**

**Additionally, FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation and not from the student's education records.**

**Records created and maintained by a law enforcement unit for law enforcement purposes are also excluded.**

### **Access to Student Records**

**Administrative regulations and procedures are formulated to comply with the provisions of federal law relating to the availability of student records. The purpose of such regulations and procedures shall be to make available to the parents or guardians of students and non-custodial parent(s) whose rights are not limited by court order or formal agreement, or students who are 18 years of age or**

older or who are attending an institution of post-secondary education, student records, and files on students, and to ensure the confidentiality of such records with respect to third parties.

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

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

#### Exceptions

Without the consent of a parent or eligible student, a school may release a student's information or records when it is:

a. Directory Information and Limited 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. Limited Directory Information Disclosure means that the school may limit disclosure of its designated directory information to specific parties, for specific purposes, or both. The intent is to allow schools the option to implement policies that allow for the disclosure of student information for uses such as yearbooks, honor roll lists, graduation programs, and playbills, but restrict disclosure for more potentially dangerous purposes. The school shall limit disclosure of its designated directory information as otherwise specified in its public notice to parents of students in attendance and eligible students in attendance.

b. To School Officials who have a Legitimate Educational Interest

To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. An educational interest includes the behavior of a student and disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of the student, other students, or other members of the school community. 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.

c. To Another Educational Institution

The school 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.**

**d. For Health and Safety Emergency Reasons**

**The school 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. The school may release information from records to appropriate parties including, but not limited to, parents, law enforcement officials and medical personnel. The school's 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 school 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.**

**e. To Juvenile Justice Systems**

**Information may be disclosed to state and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a state statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released. In such cases the official or authority must certify in writing that the information will not be disclosed to any other party except as provided under law without prior written consent.**

**f. To Foster Care Agencies**

**The school may release records to an agency caseworker or other representative of a state or local child welfare agency, who has the right to access a student's case plan, when the agency or organization is legally responsible, for the care and protection of the student. This does not give a child welfare agency the right to look into any non-foster care student's records, without parental consent, when there has been a mere allegation of abuse or maltreatment, absent an order or subpoena (see below).**

**g. Pursuant to a Subpoena or Court Order**

**When a school receives a subpoena or court order for the release of records the school must make a reasonable effort to notify the parent or guardian or eligible student of the order or subpoena in advance of compliance. This allows the parent or guardian or eligible student to seek protective action against the subpoena or order before the release of the records.**

**The school may disclose a student's records without first notifying parents or guardians or eligible students if the disclosure is:**

- 1. Based on a subpoena in which the court orders, for good cause shown, not to reveal to any person the existence or contents of the subpoena or any information furnished pursuant to the subpoena;**
- 2. Pursuant to a judicial order in cases where the parents are a party to a court proceeding involving child abuse or maltreatment or dependency matters, and the order is issued in the context of that proceeding; or**
- 3. Made to a court (with or without an order or subpoena) when the school is involved in a legal action against a parent or student and the records are relevant to the matter.**

**h. For Financial Aid Purposes**

**Pertinent information may be released in connection with the determination of eligibility, amount, conditions and enforcement of terms of a student's financial aid.**

**i. To Accrediting Organizations**

**Disclosure of a student's records may be made to an organization in which that student seeks accreditation, in order to carry out their accrediting function.**

**j. To Parents of a Dependent Student**

**Even when a student turns 18 years of age or older the school may disclose education records to that student's parents, without the student's consent, if the student is claimed as a dependent for federal income tax purposes by either parent.**

**k. For Audit/Evaluation Purposes**

**The audit or evaluation exception allows for the disclosure of PII from education records without consent to authorized representatives of the Comptroller General of the U.S., the Attorney General, the Secretary of Education, federal, state or local educational authorities ("FERPA permitted" entities). Under this exception, PII 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).**

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

#### **Challenge to Student Records**

Parents or guardians of a student under the age of 18, or a student who is 18 years of age or older or who is attending an institution of post-secondary education, shall have an opportunity for a hearing to challenge the content of the school records, to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

#### **Release of Information to the Non-Custodial Parent**

The school may presume that the non-custodial parent has the authority to request information concerning his or her child and release such information upon request. If the custodial parent wishes to limit the non-custodial parent's access to the records, it would be his or her responsibility to obtain and present to the school a legally binding instrument that prevents the release of said information.

**Family Educational Rights and Privacy Act of 1974, 20 USC Section 1232g  
34 CFR Part 99  
Education Law Section 2-d**