

## 515 PROTECTION AND PRIVACY OF PUPIL RECORDS

### I. PURPOSE

The purpose of this policy is to provide guidance for the collection, maintenance and dissemination of pupil records and the protection of the privacy rights of students as provided in state and federal law.

### II. DEFINITIONS

- A. "Authorized Representative" means any entity or individual designated by the school district, state, or an agency headed by an official of the Comptroller of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state and local educational authorities to conduct, with respect to federal or state supported education programs, any audit or evaluation or any compliance or enforcement activity in connection with federal legal requirements that relate to these programs.
- B. "Biometric Record," as referred to in "Personally Identifiable," means a record of one or more measurable biological or behavioral characteristics that can be used for authorized recognition of an individual (e.g., fingerprints, retina and iris patterns, voice prints, DNA sequence, facial characteristics, and handwriting).
- C. "Dates of attendance" as referred to in "Directory Information" means the period of time during which a student attends or attended a school or schools in the school district, including attendance in person or by paper correspondence, satellite, internet or other electronic communication technologies for students who are not in the classroom, and including the period during which a student is working under a work-study program. It does not include specific daily records of a student's attendance at a school or schools in the school district.
- D. "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It is limited to: the student's name, address, telephone listing, photograph, date of birth, major field of study, dates of attendance, grade level, enrollment status (i.e. full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, Middle and High School Student Athletic Physical Examination Expiration Date, degrees, honors and awards received, the most recent educational agency or institution attended, photographs, videotapes and other visual representations for school-approved publications, yearbooks, newspapers, public presentations, and web pages, including district, school and department social media sites. It also includes the name, address and telephone number of the student's parent(s).

Directory information does not include:

1. a student's social security number
2. a student's identification number ("ID"), user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems if the identifier may be used to access education records without use of one or more factors that authenticate the student's identity such

- as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user;
3. a student ID or other unique personal identifier that is displayed on a student ID badge if the identifier can be used to gain access to educational records when used in conjunction with one or more factors that authenticate the student's identity, such as a PIN, password, or other factor known or possessed only by the student;
  4. personally identifiable data which references religion, race, color, social position or nationality, or
  5. data collected from nonpublic school students, other than those who receive shared time educational services, unless written consent is given by the student's parent or guardian.
- E. "Military information" means name, address and home phone number for all students in grades 11 and 12.
- F. "Education records" means those records which are directly related to a student and are maintained by the school district.
1. The term "Education Records" does not include:
    - a. Records of instructional, supervisory and administrative personnel and educational personnel ancillary thereto which:
      1. Are in the sole possession of the maker of the records;
      2. Are destroyed at the end of the school year, and
      3. Are not accessible or revealed to any other individual except a temporary substitute.
    - b. Records of a law enforcement unit of the school district, provided education records maintained by the school district are not disclosed to the unit, and the law enforcement records are: (1) maintained separately from education records; (2) maintained solely for law enforcement purposes; (3) disclosed only to law enforcement officials of the same jurisdiction.
    - c. Records relating to an individual, including a student, employed by the district which are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee and are not available for use for any other purpose.
    - d. Records relating to an eligible student, or a student attending an institution of post-secondary education, which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity or assisting in that capacity; created, maintained or used only in connection with the provision of treatment to the student, and not disclosed to anyone other than individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. (For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction within the school district.)
    - e. Records which contain only information about an individual after he/she is no longer a student in the school district and that are not directly related to the individual's attendance as a student. .

- G. "Eligible student" means a student in the district who is 18 years of age or is attending an institution of post-secondary education.
- H. "Juvenile Justice System" including criminal justice agencies and the judiciary when involved in juvenile justice activities.
- I. "Legitimate educational interest" includes interests directly related to classroom instruction, teaching, student achievement and progress, student discipline, and student health and welfare, and the ability to respond to a request for education data. It includes a person's need to know in order to: (1) Perform an administrative task required in the school or employee's contract or position description approved by the school board; (2) Perform a supervisory or instructional task directly related to the student's education, or; (3) Perform a service of benefit for the student or the student's family such as health care, counseling, student job placement or student financial aid. (4) Perform a task directly related to responding to a request for data.
- J. "Parent" means a parent or a guardian or an individual acting as a parent of a student in the absence of a parent or guardian. The school district may presume the parent has the authority to exercise the rights inherent in the applicable law and set out in this policy unless it has been provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or custody, or a legally binding instrument which provides to the contrary.
- K. "Personally identifiable" means the data or information includes: (a) the name of a student, the student's parents or other family members, (b) the address of the student or student's family, (c) a personal identifier, such as the student's social security number or student number or biometric record, (d) other direct identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (f) 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 (g) information requested by a person who the school district reasonably believes knows the identify of the student to whom the education record relates.
- L. "Record" means any information or data recorded in any medium, including, but not limited to handwriting, print, computer media, video or audio tape, film, microfilm and microfiche.
- M. "Responsible authority" means the superintendent of schools or designee.
- N. "Student" includes any individual on whom the school district maintains educational records.
- O. "School official" includes: (a) a person duly elected to the school board; (b) a person employed by the school board in an administrative, supervisory, instructional, or other professional position; (c) a person employed by the school board as a temporary substitute in a professional position for the period of his or her

performance as a substitute; and (d) a person employed by, or under contract to, the school board to perform a special task such as a secretary, a clerk, a public information officer or data practices compliance official, an attorney, or an auditor for the period of his or her performance as an employee or contractor.

