

BOE Administrative Code §60-20-428 Drafted Proposed Revisions

§ 60-20-428 Student Educational Records

Pursuant to the provisions of United States Code, title 20, sections 1232g(b)(1), (b)(4)(A), (b)(4)(B), (b)(1)(B), (b)(3), (b)(6), (b)(7), and (i), and Code of Federal Regulations, title 34, sections 99.31, 99.32, 99.33, 99.34, 99.35, 99.36, 99.37, 99.38

(a) Definitions

(1) Permanent records shall include the following information:

(i) The name and sex of the student as given in a legal document, such as a birth certificate, court order or official record of school previously attended.

(ii) Any other name(s) by which the student may be identified.

(iii) The student's date of birth and the method of verification of the date of birth for the student.

(iv) The name and address of the student's parent and/or guardian if the student is a minor.

(v) The student's primary language and ethnic background.

(vi) A record of the entering and leaving dates for all school sessions previously attended by the Student.

(vii) A record of the instruction in which the student participated, and of the student's rating or achievement in instruction (student progress report or equivalent).

(viii) Test score records.

(ix) Any specific health problem and verification of immunization.

(x) Insurance company.

(xi) Disciplinary records related to all suspensions and expulsions.

(xii) Other pertinent educational information, including attendance.

(2) Directory information means the information contained in the education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information, under this section, includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous school attended.

(ii) Directory information does not include a student's:

(A) Social security number; or

(B) Student Identification (ID) number, except as provided in paragraph (C) of this definition.

(iii) In accordance with paragraphs (a) and (b) of this definition, directory information includes

(A) A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and

(B) A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

(3) Educational records means those records that are directly related to a student and are maintained by the PSS.

(4) Disclosure means to permit access to or the release, transfer, or other communication of education records, or personally identifiable information contained in those records, to any party, by any means, including oral, written or electronic means, to any party except the party identified as the party that provided or created the record.

(5) Eligible student means a student who has reached 18 years of age or attends an institution of postsecondary education.

(6) Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent/guardian in the absence of a parent/guardian.

(7) Student means any individual who is or has been in attendance in the Commonwealth and about whom the PSS maintains education records.

(8) Financial Aid 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.

(9) *Attendance* includes, but is not limited to:

(i) Attendance in person or by paper correspondence, video conference, webinar, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

(ii) The period during which a person is working under a work-study program.

(10) *Biometric record*, as used in the definition of *personally identifiable information*, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

(11) *Dates of attendance*.

(i) The term means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter.

(ii) The term does not include specific daily records of a student's attendance at an educational agency or institution.

(12) *Disciplinary action or proceeding* means the investigation, adjudication, or imposition of sanctions by CNMI PSS with respect to an infraction or violation of the internal rules of conduct applicable to students of the CNMI Public School System.

(13) *Early childhood education program* means—

(i) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(ii) A State licensed or regulated child care program; or

(iii) A program that—

(A) Serves children from birth through age six that addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(B) Is—

(i) A State prekindergarten program;

(ii) A program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or

(iii) A program operated by a local educational agency.

(14) *Educational agency or institution* means any public or private agency or institution to which this part applies under FERPA §99.1(a).

(15) *Education program* means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

(16) *Education records*.

(i) The term means those records that are:

(A) Directly related to a student; and

(B) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(ii) The term does not include:

(A) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

(B) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of [*FERPA Subpart A §99.8*](#).

(C)(i) Records relating to an individual who is employed by the PSS, that:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(C)(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(E) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

(F) Grades on peer-graded papers before they are collected and recorded by a teacher.

(17) *Institution of postsecondary education* means an institution that provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(18) *Party* means an individual, agency, institution, or organization.

(19) *Personally Identifiable Information*

The term includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent, guardian, or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect 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 educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(h) A list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable.

(20) *Record* means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

(21) *Secretary* means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(22) “Signed and dated written consent” under 60-20-428 may include 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.

(b) General Guidelines

(1) The PSS shall give full rights under this section to either parent/guardian of a student; unless the PSS

is provided with a court order, state statute or other legally binding document that specifically revokes the

parent/ guardian’s rights to access under this section.

(2) When a student reaches the age of 18, or attends a post-secondary institution of education the parent/

guardian rights under this policy will transfer from the parent/guardian to the eligible student.

