Dealing with Data Requests

Questions to Consider

Types of data requests

- Parent to School
- Parent to LEA
- School to LEA
- LEA to LEA
- LEA to another district’s school
- College or University to LEA
- Third party to LEA
- Military to LEA

What is the Family Educational Rights and Privacy Act (FERPA)?

- FERPA is a federal law that:
  - Protects the privacy interests of students.
  - Affords parents the right to access their children's educational records.
  - Gives parents some control over the disclosure of the information in these records.

What are “Educational Records”?

- “Educational records”:
  - All records, files, documents, and other materials containing information directly related to a student.
  - Includes academic information (grades, test scores, etc.), special education records, §504 plans, health care plans, medical records, student IQ scores, disciplinary records, anecdotal comments about students, etc.
  - Can be in *any location* and in *any format*: print, computer media, video or audio, etc.

Who is a “parent” of the student?

- Natural Parent
- Adoptive Parent
- Legal Guardian (Court Order)
- Individual acting as a parent in the absence of a parent or guardian
  - Foster Parent – Yes
  - Step Parent – Generally no, but in certain situations yes

What are the rights of custodial and non-custodial parents?

- FERPA affords full rights to either parent, custodial or non-custodial, unless the school has been provided with evidence of a court order that specifically revokes these rights.

Authorizations to Disclose Information from a Student's Educational Record

Any information disclosed from a student's educational record must be authorized by one of the following:

- Specific written parent consent.
- The information is "Directory Information" (see next slide).
- School officials with a legitimate educational interest.
- Schools to which the student seeks to enroll.
- Federal, state, and local educational authorities for audit or evaluation purposes.
- Financial aid purposes.
- Organizations conducting studies for, or in behalf of, the school district.
- Accrediting organizations.
- Parents of dependent students for tax purposes (applies after the student is 18 years old).
- Health or safety emergencies (must be imminent).
- Judicial orders or subpoenas
- State law (currently no Utah law).
- DCFS and JJS Agents with right to access specific student's case plan (ID and court documentation required).

Directory Information

- Disclosure of Directory information is not mandatory. It should only be disclosed if it serves a legitimate school purpose.
- Directory Information includes the following:
  - Student's name, address and telephone listing.
  - Electronic mail addresses.
  - Date and place of birth.
  - Major field of study.
  - Participation in officially recognized activities and sports.
  - Weights and heights of members of athletic teams.
  - Dates of attendance.
  - Degrees and awards received.
  - Most recent previous educational agency/institution attended by the student.
  - Current grade level and teacher's name(s).
  - Photos, videotapes and other likenesses of a student.

NOTE: A parent has the right to "opt-out" of any or all items listed as Directory Information. In the event of an "opt-out," such Directory Information may not be disclosed on that particular student.

NOTE: If Directory Information is disclosed, it should be given with the "Limitation on Use" statement - see NSD Administrative Directive No. 6.1.

Is disclosure of directory information mandatory?

- No. Disclosure of “directory information” is optional and at the discretion of the school/district.
  - Exception – Military recruiters as per NCLB.
- The disclosure of “directory information” should serve a legitimate school/district purpose – (See NSD Administrative Directive No. 6.1 – Student Directory Information - Limitation on Use).

Limitation on Use Statement

- **THIS STUDENT INFORMATION IS PROVIDED TO YOU EXCLUSIVELY FOR YOUR USE IN CONJUNCTION WITH ACCOMPLISHING LEGITIMATE SCHOOL PURPOSES. YOU SHALL PROTECT THIS STUDENT INFORMATION AND TREAT IT AS STRICTLY CONFIDENTIAL. YOU SHALL NOT AT ANY TIME OR IN ANY MANNER, EITHER DIRECTLY OR INDIRECTLY, SELL, ASSIGN, TRANSFER, DIVULGE, DISCLOSE, OR DISSEMINATE THIS STUDENT INFORMATION TO ANY OTHER PERSON OR ENTITY. UPON COMPLETION OF YOUR PURPOSES, YOU SHALL IMMEDIATELY DESTROY THIS STUDENT INFORMATION.**

Personally Identifiable – Single Student

- Do I know the person making the request?
- Can the person be identified as who they say they are?
- Is it for a legitimate school purpose?
- Is it for a question(s) to be answered about a single individual?
- Should this be referred back to a school to check for legal issues?
- Does it need to be printed?

Personally Identifiable – Multiple Students

- Is it for a legitimate school purpose?
- Can I verify the request is legitimate?
- Does the request just include directory information?
- Have I excluded those students who have requested an exemption from this type of data request?
- Have we attached the ‘Limitation on use’ statement?
- Is there a secure transport mechanism?

Aggregated Totals

- Do we clearly understand what is being asked?
- Could the data be misinterpreted?
- Is it for a legitimate school purpose?
- Will it take a large amount of time to generate data?
- Have we attached the ‘Limitation on Use’ statement?
- Is there a secure transport mechanism?

Request for records

- Document that we have received an official request for records.
- If needed, fax documents to requesting institution.
- Mail file folder of student to requesting institution.

When in Doubt

- Verify the person/agency making the request.
- Contact your legal counsel to get additional questions resolved.
- This presentation does not constitute legal advice. It contains general legal information and recommendations and should not be relied upon for any specific purpose without consultation with legal counsel and in the context of the specific facts and circumstances.