- P. "Summary data" means statistical records and reports derived from data on individuals, but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.
- Q. All other terms and phrases shall be defined in accordance with applicable law or ordinary custom and usage.

### **III. GENERAL CLASSIFICATION**

State law provides that all data collected, created, received or maintained by a school district are public unless classified by state or federal law as not public or private or confidential. State law classifies all data on individuals maintained by a school district which relates to a student as private data on individuals. This data may not be disclosed to parties other than the parent or eligible student without consent except pursuant to a valid court order, certain state statutes authorizing access, and the provisions of FERPA and the regulations promulgated thereunder.

### **IV. STATEMENT OF RIGHTS**

#### **A. Rights of Parents and Eligible Students**

Parents and eligible students have the following rights under this policy:

1. The right to inspect and review the student's education records;
2. The right to request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
3. The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that such consent is not required for disclosure pursuant to this policy, state or federal law, or the regulations promulgated thereunder;
4. The right to refuse release of names, addresses, and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions;
5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the school district to comply with the federal law and the regulations promulgated thereunder;
6. The right to be informed about rights under the federal law; and
7. The right to obtain a copy of this policy at the location set forth in Section XXI. of this policy.

#### **B. Eligible Students**

All rights and protections given parents under this policy transfer to the student when he or she reaches eighteen (18) years of age or enrolls in an institution of post-secondary education. The student then becomes an "eligible student."

However, the parents of an eligible student who is also a “dependent student” are entitled to gain access to the education records of such student without first obtaining the consent of the student. In addition, parents of an eligible student may be given access to education records in connection with a health or safety emergency if the disclosure meets the conditions of any provision set forth in 34 C.F.R. § 99.31(a).

C. Disabled Students

The school district shall follow 34 C.F.R. §§300.610-300.617 with regard to the confidentiality of information related to students with disability.

**V. DISCLOSURE OF EDUCATION RECORDS**

A. Consent Required for Disclosure

1. The school district shall obtain a signed and dated written informed consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of the student, except as provided herein.
2. The written consent required by this subdivision must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:
  - a. a specification of the records to be disclosed;
  - b. the purpose or purposes of the disclosure;
  - c. the party or class of parties to whom the disclosure may be made;
  - d. the consequences of giving informed consent; and
  - e. if appropriate, a termination date for the consent.
3. When a disclosure is made under this subdivision:
  - a. if the parent or eligible student so requests, the school district shall provide him or her with a copy of the records disclosed; and
  - b. if the parent of a student who is not an eligible student so requests, the school district shall provide the student with a copy of the records disclosed.
4. A signed and dated written consent may include a record and signature in electronic form that:
  - 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.
5. If the responsible authority seeks an individual’s informed consent to the release of private data to an insurer or the authorized representative of an insurer, informed consent shall not be deemed to have been given unless the statement is:
  - a. in plain language;
  - b. dated;
  - c. specific in designating the particular persons or agencies the data subject is authorizing to disclose information about the data subject;
  - d. specific as to the nature of the information the subject is authorizing to be disclosed;

- e. specific as to the persons or agencies to whom the subject is authorizing information to be disclosed;
- f. specific as to the purpose or purposes for which the information may be used by any of the parties named in Clause e. above, both at the time of the disclosure and at any time in the future; and
- g. specific as to its expiration date which should be within a reasonable time, not to exceed one year except in the case of authorizations given in connection with applications for: (i) life insurance or noncancellable or guaranteed renewable health insurance and identified as such, two years after the date of the policy, or (ii) medical assistance under Minn. Stat. Ch. 256B or Minnesota Care under Minn. Stat. Ch. 256L, which shall be ongoing during all terms of eligibility, for individualized education program health-related services provided by a school district that are subject to third party reimbursement.

6. Eligible Student Consent

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 of the student shall thereafter only be accorded to and required of the eligible student, except as provided in Section IV. of this policy.