(3)(i) The PSS will annually disseminate a notice of the rights available under this section to parent/guardian and eligible students. The annual notification will include a statement that the parent/guardian or eligible student is entitled:

(A) To inspect and review the student’s educational records.

(B) To request changes to the educational records to ensure that the records are not inaccurate, misleading, or otherwise in violation of the student’s privacy or other rights.

(C) To consent to disclosures of personally identifiable information contained in the student’s educational records, except to the extent that federal and state law authorize disclosure without such consent; and

(D) To obtain a copy of this section and guidelines.

(ii) The annual notification will also inform parent/ guardian and eligible students where copies of the section and guidelines are located.

(4) Prior to making directory information public, the PSS will notify the parent/guardian regarding the categories of information that it has designated as directory. In addition, the PSS

will allow a reasonable period of time after such notice for the parent/guardian or eligible student to inform the PSS that any or all of the designated directory information should not be released without the parents/guardians' or eligible student's consent.

(5) Principal/designee of the school where access to student records is being requested shall provide a space or room for authorized agency or person requesting access to review records.

(6) If necessary and requested by the student, parent or guardian, qualified personnel to interpret records will be made available.

(c) Procedures for Inspection and Review of Educational Records

(1) The PSS's regulation permits parent/guardian and eligible students to inspect and review the education records of the student.

(2) After a request for access to records, the PSS will allow access within a reasonable period of time, but in no case more than forty-five (45) days after receipt of the request. All requests for access should be directed to the building administrator.

(3) After the parent/guardian or eligible student has had an opportunity to inspect and review the student's education records, the parent/guardian may make a request for explanations and interpretations of the records to building administrator. The PSS's designee shall respond to all reasonable requests for explanation or interpretation.

(4) The PSS will not destroy any education record if there is an outstanding request to inspect and review that record.

(5) The PSS may charge a fee for copies of education records that are made for a parent/guardian or eligible student, unless that fee would prevent a parent/guardian or eligible student from exercising their rights to inspect and review the student's education records. The PSS will not charge a fee to search for or retrieve a student's education records.

(6) If a student's education records contain information on more than one student, the parent/guardian or eligible student may inspect, review or be informed of only the specific information about that student.

(d) Procedures Regarding Disclosure of Personally Identifiable Information Where Consent Is Required

(1) Before the PSS discloses personally identifiable information from a student's records (other than directory information), the PSS will obtain a signed and dated written consent from the parent/guardian or eligible student except as provided in subpart (e) of this subsection and §99.31 of FERPA. The written consent will specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or parties to whom disclosure may be made.

(2) If the parent/guardian or eligible student so requests, the PSS will provide him/her with a copy of the records disclosed.

(e) Disclosure of Personally Identifiable Information Where Consent Is Not Required

The PSS may disclose personally identifiable information from a student's education records without the written consent of the parent/guardian or eligible student in the following circumstances:

(1) Disclosure may be made to other school officials, including teachers, within the PSS whom the PSS has determined to have legitimate educational interests. The PSS will use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.

(A) The PSS designates the principal to make the determination as to whether a particular school official has a legitimate educational interest in accessing a student's education records. Before making the determination, the principal shall consult with the PSS legal counsel.

(B) Before obtaining access to any student's education records, the school official seeking access must submit a written request to the principal. The request must include the student's name, the reason for the request, the school official's name and the date of the request.

(C) The PSS's designee must provide in writing whether the request was granted or denied and the reason for the decision.

(D) If the request is granted, the request and the designee's decision must be maintained with the student's education records.

(2) Disclosure may be made to a contractor, consultant, volunteer, or other party to whom the PSS has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—

(A) Performs an institutional service or function for which the PSS would otherwise use employees;

(B) Is under the direct control of the PSS with respect to the use and maintenance of education records; and

(C) Is subject to the requirements of [FERPA §99.33](#) (a) governing the use and redisclosure of personally identifiable information from education records.

(3) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

(4) Disclosure may be made to authorized federal and state agencies and authorities.

(5) Disclosure of acts of school violence as defined in the Code of Federal Regulations Title 34 Subpart 99 [Appendix A to Part 99—Crimes of Violence Definition](#).

(6) Disclosure to law enforcement officials, as soon as is reasonably practicable of the commission of the criminal acts pursuant to [Appendix A to Part 99—Crimes of Violence Definitions](#).

