

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

February 7, 2011

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Policy 7:340- Student Records

This policy is reflective of some wording changes due to the Patriot Act. There is also a new section that outlines the rights of students in the event that biometric information is collected, most likely for something like charging student lunches by using a biometric scan of a finger.

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

## Students

### Student Records <sup>1</sup>

School student records are confidential and information from them shall not be released other than as provided by law. <sup>2</sup> Any record that contains personally identifiable information or other information that would link the document to an individual student is a school student record if maintained by the District, except: (1) records that are kept in the sole possession of a school staff member, are destroyed not later than the student's graduation or permanent withdrawal, and are not accessible or revealed to any other person except a temporary substitute teacher, and (2) records kept by law enforcement officials working in the school. <sup>3</sup>

State and federal law grants students and parents/guardians certain rights, including the right to inspect, copy, and challenge school records. The information contained in school student records shall be kept current, accurate, clear, and relevant. All information maintained concerning a student receiving special education services shall be directly related to the provision of services to that child. <sup>4</sup> The District may release directory information as permitted by law, but a parent/guardian shall have the right to object to the release of information regarding his or her child. <sup>5</sup> However, the District will comply with an *ex parte* court order requiring it to permit the U.S. Attorney General or

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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. Both federal (Family Educational Rights and Privacy Act, 20 U.S.C. §1232g) and State (Illinois School Student Records Act, 105 ILCS 10/1 *et seq.*) laws govern student school records. These laws differ in many respects. State law requires school boards to adopt policy and procedures implementing the Student Records Act and specifying the content of school records (23 Ill.Admin.Code §§375.100 and 226.740). The release of confidential information given by a student to a therapist, e.g., school counselor or psychologist, is not included in this policy but is governed by the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 *et seq.* Information kept by law enforcement professionals working in a school are not "school student records" (105 ILCS 10/2).

<sup>2</sup> A plethora of statutory and decisional law protects student records. Under no circumstances may a school official provide a student's "personal information" to a business organization or financial institution that issues credit or debit cards (105 ILCS 5/10-20.37). The Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/, 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. Allowing students to grade each other's papers does not violate FERPA; such student work is not a "school record" until it is recorded by the teacher. *Owasso I.S.D. No. I-011 v. Falvo*, 122 S.Ct. 934 (2002). Student records are *per se* prohibited from disclosure; a district is under no obligation to redact them. *Chicago Tribune Co. v. Chicago Bd. of Ed.*, 773 N.E.2d 674 (Ill.App.1, 2002).

Confusion persists regarding the interplay between the FERPA and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Privacy Rule, issued by the U.S. Depart. of Health and Human Services, addresses the use and disclosure of individuals' health information by "covered entities." Generally speaking, a school district is a "covered entity," and must comply with applicable sections in the Privacy Rule, if it provides health care and transmits health information in electronic form in connection with transactions. However, "educational records" as defined by FERPA are excluded from HIPAA's definition of "protected health information," (45 C.F.R. §164.501). In most cases this exception relieves school districts of complying with burdensome privacy notices and authorization forms. The board attorney should be consulted on all HIPAA-related questions.

Schools must keep a sex offender registration form received from law enforcement separately from school records maintained on behalf of the juvenile sex offender (730 ILCS 152/121).

<sup>3</sup> 20 U.S.C. §1232g(a)(4)(A); 34 C.F.R. §99.3; 105 ILCS 10/2(d).

<sup>4</sup> 23 Ill.Admin.Code §226.740.

<sup>5</sup> This paragraph is required if the board wants to allow school officials to release student directory information (20 U.S.C. §1232g; 23 Ill.Admin.Code §375.80; 34 C.F.R. §99.6(a)(4)).

designee to have access to a student's school records without notice to, or the consent of, the student's parent/guardian. <sup>6</sup>

The Superintendent shall implement this policy with administrative procedures. The Superintendent shall also designate a *records custodian* who shall maintain student records. <sup>7</sup> The Superintendent or designee shall inform staff members of this policy, and shall inform students and their parents/guardians of it, as well as their rights regarding student school records. <sup>8</sup>

#### Student Biometric Information Collection <sup>9</sup>

The Superintendent or designee may recommend a student biometric information collection system solely for the purposes of identification and fraud prevention. <sup>10</sup> Such recommendation shall be consistent with budget requirements and in compliance with State law. Biometric information means any information that is collected through an identification process for individuals based on their unique behavioral or physiological characteristics, including fingerprint, hand geometry, voice, or facial recognition or iris or retinal scans.

Before collecting student biometric information, the District shall obtain written permission from the person having legal custody <sup>11</sup> or the student (if over the age of 18). <sup>12</sup> Upon a student's 18<sup>th</sup> birthday, the District shall obtain written permission from the student to collect student biometric information. <sup>13</sup> Failure to provide written consent to collect biometric information shall not be the basis for refusal of any services otherwise available to a student.

All collected biometric information shall be stored and transmitted in a manner that protects it from disclosure. Sale, lease, or other disclosure of biometric information to another person or entity is strictly prohibited. <sup>14</sup>

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<sup>6</sup> 20 U.S.C. §1232(g)(j), as added by the Sec. 507 of the U.S.A. Patriot Act of 2001.