- B. Prior Consent for Disclosure Not Required – The school district may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student unless otherwise provided herein and if the disclosure is:
- 1. To other school officials, including teachers, within the school district whom the school district determines have a legitimate educational interest in such records;
  - 2. To a contractor, consultant, volunteer, or other party to whom the school district has outsourced institutional services or functions provided that the outside party:
    - a. performs an institutional service or function for which the school district would otherwise use employees;
    - b. is under the direct control of the school district with respect to the use and maintenance of education records; and
  - c. will not disclose the information to any other party without the prior consent of the parent or eligible student and uses the information only for the purposes for which the disclosure was made.
  - 3. To officials of other schools, school districts, or post-secondary educational institutions in which the student seeks or intends to enroll, or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. The records shall include information about disciplinary action taken as a result of any incident in which the student possessed or used a dangerous weapon, and with proper annual notice (see Section Annual Notification of Rights), suspension and expulsion information pursuant to section 7917 of the federal Every Student Succeeds Act and, if applicable, data regarding a student's history of violent behavior. The records also shall include a copy of any probable cause notice or any disposition or court order under Minn. Stat. § 260B.171,

unless the data are required to be destroyed under Minn. Stat. § 120A.22, Subd. 7(c) or § 121A.75. On request, the school district will provide the parent or eligible student with a copy of the education records which have been transferred and provide an opportunity for a hearing to challenge the content of those records in accordance with Section Request to Amend Records; Procedures to Challenge Data of this policy;

4. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or the Commissioner of the State Department of Education or his or her representative, subject to the conditions relative to such disclosure provided under federal law;
5. In connection with financial aid for which a student has applied or has received, if the information is necessary for such purposes as to:
  - a. determine eligibility for the aid;
  - b. determine the amount of the aid;
  - c. determine conditions for the aid; or
  - d. enforce the terms and conditions of the aid.

“Financial aid” for purposes of this provision means a payment of funds provided to an individual or a payment in kind of tangible or intangible property to the individual that is conditioned on the individual’s attendance at an educational agency or institution;
6. To state and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to state statute adopted:
  - a. before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve the student whose records are released; or
  - b. after November 19, 1974, if the reporting or disclosure allowed by state statute concerns the juvenile justice system and the system’s ability to effectively serve, prior to adjudication, the student whose records are released, provided the officials and authorities to whom the records are disclosed certify in writing to the school district that the data will not be disclosed to any other party, except as provided by state law, without the prior written consent of the parent of the student. At a minimum, the school district shall disclose the following information to the juvenile justice system under this paragraph: a student’s full name, home address, telephone number, and date of birth; a student’s school schedule, attendance record, and photographs, if any; and parents’ names, home addresses, and telephone numbers.
7. To organizations conducting studies for or on behalf of educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction; provided that the studies are conducted in a manner which does not permit the personal identification of parents or students by individuals other than representatives of the organization who have a legitimate interest in the information, the information is destroyed when no longer needed for the purposes for which the study was conducted, and the school district enters into a written agreement with the organization that: (a) specifies the purpose, scope, and duration of the study or studies and the information to be disclosed; (b) requires the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in the written agreement; (c) requires

the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests; and (d) requires the organization to destroy all personally identifiable information when information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be or destroyed. For purposes of this provision, the term, "organizations," includes, but is not limited to, federal, state, and local agencies and independent organizations. In the event the Department of Education determines that a third party outside of the school district to whom information is disclosed violates this provision, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years;

8. To accrediting organizations in order to carry out their accrediting functions;
9. To parents of a student eighteen (18) years of age or older if the student is a dependent of the parents for income tax purposes;
10. To comply with a judicial order or lawfully issued subpoena, provided, however, that the school district makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance therewith so that the parent or eligible student may seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena, or any other subpoena issued for law enforcement purposes, and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, or the disclosure is in compliance with an ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. § 2332b(g)(5)(B), an act of domestic or international terrorism as defined in 18 U.S.C. § 2331, or a parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of the proceeding. If the school district initiates legal action against a parent or student, it may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the school district to proceed with the legal action as plaintiff. Also, if a parent or eligible student initiates a legal action against the school district, the school district may disclose to the court, without a court order or subpoena, the student's education records that are relevant for the school district to defend itself;
11. To appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health, including the mental health, or safety of the student or other individuals. The decision is to be based upon information available at the time the threat occurs that indicates that there is an articulable and significant threat to the health or safety of a student or other individuals. In making a determination whether to disclose information under this section, the school district may take into account the totality of the circumstances pertaining to a threat and may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other students. A record of this disclosure must be maintained pursuant to Section XIII.E. of this policy. In addition, an educational agency or institution may include in the education records of a student appropriate information concerning



- disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community. This information may be disclosed to teachers and school officials within the school district and/or teachers and school officials in other schools who have legitimate educational interests in the behavior of the student;
12. To the juvenile justice system if information about the behavior of a student who poses a risk of harm is reasonably necessary to protect the health or safety of the student or other individuals;
  13. Information the school district has designated as “directory information” pursuant to Section VII. of this policy;
  14. To military recruiting officers and post-secondary educational institutions pursuant to Section XI. of this policy;
  15. To the parent of a student who is not an eligible student or to the student himself or herself;
  16. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiologic investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted;
  17. To volunteers who are determined to have a legitimate educational interest in the data and who are conducting activities and events sponsored by or endorsed by the educational agency or institution for students or former students;
  18. To the juvenile justice system, on written request that certifies that the information will not be disclosed to any other person except as authorized by law without the written consent of the parent of the student:
    - a. the following information about a student must be disclosed: a student’s full name, home address, telephone number, date of birth; a student’s school schedule, daily attendance record, and photographs, if any; and any parents’ names, home addresses, and telephone numbers;
    - b. the existence of the following information about a student, not the actual data or other information contained in the student’s education record, may be disclosed provided that a request for access must be submitted on the statutory form and it must contain an explanation of why access to the information is necessary to serve the student: (1) use of a controlled substance, alcohol, or tobacco; (2) assaultive or threatening conduct that could result in dismissal from school under the Pupil Fair Dismissal Act; (3) possession or use of weapons or look-alike weapons; (4) theft; or (5) vandalism or other damage to property. Prior to releasing this information, the principal or chief administrative officer of a school who receives such a request must, to the extent permitted by federal law, notify the student’s parent or guardian by certified mail of the request to disclose information. If the student’s parent or guardian notifies the school official of an objection to the disclosure within ten (10) days of receiving certified notice, the school official must not disclose the information and instead must inform the requesting member of the juvenile justice system of the objection. If no objection from the parent or guardian is received within fourteen (14) days, the school official must respond to the request for information.
- The written requests of the juvenile justice system member(s), as well as a record of any release, must be maintained in the student’s file;

19. To the principal where the student attends and to any counselor directly supervising or reporting on the behavior or progress of the student if it is information from a disposition order received by a superintendent under Minn. Stat. § 260B.171, Subd. 3. The principal must notify the counselor immediately and must place the disposition order in the student's permanent education record. The principal also must notify immediately any teacher or administrator who directly supervises or reports on the behavior or progress of the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other school district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individual need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student, outline the offense, and describe any conditions of probation about which the school must provide information if this information is provided in the disposition order. Disposition order information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information may not be further disseminated by the counselor, teacher, administrator, staff member, substitute, or volunteer except as necessary to serve the student, to protect students and staff, or as otherwise required by law, and only to the student or the student's parent or guardian;
20. To the principal where the student attends if it is information from a peace officer's record of children received by a superintendent under Minn. Stat. § 260B.171, Subd. 5. The principal must place the information in the student's education record. The principal also must notify immediately any teacher, counselor, or administrator directly supervising the student whom the principal believes needs the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. The principal may also notify other district employees, substitutes, and volunteers who are in direct contact with the student if the principal determines that these individuals need the information to work with the student in an appropriate manner, to avoid being needlessly vulnerable, or to protect other persons from needless vulnerability. Such notices from the principal must identify the student and describe the alleged offense if this information is provided in the peace officer's notice. Peace officer's record information received is private educational data received for the limited purpose of serving the educational needs of the student and protecting students and staff. The information must not be further disseminated by the counselor, teacher administrator, staff member, substitute, or volunteer except to communicate with the student or the student's parent or guardian as necessary to serve the student, to protect students and staff, or as otherwise required by law.

The principal must delete the peace officer's record from the student's education record, destroy the data, and make reasonable efforts to notify any teacher, counselor, staff member, administrator, substitute, or volunteer who received information from the peace officer's record if the county attorney determines not to proceed with a petition or directs the student into a diversion or mediation

program or if a juvenile court makes a decision on a petition and the county attorney or juvenile court notifies the superintendent of such action; or

21. To the Secretary of Agriculture, or authorized representative from the Food and Nutrition Service, for the purposes of conducting program monitoring, evaluations, and performance measurements of state and local educational and other agencies and institutions receiving funding or providing benefits of one or more programs authorized under the National School Lunch Act or the Child Nutrition Act of 1996 for which the results will be reported in an aggregate form that does not identify any individual, on the conditions that: (a) any data collected shall be protected in a manner that will not permit the personal identification of students and their parents by other than the authorized representatives of the Secretary; and (b) any personally identifiable data shall be destroyed when the data are no longer needed for program monitoring, evaluations, and performance measurements.
22. To an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 450b of Title 25), who has the right to access a student's case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student's education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student's education records.

C. Nonpublic School Students

The school district may disclose personally identifiable information from the education records of a nonpublic school student, other than a student who receives shared time educational services, without the written consent of the parent of the student or the eligible student unless otherwise provided herein, if the disclosure is:

1. Pursuant to a valid court order;
2. Pursuant to a statute specifically authorizing access to the private data; or
3. To appropriate health authorities to the extent necessary to administer immunization programs and for bona fide epidemiological investigations which the commissioner of health determines are necessary to prevent disease or disability to individuals in the public educational agency or institution in which the investigation is being conducted.

**VI. RELEASE OF DIRECTORY INFORMATION**

A. Classification

Directory information is public except as provided herein.

B. Former Students

Unless a former student validly opted out of the release of directory information while the student was in attendance and has not rescinded the opt out request at any time, the school district may disclose directory information from the

education records generated by it regarding the former student without meeting the requirements of Paragraph C. of this section. In addition, under an explicit exclusion from the definition of an “education record,” the school district may release records that only contain information about an individual obtained after he or she is no longer a student at the school district and that are not directly related to the individual’s attendance as a student (e.g., a student’s activities as an alumnus of the school district).