(7) Disclosure to appropriate staff members of portions of any student's individualized education program that is related to past or potentially future violent behavior.

(8) Disclosure to the appropriate division of the juvenile court of the suspension of more than ten days of any student under court jurisdiction.

(9) Disclosure of discipline records within five days to any requesting school district where the student seeks to enroll.

(10) Disclosure may be made if such disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, amount of aid, condition for the aid, or to enforce the terms and conditions of the aid.

(11) Disclosure may be made to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests; administer

student aid programs; or improve instruction, if the study is conducted in a way that does not permit personal identification of parent/guardian and students, and the information is destroyed when no longer needed for the purposes for which the study was conducted.

(12) Disclosure may be made to accrediting organizations to carry out their accrediting functions.

(13) Disclosure may be made to comply with a judicial order or lawfully issued subpoena and only after the PSS makes a reasonable effort to notify the parent/guardian or eligible student of the order or subpoena in advance of the compliance.

(14) Disclosure may be made where the disclosure is in connection with a health or safety emergency and the information is necessary to protect the health or safety of the student or other individuals.

(15) Disclosure may be made where the disclosure is of information the PSS has designated to be directory information.

(16) Disclosure may be made to the parent/guardian of a non-eligible student or to an eligible student.

(17) Disclosure may be made without the written consent of the parent/guardian or eligible student as otherwise may be specified by federal or state law.

(18) The PSS may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent/guardian or eligible student. Each party to whom disclosure may be made under this policy must first sign a statement in which he/she agrees to abide by this provision and agrees to use the information disclosed only for the purposes for which the disclosure was made. This does not apply to disclosures of directory information or to any information that the PSS is required to disclose.

(f) The Division of Youth Services (DYS) Access to Student Records

Pursuant to 1 CMC § 2378 the Division of Youth Services (DYS) shall have recess to student records with or without the consent or authorization of the student's parent/guardian if that student is a minor, or the consent of the student if that student is eighteen years of age or older. Provided however, that the DHS shall, in writing:

- (1) Demonstrate its interest in the student record.
- (2) Specify the particular record or information requested.
- (3) List the name or names of agency personnel authorized to have access to information being sought.

(g) Procedures to Request Amendment of a Student's Educational Records

(1) If a parent/guardian or eligible student believes the education records for that student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he/she may ask the PSS to amend the record. All such requests should be directed to the building administrator.

(2) The PSS's designee, in consultation with the administration or Board of Education as needed, shall decide whether to amend the record as requested within a reasonable time after the request.

(3) If the PSS's designee decides not to amend the record, he/she shall inform the parent/guardian or eligible student of that decision and of their right to request a hearing.

(4) If a hearing is requested, the PSS will hold the hearing within a reasonable time after it has received the request and will give the parent/guardian or eligible student reasonable advance notice of the date, time and place of the hearing. Any individual, including an employee of the PSS, who does not have a direct interest in the outcome of the hearing, may conduct the hearing. The PSS will give the parent/guardian or eligible student a full and fair opportunity to present evidence relevant to the issue(s) raised by the parent/guardian or eligible student's request. The parent/guardian or eligible student may, at their own expense, be assisted or represented at the hearing by any individual of their choice, including an attorney.

(5) The PSS will make its decision in writing within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing, and will include a statement of the evidence and the reasons for the decision.

(i) If the PSS decides, as a result of the hearing, that the information is inaccurate, misleading or violates the student's rights, the PSS shall amend the record and inform the parent/guardian or eligible student of the amendment in writing.

(ii) If the PSS decides, as a result of the hearing, that the information is not inaccurate, misleading,

or otherwise in violation of the student's rights, the PSS shall inform the parent/guardian or eligible student of that decision and shall inform the parent/guardian or student of his/her right to place a statement in the record commenting on the contested information or stating why he/she disagrees with the PSS's decision, or both. If the parent/guardian or eligible student submits such a statement, the PSS will maintain that statement with the student's education records as long as the record is maintained and will disclose the statement whenever it discloses the portion of the record to which the statement relates.

(h) Record Keeping Procedures

(1) The PSS will maintain a record of each request for access to and each disclosure of personally identifiable information from the educational records of each student. The school administrator or registrar will be responsible for keeping such records of requests and disclosures.

