

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

February 7, 2011

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 7:15- Student and Family Privacy Rights

This policy is new for Millburn and it was recommended due to changes in the law in 2008. It outlines the privacy and confidentiality rights that parents and students have and gives guidelines as to when the district is compelled to provide information.

We can use this as our first reading and place this on the consent agenda for next time.

## Students

### Student and Family Privacy Rights 1

#### Surveys 2

All surveys requesting personal information from students, as well as any other instrument used to collect personal information from students, must advance or relate to the District's educational objectives as identified in School Board policy 6:10, *Educational Philosophy and Objectives*, or assist students' career choices. This applies to all surveys, regardless of whether the student answering the questions can be identified and regardless of who created the survey.

#### Surveys Created by a Third Party 3

Before a school official or staff member administers or distributes a survey or evaluation created by a third party to a student, the student's parent(s)/guardian(s) may inspect the survey or evaluation, upon their request and within a reasonable time of their request.

This section applies to every survey: (1) that is created by a person or entity other than a District official, staff member, or student, (2) regardless of whether the student answering the questions can be identified, and (3) regardless of the subject matter of the questions.

#### Survey Requesting Personal Information 4

School officials and staff members shall not request, nor disclose, the identity of any student who completes any survey or evaluation (created by any person or entity, including the District) containing one or more of the following items:

1. Political affiliations or beliefs of the student or the student's parent/guardian.
2. Mental or psychological problems of the student or the student's family.
3. Behavior or attitudes about sex.

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**The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.**

<sup>1</sup> State or federal law requires this subject matter be covered by policy. State or federal law controls this policy's content. The No Child Left Behind Act significantly changed the Protection of Pupil Rights Act, a/k/a/ the Hatch Amendments. The Protection of Pupil Rights Act requires any school district, "that receives funds under any applicable program [to] develop and adopt policies, in consultation with parents, regarding [statutory privacy rights]." (20 U.S.C. §1232h(c)(1). "Any applicable program" generally refers to any federal program administered by the U.S. Department of Education (20 U.S.C. §1221(c). "Consultation with parents" is not defined; boards are advised, at minimum, to publicize the issue and request public comment during the policy's adoption.

<sup>2</sup> This paragraph is not dictated by law. It, however, contains the principles to guide staff and should be carefully considered and re-crafted by each board. Note that IASB sample board policy 6:10, *Educational Philosophy and Objectives*, is very broad and will thus justify surveys covering many subjects. However, it would prohibit the collection of information for marketing or selling (see f/n 13 of this policy); this reference must be struck if the board wants the option of selling personal information collected from students, such as in the following:

A survey requesting personal information from students, as well as any other instrument used to collect personal information from students, must have a business, educational, or marketing justification.

Another alternative is to strictly restrict the subjects on which students may be surveyed, as in the following:

All surveys requesting information from students, as well as any other instrument used to collect personal information from students, must be for the purpose of monitoring the quality of the District's educational programs or assisting students' career choices.

<sup>3</sup> Required by 20 U.S.C. §§1232h(c)(1)(A)(i) and 1232h(c)(2)(A)(ii).

<sup>4</sup> Required by 20 U.S.C. §1232h(c)(1)(B).

4. Illegal, anti-social, self-incriminating, or demeaning behavior.
5. Critical appraisals of other individuals with whom students have close family relationships.
6. Legally recognized privileged or analogous relationships, such as those with lawyers, physicians, and ministers.
7. Religious practices, affiliations, or beliefs of the student or the student's parent/guardian.
8. Income other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program.

The student's parent(s)/guardian(s) may:

1. Inspect the survey or evaluation upon, and within a reasonable time of, their request, <sup>5</sup> and/or
2. Refuse to allow their child or ward to participate in the activity described above. <sup>6</sup> The school shall not penalize any student whose parent(s)/guardian(s) exercised this option.

#### Instructional Material <sup>7</sup>

A student's parent(s)/guardian(s) may inspect, upon their request, any instructional material used as part of their child/ward's educational curriculum within a reasonable time of their request.

The term "instructional material" means instructional content that is provided to a student, regardless of its format, printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments. <sup>8</sup>

#### Physical Exams or Screenings <sup>9</sup>

No school official or staff member shall subject a student to a non-emergency, invasive physical examination or screening as a condition of school attendance. The term "invasive physical examination" means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

The above paragraph does not apply to any physical examination or screening that:

1. Is permitted or required by an applicable State law, including physical examinations or screenings that are permitted without parental notification. <sup>10</sup>

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<sup>5</sup> Id.

<sup>6</sup> 20 U.S.C. §1232h(c)(2)(A)(ii).