<sup>7</sup> Required by 105 ILCS 10/4(a).

<sup>8</sup> Both State and federal law require districts to notify students and parents/guardians of their rights concerning school records (105 ILCS 10/3; 23 Ill.Admin.Code §375.30; 34 C.F.R. §99.7). Comprehensive faculty and student handbooks can provide required notices, along with other important information, to recipients. Handbooks can be developed by the building principal, but should be reviewed and approved by the superintendent and board. Faculty handbooks may contain working conditions and be subject to mandatory collective bargaining. See exhibit 7:340-E, *Notification of Rights Concerning Student's School Records*, and administrative procedure 7:340-AP, *School Records*.

<sup>9</sup> This program is optional; however, districts either wishing to implement such a program or districts that have already engaged in the collection of student biometric information must have a policy consistent with the requirements of 105 ILCS 5/10-20.40 *et seq.*, as amended by P.A. 95-232. This section restates The School Code's requirements for a student biometric information policy.

<sup>10</sup> For districts already collecting biometric information the following is an alternative:

The Superintendent or designee shall maintain a biometric screening program that is consistent with budget requirements and in compliance with State law.

<sup>11</sup> 105 ILCS 5/10-20.40(b)(1) states the definition of legal custody is the same as the definition of legal custody for purposes of residency, payment of tuition, hearings, and criminal penalties at 105 ILCS 5/10-20.12b(2)(i)-(v). Several statutes in Illinois define legal custody and when a court may grant it; the term requires statutory construction/interpretation and school boards should discuss this issue with their attorney prior to adopting a policy on collection of student biometric information.

<sup>12</sup> Based upon 105 ILCS 5/10-20.40, written permission is not required annually; it is valid until a request for discontinuation of the use of biometric information is received or until the student reaches the age of 18. See 7:340-E5, *Biometric Information Collection Authorization*.

<sup>13</sup> Districts must reissue 7:340-E5, *Biometric Information Collection Authorization* to students turning 18 years of age during the school year. This is because all rights and privileges accorded to a parent under the Ill. School Student Records Act shall become exclusively those of the student upon [the student's] 18<sup>th</sup> birthday, graduation from secondary school, marriage or entry into military service, whichever comes first. 105 ILCS 10/2(g).

<sup>14</sup> State law contains two exceptions: (1) the individual who has legal custody of the student or the student (if over the age of 18) consents to the disclosure, and (2) the disclosure is required by court order. 105 ILCS 10-20.40(b)(5).

The District will discontinue use of a student's biometric information and destroy all collected biometric information within 30 days after: (1) the student graduates or withdraws from the School District, or (2) the District receives a written request to discontinue use of biometric information from the person having legal custody of the student or the student (if over the age of 18). **15** Requests to discontinue using a student's biometric information shall be forwarded to the Superintendent or designee.

The Superintendent or designee shall develop procedures to implement this policy consistent with State and federal law. **16**

LEGAL REF.: Chicago Tribune Co. v. Chicago Bd. of Ed., 773 N.E.2d 674 (Ill.App.1, 2002).  
Owasso I.S.D. No. I-011 v. Falvo, 122 S.Ct. 934 (2002).  
Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99.  
Children's Privacy Protection and Parental Empowerment Act, 325 ILCS 17/1 et seq.  
105 ILCS 5/10-20.21b, 20.37, 20.40, 5/14-1.01 et seq., and 10/1 et seq.  
50 ILCS 205/7.  
23 Ill.Admin.Code §§226 and 375.

CROSS REF.: 5:100 (Staff Development Program), 5:130 (Responsibilities Concerning Internal Information), 7:15 (Student and Family Privacy Rights)

ADMIN PROC.: 7:15-E (Notification to Parents of Family Privacy Rights), 7:340-AP (Student Records), 7:340-E (Notification of Rights Concerning a Student's School Records)

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**15** 105 ILCS 5/10-20.40(d), added by P.A. 95-793. No notification to or approval from the district's local records commission, pursuant to the Local Records Act, is required to destroy student biometric information.

**16** Whether the student biometric information is an education record under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, or falls under an exception to an education record under FERPA is an issue about which school boards should consult their board attorney. Protected Health Information under the U.S. Department of Health and Human Service's interpretations of the Health Insurance Portability Accountability Act (HIPAA) excludes education records covered by FERPA, and thus HIPAA requirements are not expected to be triggered by districts collecting student biometric information. However, before implementing policies and procedures to collect student biometric information, a board should discuss these issues with the board attorney.

## **Students**

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The Superintendent shall implement this policy with administrative procedures. The Superintendent shall also designate a *records custodian* who shall maintain student records. The Superintendent or designee shall inform staff members of this policy, and shall inform students and their parent(s)/guardian(s) of it, as well as their rights regarding student school records.

LEGAL REF.: Family Educational Rights and Privacy Act, 20 U.S.C. § 1232; 34 C.F.R. Part 99.  
105 ILCS 5/14-1.01 et seq. and 10/1 et seq.  
50 ILCS 205/7.  
23 Ill. Admin. Code §§ 226 and 375.

ADOPTED: May 20, 2002