C. Present Students and Parents

The school district may disclose directory information from the education records of a student and information regarding parents without prior written consent of the parent of the student or eligible student, except as provided herein. Prior to such disclosure the school district shall:

1. Annually give public notice by any means that are reasonably likely to inform the parents and eligible students of:
  - a. the types of personally identifiable information regarding students and/or parents that the school district has designated as directory information;
  - b. the parent’s or eligible student’s right to refuse to let the school district designate any or all of those types of information about the student and/or the parent as directory information; and
  - c. the period of time in which a parent or eligible student has to notify the school district in writing that he or she does not want any or all of those types of information about the student and/or the parent designated as directory information.
2. Allow a reasonable period of time after such notice has been given for a parent or eligible student to inform the school district in writing that any or all of the information so designated should not be disclosed without the parent’s or eligible student’s prior written consent, except as provided in Section VI. of this policy.
3. A parent or eligible student may not opt out of the directory information disclosures to:
  - a. prevent the school district from disclosing or requiring the student to disclose the student’s name, ID, or school district e-mail address in a class in which the student is enrolled; or
  - b. prevent the school district from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that may be designated as directory information and that has been properly designated by the school district as directory information.
4. The school district shall not disclose or confirm directory information without meeting the written consent requirements contained in Section VI.A. of this policy if a student’s social security number or other non-directory information is used alone or in combination with other data elements to identify or help identify the student or the student’s records.

D. Procedure for Obtaining Nondisclosure of Directory Information

The parent’s or eligible student’s written notice shall be directed to the responsible authority and shall include the following:

1. Name of the student and/or parent, as appropriate;

2. Home address;
3. School presently attended by student;
4. Parent's legal relationship to student, if applicable; and
5. Specific categories of directory information to be made not public without the parent's or eligible student's prior written consent, which shall only be applicable for that school year.

E. Duration

The designation of any information as directory information about a student or parents will remain in effect for the remainder of the school year unless the parent or eligible student provides the written notifications provided herein.

## VII. DISCLOSURE OF PRIVATE RECORDS

A. Private Records

For the purposes herein, education records are records which are classified as private data on individuals by state law and which are accessible only to the student who is the subject of the data and the student's parent if the student is not an eligible student. The school district may not disclose private records or their contents except as summary data, or except as provided in Section VI. of this policy, without the prior written consent of the parent or the eligible student. The school district will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other party to whom personally identifiable information from education records is disclosed.

B. Private Records Not Accessible to Parent

1. In certain cases state law intends, and clearly provides, that certain information contained in the education records of the school district pertaining to a student be accessible to the student alone, and to the parent only under special circumstances, if at all. Pursuant to Minnesota law, child welfare reports pertaining to abused and battered children shall be accessible to appropriate welfare and law enforcement agencies and the subject individual alone. The district shall not make such reports available to the parent.
2. The responsible authority may deny access to private data by a parent when a minor student who is the subject of that data requests that the responsible authority deny such access. The minor student's request must be submitted in writing setting forth the reasons for denying access to the parent and must be signed by the minor. Upon receipt of such request the responsible authority shall determine if honoring the request to deny the parent access would be in the best interest of the minor data subject. In making this determination the responsible authority shall consider the following factors:
  - a. whether the minor is of sufficient age and maturity to be able to explain the reasons for and understand the consequences of the request to deny access;
  - b. whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;
  - c. whether there are grounds for believing that the minor data subject's reasons for precluding parental access are reasonably accurate;
  - d. whether the data in question is of such a nature that disclosure of it to the parent may lead to physical or emotional harm to the minor data subject; and
  - e. whether the data concerns medical, dental or other health services provided

pursuant to Minn. Stat. §§ 144.341 to 144.347, in which case the data may be released only if the failure to inform the parent would seriously jeopardize the health of the minor.

C. Private Records Not Accessible to Student

Students shall not be entitled to access to private data concerning financial records and statements of the student's parent or any information contained therein.

## VIII. DISCLOSURE OF CONFIDENTIAL RECORDS

Confidential records are those records (and data within those records) which are made not public by state or federal law and which are inaccessible to the student and his or her parent or to an eligible student.

A. Reports Under the Maltreatment of Minors Reporting Act

Pursuant to Minn. Stat. § 626.556, written copies of reports pertaining to a neglected and/or physically and/or sexually abused child shall be accessible only to the appropriate welfare and law enforcement agencies. In respect to other parties, such data shall be confidential and will not be made available to the parent or the subject individual by the school district. The subject individual, however, may obtain a copy of the report from either the local welfare agency, county sheriff or the local police department subject to the provisions of Minn. Stat. § 626.556, Subd. 11.

Regardless of whether a written report is made under Minn. Stat. § 626.556, Subd. 7, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian or custodian of the child that an incident occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.