(2) The PSS will maintain the record of each request and disclosure with the educational records of the student as long as the records are maintained by the PSS.

(3) For each request or disclosure, the PSS's record will include the parties who have requested or received personally identifiable information from educational records and the legitimate interests the parties had in requesting or obtaining the information.

(4) If the PSS discloses personally identifiable information from an educational record under the exceptions enumerated in the earlier sections, the PSS will record the names of those persons to whom that party may disclose the information on behalf of the PSS and the legitimate interests which each of the additional parties has in requesting or obtaining the information.

Form 2420 FERPA Educational Rights Annual Notification

To All PSS Parents:

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) affords parents and students over 18 years of age (eligible students) certain rights with respect to the student's education records. They are:

1. The right to inspect and review the student's education records within 45 days of the day the PSS receives a request for access.

Parents or eligible students should submit to the school administrator or registrar a written request that identifies the record(s) they wish to inspect. The administrator or registrar will make arrangements for access and notify the parents or eligible students of the time and place where the records may be inspected. The right to request the amendment of the student's education records that the parents or eligible students believe are inaccurate, misleading, or otherwise in violation of the students privacy rights under FERPA

Parents or eligible students may ask the Public School System school to amend a record that they believe is inaccurate or misleading. They should write by writing the school principal administrator or registrar, clearly identify identifying the part of the record they want changed, and specify specifying why it is inaccurate or misleading should be changed.

If the PSS school decides not to amend the record as requested by the parent or eligible student, the PSS 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 as per Admin Code § 60-20-452 Hearing Procedures.

3. The right to provide written consent to disclosures before the school discloses of personally identifiable information (PII) contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception that permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school or PSS 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 PSS has contracted to perform a special task school official also may include a volunteer, contractor, or consultant who, while not employed by the school, performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records (such as an attorney, auditor, medical consultant, therapist or service provider); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or a parent, student, or other volunteer 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.

Upon request, the PSS may disclose education records without consent to officials of another school district in which a student seeks or intends to enroll or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. Please refer to the list of disclosures that elementary and secondary schools may make without consent in Admin Code § 60-20-428 Student Records.

4. Upon request, parents are entitled to a copy of the complete Board policies and regulations regarding student records. Please contact the administrator or registrar for a copy.

5. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the PSS to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. 20202-4605

RETURN TO BUILDING PRINCIPAL SCHOOL ADMINISTRATOR OR REGISTRAR

I have received and read the annual notice of my rights and those of my child under the Family Educational Rights and Privacy Act (FERPA) on Form 2420 FERPA Educational Rights Annual Notification. Those rights are the:

1. Right to inspect.
2. Right to request amendment.
3. Right to prevent disclosures.
4. Right to obtain a copy of the policy from the PSS.
5. Right to complain to FERPA office.

Parent/Guardian Signature

Date

Form 2420.1 FERPA Notice of Designation of Directory Information

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires that the CNMI Public School System, with certain exceptions, obtain your written consent prior to the

disclosure of personally identifiable information (PII) from your child's education records. However, PSS may disclose appropriately designated "directory information" without written consent, unless you have advised the PSS to the contrary in accordance with PSS procedures. The primary purpose of directory information is to allow the school of PSS to include information from your child's education records in certain school publications, including the PSS-sanctioned school and district websites and social media pages. Examples include:

- A playbill, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Promotion and graduation programs; and
- Sports activity sheets, such as for basketball, showing weight, height and BMI of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act of 1965, as amended (ESEA) to provide military recruiters, upon request, with the following information – names, addresses and telephone listings – unless parents have advised the LEA that they do not want their student's information disclosed without their prior written consent. NOTE: These laws are Section 9528 of the ESEA (20 U.S.C. § 7908) and 10 U.S.C. § 503(c).

If you do not want PSS to disclose any or all of the types of information designated below as directory information from your child's education records without your prior written consent, you must notify your child's school in writing before the start of the school year. PSS has designated the following information as directory information:

1. Student's name
2. Address
3. Telephone listing
4. Electronic mail address
5. Photograph
6. Date and place of birth
7. Major field of study
8. Dates of attendance
9. Grade level

10. Participation in officially recognized activities and sports
11. Weight and height of members of athletic teams
12. Degrees, honors, and awards received
13. The most recent educational agency or institution attended
14. Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user
15. A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.