<sup>7</sup> Required by 20 U.S.C. §1232h(c)(1)(C)(i).

<sup>8</sup> 20 U.S.C. §1232h(c)(6)(A).

<sup>9</sup> The Protection of Pupil Rights Act states that student's parent(s)/guardian(s) may refuse to allow their child or ward to participate in "non-emergency, invasive physical examination or screening." (20 U.S.C. §1232h(c)(2)(A)(ii). This does not necessarily mean, however, that schools have authority to conduct invasive physical examinations or screenings of students. In order to avoid misunderstandings, the sample policy prohibits physical examinations and screenings of students as those terms are defined in the policy (and federal law).

A board that wants to retain this option must strike the first sentence and replace it with the following:

A student's parent(s)/guardian(s) may refuse to allow their child or ward to participate in any non-emergency, invasive physical examination or screening that is: (a) required as a condition of attendance, (b) administered by the school and scheduled by the school in advance; and (c) not necessary to protect the immediate health and safety of the student, or of other students.

<sup>10</sup> 20 U.S.C. §1232h(c)(4)(B)(ii).

2. Is administered to a student in accordance with the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.). **11**
3. Is otherwise authorized by Board policy. **12**

### Selling or Marketing Students' Personal Information Is Prohibited **13**

No school official or staff member shall market or sell personal information concerning students (or otherwise provide that information to others for that purpose). The term "personal information" means individually identifiable information including: (1) a student or parent's first and last name, (2) a home or other physical address (including street name and the name of the city or town), (3) a telephone number, (4) a Social Security identification number or (5) driver's license number or State identification card. **14**

The above paragraph does not apply: (1) if the student's parent(s)/guardian(s) have consented; or (2) to the collection, disclosure or, use of personal information collected from students for the exclusive purpose of developing, evaluating or providing educational products or services for, or to, students or educational institutions, such as the following: **15**

1. College or other postsecondary education recruitment, or military recruitment.
2. Book clubs, magazines, and programs providing access to low-cost literary products.
3. Curriculum and instructional materials used by elementary schools and secondary schools.
4. Tests and assessments to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.
5. The sale by students of products or services to raise funds for school-related or education-related activities.
6. Student recognition programs.

Under no circumstances may a school official or staff member provide a student's "personal information" to a business organization or financial institution that issues credit or debit cards. **16**

### Notification of Rights and Procedures **17**

The Superintendent or designee shall notify students' parents/guardians of:

1. This policy as well as its availability upon request from the general administration office.

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**11** 20 U.S.C. §1232h(c)(5)(ii).

**12** If a board adopted a drug-testing program for extracurricular participants, that policy should be referenced here and added to this policy's cross-references. (See the optional program in 7:240, *Conduct Code for Participants in Extracurricular Activities*.)

**13** The Children's Privacy Protection and Parental Empowerment Act, P.A. 93-462, prohibits the sale of personal information concerning a child under the age of 16, with a few exceptions, unless the parent(s)/guardian(s) have consented. Federal law [20 U.S.C. §1232h(c)(1)(E)] is similar but not identical. In order to effectuate both laws, the sample policy prohibits the sale or marketing of "personal information" unless the parents/guardians have consented.

**14** 20 U.S.C. §1232h(c)(6)(E); Children's Privacy Protection and Parental Empowerment Act, P.A. 93-462.

**15** Id.

**16** 105 ILCS 5/10-20.38.

**17** The details in this section are specified in and required by 20 U.S.C. §1232h(c)(2). This information should be in the student handbook.

2. How to opt their child or ward out of participation in activities as provided in this policy.
3. The approximate dates during the school year when a survey requesting personal information, as described above, is scheduled or expected to be scheduled. **18**
4. How to request access to any survey or other material described in this policy.

This notification shall be given parents/guardians at least annually, at the beginning of the school year, and within a reasonable period after any substantive change in this policy.

The rights provided to parents/guardians in this policy transfer to the student when the student turns 18 years old, or is an emancipated minor. **19**

LEGAL REF.: Protection of Pupil Rights, 20 U.S.C. §1232h.  
Children’s Privacy Protection and Parental Empowerment Act, 325 ILCS 17/1 et seq.  
105 ILCS 5/10-20.38.

CROSS REF.: 2:260 (Uniform Grievance Procedure), 6:210 (Instructional Materials), 6:260 (Complaints About Curriculum, Instructional Materials, and Programs), 7:130 (Student Rights and Responsibilities)

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**18** If the board chose to keep the option of marketing personal information received from students and/or conducting physical exams, add the following to this list as appropriate: “collection of personal information from students for marketing and physical examinations or screenings.”

**19** 20 U.S.C. §1232h(c)(5)(B).