B. Investigative Data

1. Data collected by the school district as part of an active investigation undertaken for the purpose of the commencement or defense of pending civil legal action, or which are retained in anticipation of a pending civil legal action are classified as protected nonpublic data in the case of data not on individuals, and confidential data in the case of data on individuals.
2. The school district may make any data classified as protected non-public or confidential data pursuant to this subdivision accessible to any person, agency or the public if the school district determines that such access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest.
3. A complainant has access to a statement he or she provided to the school district.
4. Parents or eligible students may have access to investigative data of which the student is the subject, but only to the extent the data is not inextricably intertwined with data about other school district students, school district employees, and/or attorney data as defined in Minn. Stat. 13.393.
5. Once a civil investigation becomes inactive, civil investigative data becomes public unless the release of the data would jeopardize another pending civil legal action, except for those portions of such data that are classified as not public data under state or federal law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. For purposes of this provision, a civil investigation becomes inactive upon the occurrence of any of

the following events:

- a. a decision by the school district, or by the chief attorney for the school district, not to pursue the civil legal action. However, such investigation may subsequently become active if the school district or its attorney decides to renew the civil legal action;
  - b. the expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil legal action; or
  - c. the exhaustion or expiration of rights of appeal by either party to the civil legal action.
6. A “pending civil legal action” for purposes of this subdivision is defined as including, but not limited to, judicial, administrative or arbitration proceedings.

C. Chemical Abuse Records

To the extent the school district maintains records of the identity, diagnosis, prognosis, or treatment of any student which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, such records are classified as confidential and shall be disclosed only for the purposes and under the circumstances expressly authorized by law.

**IX. DISCLOSURE OF SCHOOL RECORDS PRIOR TO EXCLUSION OR EXPULSION HEARING**

At a reasonable time prior to any exclusion or expulsion hearing, the student and the student’s parent or guardian or representative shall be given access to all school district records pertaining to the student, including any tests or reports upon which the action proposed by the school district may be based, pursuant to the Minnesota Pupil Fair Dismissal Act, Minn. Stat. § 121A.40, et seq.

**X. DISCLOSURE OF DATA TO MILITARY RECRUITMENT OFFICERS AND POST-SECONDARY EDUCATIONAL INSTITUTIONS**

- A. The school district will release the names, addresses, and home telephone numbers of students in grades 11 and 12 to military recruiting officers and post-secondary educational institutions within sixty (60) days after the date of the request unless a parent or eligible student has refused in writing to release this data pursuant to Paragraph C. below.
- B. Data released to military recruiting officers under this provision:
  1. may be used only for the purpose of providing information to students about military service, state and federal veterans’ education benefits, and other career and educational opportunities provided by the military; and
  2. cannot be further disseminated to any other person except personnel of the recruiting services of the armed forces.
- C. A parent or eligible student has the right to refuse the release of the name, address, or home telephone number to military recruiting officers and post-secondary educational institutions. To refuse the release of the above information to military recruiting officers and post-secondary educational institutions, a parent or eligible student must notify the responsible authority in writing each year. (See Appendices C and D.)
- D. Annually, the school district will provide public notice by any means that are reasonably likely to inform the parents and eligible students of their rights to refuse

to release the names, addresses, and home phone numbers of students in grades 11 and 12 without prior consent.

- E. A parent or eligible student's refusal to release the above information to military recruiting officers and post-secondary educational institutions does not affect the school district's release of directory information to the rest of the public, which includes military recruiting officers and post-secondary educational institutions. In order to make any directory information about a student private, the procedures contained in Section VII. of this policy also must be followed. Accordingly, to the extent the school district has designated the name, address, phone number, and grade level of students as directory information, absent a request from a parent or eligible student not to release such data, this information will be public data and accessible to members of the public, including military recruiting officers and post-secondary educational institutions.

## **XI. LIMITS ON REDISCLOSURE**

### **A. Redisclosure**

Consistent with the requirements herein, the school district may only disclose personally identifiable information from the education records of a student on the condition that the party to whom the information is to be disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the officers, employees, and agents of any party receiving personally identifiable information under this section may use the information, but only for the purposes for which the disclosure was made.

### **B. Redisclosure Not Prohibited**

1. Subdivision A. of this section does not prevent the school district from disclosing personally identifiable information under Section Disclosure of Education Records of this policy with the understanding that the party receiving the information may make further disclosures of the information on behalf of the school district provided:
  - a. The disclosures meet the requirements of Section Disclosure of Education Records of this policy; and
  - b. The school district has complied with the record-keeping requirements of Section Disclosure of Private Records of this policy.
2. Subdivision A. of this section does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas or litigation, to disclosures of directory information, to disclosures to a parent or student or to parents of dependent students, or to disclosures concerning sex offenders and other individuals required to register under 42 U.S.C. § 14071. However, the school district must provide the notification required in Section Release of Directory Information of this policy if a redisclosure is made based upon a court order or lawfully issued subpoena.

### **C. Classification of Disclosed Data**

The information disclosed shall retain the same classification in the hands of the party receiving it as it had in the hands of the school district.

### **D. Notification**

The school district shall inform the party to whom a disclosure is made of the



requirements set forth in this section, except for disclosures made pursuant to court orders or lawfully issued subpoenas, disclosure of directory information under Release of Directory Information of this policy, disclosures to a parent or student, or disclosures to parents of a dependent student. In the event that the Family Policy Compliance Office determines that a state or local educational authority, a federal agency headed by an official listed in 34 C.F.R. § 99.31(a)(3), or an authorized representative of a state or local educational authority or a federal agency headed by an official listed in § 99.31(a)(3), or a third party outside of the school district improperly rediscloses personally identifiable information from education records or fails to provide notification required under this section of this policy, the school district may not allow that third party access to personally identifiable information from education records for at least five (5) years.

## **XII. RESPONSIBLE AUTHORITY, RECORD SECURITY; AND RECORD KEEPING**

- A. The responsible authority shall be responsible for the maintenance and security of student records and shall be the superintendent of schools or his or her designee.
- B. Record Security – The principal of each school and the Director of Student Services, subject to the supervision and control of the superintendent, shall be the records manager of his or her school or program and shall have the duty of maintaining and securing the privacy and/or confidentiality of student records. The Office of the Superintendent shall be the records manager for student records maintained in the district storage.
- C. Record-keeping – The school district shall, for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:
  - 1. The parties who have requested or obtained personally identifiable information from the education records of the student;
  - 2. The legitimate interests these parties had in requesting or obtaining the information;
  - 3. The date of the request, and
  - 4. Whether the request was granted and, if it was, the date access was permitted or the disclosure was made.
- D. Section C above does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under Disclosure of Education Records or disclosures of directory information under Release of Directory Information.
- E. The record of disclosures may be inspected by the parent of the student or the eligible student, and by the authority responsible for the custody of the records.

## **XIII. RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS**

- A. The district shall permit the parents of a student or an eligible student who is or has been in attendance in the district to inspect and review all education records of the student (except those records which are made confidential by state or federal law). A written request must be submitted in accordance with district procedure. All education records includes education records kept by teachers, counselors and other school staff

members, and education records kept in school offices and district-level records storage. The district shall comply with a request immediately, if possible, or within 10 working days of the date of that request.

- B. The right to inspect and review education records under Section XII. A. (Right to Inspect and Review Education Records) includes:
  - 1. The right to a response from the district to reasonable requests for explanations and interpretations of the records, and
  - 2. The right to obtain copies of the records from the district where failure of the district to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.
- C. The district may presume that either parent of the student has authority to inspect and review the education records of the student unless the district has been provided with evidence that there is a legally binding instrument, or a state law or court order governing such matters as divorce, separation or custody, which provides to the contrary.
- D. The school district shall charge a reasonable fee for providing copies of records. The cost of providing copies shall be borne by the parent or eligible student, except when to do so would impair the ability of the parent or the eligible student to exercise their right to inspect and review those records. Copying costs shall be waived for families eligible for free or reduced school lunch. Parents or eligible students shall request a fee waiver in writing.

#### **XIV. REQUEST TO AMEND RECORDS; PROCEDURES TO CHALLENGE DATA**

- A. Request to Amend Education Records – The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading, or violates the privacy of the student may request in writing that the district amend the records.
  - 1. The superintendent or designee shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.
  - 2. If the superintendent or designee decides to refuse to amend the education records of the student in accordance with the request, he or she shall so inform the parent of the student or the eligible student of the refusal and advise the parent or the eligible student of the right to a hearing under Section B below.
- B. Request for Hearing – The district shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading, incomplete or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with Section C below.
  - 1. If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.
  - 2. If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of

students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reason for disagreeing with the decision of the agency or institution.

3. Any statement placed in the education records of the student based on the results of a hearing to amend that student's records shall:
  - a. Be maintained by the district as part of the education records of the student as long as the record or contested portion thereof is maintained by the district, and
  - b. If the education records of the student or the contested portion thereof is disclosed by the district to any party, the statement shall also be disclosed to that party.

#### C. Conduct of Hearing

1. The hearing shall be held within a reasonable period of time after the district has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing.
2. The hearing may be conducted by the superintendent or other designated representative of the school board who has no direct interest in the outcome of the hearing. The school board attorney shall be in attendance to present the district's position and to advise the superintendent or designated representative on legal and evidentiary matters.
3. The parent of the student or eligible student shall be afforded a full and fair opportunity at the hearing to present evidence relevant to the issues raised under sections A. and B. above and may be assisted by individuals of his or her choice at his or her own expense, including an attorney.
4. The decision shall be made in writing in a reasonable period of time after the conclusion of the hearing. The decision shall be based solely on evidence presented at the hearing and shall include a summary of evidence and reasons for the decision.
5. The decision of the superintendent or designated representative shall be the final decision of the district.

#### D. Appeal

The decision of the superintendent (responsible authority) or designated representative may be appealed in accordance with the applicable provisions of the State Administrative Procedures Act, Minnesota Statute, Chapter 14, relating to contested cases.

### **XV. COMPLAINTS FOR NONCOMPLIANCE WITH FERPA**

Complaints regarding alleged violations of rights accorded parents and eligible students by FERPA and the rules promulgated thereunder, shall be submitted in writing to the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. A complaint filed pursuant to this section must contain specific allegations of fact giving reasonable cause to believe that a violation of FERPA and the rules promulgated thereunder has occurred.

### **XVI. WAIVER**

A parent or eligible student may waive any of his or her rights provided herein pursuant

to FERPA. A waiver shall not be valid unless in writing and signed by the parent or eligible student. The school district may not require such a waiver.

## **XVII. ANNUAL NOTIFICATION OF RIGHTS**

The district shall give parents of students in attendance or eligible students in attendance annual notice by such means as are reasonably likely to inform them of the following:

1. That the parent or eligible student has a right to inspect and review the student's education records and the procedure for inspecting and reviewing education records;
2. That the parent or eligible student has a right to seek amendment of the student's education records to ensure that those records are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights and the procedure for requesting amendment of records;
3. That the parent or eligible student has a right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that federal and state law and the regulations promulgated thereunder authorize disclosure without consent;
4. That the parent or eligible student has a right to file a complaint with the U.S. Department of Education regarding an alleged failure by the school district to comply with the requirements of FERPA and the rules promulgated thereunder;
5. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest for purposes of disclosing education records to other school officials whom the school district has determined to have legitimate educational interests; and
6. That the school district forwards education records on request to a school in which a student seeks or intends to enroll or is already enrolled as long as the disclosure is for purposes related to the student's enrollment or transfer and that such records may include suspension and expulsion records pursuant to the federal Every Student Succeeds Act and, if applicable, a student's history of violent behavior.

### Notification to Parents of Students Having a Primary Home Language Other Than English

The school district shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

### Notification to Parents or Eligible Students Who are Disabled

The school district shall provide for the need to effectively notify parents or eligible students identified as disabled.

## **XVIII. DESTRUCTION AND RETENTION OF RECORDS**

The destruction and retention of records by the district shall be controlled by state and federal law.

Policy 515 - Protection and Privacy of Pupil Records

Adopted: 8/25/08 (updated 4/2011) (updated 5.14.12) (updated 5.14.13) (updated 12/2013) (updated 06/2018)

School Board

INDEPENDENT SCHOOL DISTRICT 659

Northfield, Minnesota

Appendices: Appendix A – Statement of Rights  
Appendix B – Notice of Designation of Directory Information  
Appendix C – Denial of Release of Directory Information  
Appendix D – Notice to Parents/Guardians and Students Regarding the Release of Information to Military Recruiters  
Appendix E – Authorization for Release of School Records  
Appendix F – Consent for the Release of Confidential Information Regarding Alcohol & Drug Abuse Student Records  
Appendix G – Request for Access to Records  
Appendix H – Request for Correction to be Made in the Education Record  
Appendix I – Retention of Test Protocols  
Appendix J – Photograph and Student Work Consent Form  
Appendix K – Juvenile Justice System Request for Information

**Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
Minn. Stat. Ch. 14 (Administrative Procedures Act)  
Minn. Stat. § 120A.22 (Compulsory Instruction)  
Minn. Stat. § 121A.40-121A.56 (The Pupil Fair Dismissal Act)  
Minn. Stat. § 121A.75 (Sharing Disposition Order and Peace Officer Records)  
Minn. Stat. § 127A.852 (Military-Connected Youth Identifier)  
Minn. Stat. § 144.341-144.347 (Consent of Minors for Health Services)  
Minn. Stat. § 260B.171, Subds. 3 and 5 (Disposition Order and Peace Officer Records of Children)  
Minn. Stat. § 363A.42 (Public Records; Accessibility)  
Minn. Stat. § 626.556 (Reporting of Maltreatment of Minors)  
Minn. Rules Parts 1205.0100-1205.2000 (Data Practices)  
10 U.S.C. § 503(b) and (c) (Enlistments: Recruiting Campaigns; Compilation of Directory Information)  
18 U.S.C. § 2331 (Definitions)  
18 U.S.C. § 2332b (Acts of Terrorism Transcending National Boundaries)  
20 U.S.C. § 1232g *et seq.* (Family Educational Rights and Privacy Act)  
20 U.S.C. § 6301 *et seq.* (Every Student Succeeds Act)  
20 U.S.C. § 7908 (Armed Forces Recruiting Information)  
26 U.S.C. §§ 151 and 152 (Internal Revenue Code)  
34 C.F.R. §§ 99.1-99.67 (Family Educational Rights and Privacy)  
34 C.F.R. § 300.610-300.627 (Confidentiality of Information)  
42 C.F.R. § 2.1 *et seq.* (Confidentiality of Drug Abuse Patient Records)  
*Gonzaga University v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L.Ed. 2d 309 (2002)

**Cross References:** Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)  
Policy 417 (Chemical Use and Abuse)  
Policy 506 (Student Discipline)  
Policy 515.2 (Access to Students and Student Records by Custodial and Non-Custodial Parents)  
Policy 519 (Interviews of Students by Outside Agencies)

Policy 520 (Student Surveys)

Policy 906 (Community Notification of Predatory Offenders)

MSBA Service Manual, Chapter 13, School Law Bulletin "I" (School Records – Privacy – Access to Data)