

MSBO Technology Committee
June 22, 2017



UPDATE REGARDING PRIVACY OF STUDENT
INFORMATION RECORDS

Common Terms

- “Education Record” = records that are (1) directly related to the student; (2) maintained by an educational agency or institution or by a party acting for the agency or institution.
- “Directory information” = information in a student’s education records that would not generally be considered harmful or an invasion of privacy if disclosed.
 - may be designated by a school, and include student’s name, address, telephone listing, electronic mail address, photograph, date and place of birth, fields of study, dates of attendance, grade level, participation in officially recognized activities and sports, degrees, honors and awards achieved.
 - May **never** include Social Security Number.
 - Michigan School Code (380.1139(b)) defines “student directory Information” as a student’s name, address, and telephone number.

Common Terms

- “PII” = personally identifiable information, i.e., 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.
 - generally includes student’s name, address, social security number, student number or date of birth, name/address of student’s family members or other information linkable to a specific student.

Two New Michigan Laws

- Revised School Code, “Act 451” (MCL 380.1136) – imposes privacy requirements and disclosure restrictions upon the Michigan Department of Education, the Center for Educational Performance and Information, school districts, and public school academies.
- Student Online Personal Protection Act (MCL 388.1239) – imposes privacy requirements upon the operators of internet websites, online services, online applications or mobile applications used primarily in the K-12 setting.

FERPA Recap

- Federal privacy law.
- Gives parents the right to:
 - Have access to their children's education records;
 - Seek to have their children's education records amended; and
 - Consent to the disclosure of PII from education records (with exceptions).
- Restricts access to records that contain PII.
- Requires that reasonable methods be used to protect education records.
- Permits disclosure of Directory Information if student/parent has not opted out.

FERPA General Consent Exceptions

- To school officials with legitimate educational interests (defined in annual notification).
- To schools in which a student seeks or intends to enroll, subject to certain conditions.
- To state and local officials pursuant to state statute in connection with service the student under the juvenile justice system subject to certain conditions.
- To accrediting organizations to carry out their accrediting functions.
- To parents of a dependent student.
- To authorized representatives of specific federal or state or local agencies or authorities, or to comply with a judicial order or subpoena.
- To organizations conducting studies for specific purposes on behalf of schools or districts.
- In a health or safety emergency, subject to certain conditions.
- Directory information, subject to certain conditions.

Protection of student Privacy in the School Code

- The School Code was revised with Public Act 367 of 2016.
- Effective March 22, 2017.
- Under these revisions, Michigan schools will be required to manage releases of education record disclosures in a more restrictive manner than FERPA.
 - States can enact laws that are more restrictive than FERPA as long as they do not undo FERPA protections.

The Revised School Code Adds Obligations

- FERPA requirements related to the use of directory information and education records remain intact.
- FERPA exemptions, and requirements related to exemptions are unchanged.
- Schools must still enter into data-sharing agreements as required by FERPA.
- Schools now must comply with additional requirements.

Rules for MDOE and CEPI

- Restriction on sale of information that is part of a student's education records.
- Requirements that notice be posted regarding collection of information.
- Requirements that all disclosures be pursuant to written policy.
- Requirement that under contract address privacy protection.
- Requirements regarding response to unauthorized disclosure.

Rules for MDOE and CEPI

- CEPI Pupil Privacy: <http://www.michigan.gov/cepi/0,4546,7-113-79559-407211--,00.html>
- How CEPI protects Education Data: <http://www.michigan.gov/cepi/0,4546,7-113-985-336886--,00.html>
- MDE Pupil Privacy: <http://www.michigan.gov/mde/0,4615,7-140--406171--,00.html>

Revised Rules for Schools

- No sale of information in education records (or, arguably, directory information).
- Disclosures of education records requested by parents/guardians within 30 days of request.
- Required disclosure log and reports of disclosures.
- Additional notifications and opt-out.
- Board of school district or ISD/board of directors of charter school must ensure that schools comply with Act's requirements.

No Sale of Information

- District may not sell or otherwise provide a for-profit entity with any PII that is part of a student's education records.
- Public school academics having a management agreement in educational management organizations may disclose information to those management organizations.
- Schools may provide information necessary for standardized testing.
- Schools may provide information as necessary to a person providing educational support services to a student under a contract with the school district, public school academy or educational management organization.

Disclosure to Students & Parents

- School districts must disclose to a student's parent/guardian, upon written request:
 - the PII that was disclosed;
 - The name and contact information of the person, agency or organization to which the information was disclosed; and
 - The legitimate reason that the person, agency, or organization had in obtaining the information.
- Schools have 30 days to respond to parental requests, and schools may not bill for necessary redactions.

Exceptions to Disclosure to Students & Parents

- Parental disclosure is not required where:
 - School discloses information to DOE or CEPA;
 - School discloses information to student's parent or guardian;
 - Public school academy discloses information to its authorizing body or educational management organization with which it has a management agreement;
 - School district/public school academy discloses to its ISD or another ISD providing services pursuant to a written agreement;
 - ISD discloses information to school district/public school academy in which the student is enrolled or for which the ISD is providing services pursuant to a written agreement;
 - Authorizing body discloses information to a public school academy in which the student is enrolled;

Exceptions to Disclosure to Students & Parents (cont'd)

- Parental disclosure is not required where:
 - Disclosing to a person, agency, or organization with written consent from the student's parent/legal guardian, or to students over 18 years old.
 - Disclosing to a person, agency, or organization seeking or receiving records in accordance with an order, subpoena, or ex party order issued by a court of competent jurisdiction;
 - Disclosing the information as necessary for standardized testing that measures the student's academic progress and achievement;
 - Disclosures that are covered by the opt-out form, unless the student has signed and submitted the opt-out form.

New and Additional Notifications and Opt-Out Requirements

- Each school district, ISD, public school academy or authorizing body must:
 - develop a list of uses for which they would commonly disclose directory information;
 - Develop an opt-out form that lists all of the above uses and that allows a parent/guardian to selectively opt their student out of having directory information disclosed for any one or more of the items on the list of uses.
 - Present the opt-out form to the parent or guardian within the first 30 days of a school year and, thereafter, upon request.

Student Online Personal Protection Act

- Operators of K-12 Computer Programs that use certain covered information are subject to requirements.
 - Covered information includes PII defined by statute that is provided to an operator of a computer program by a parent, guardian or student in the course of use by the site, service or application for school purposes, created or provided by an employee or agent of the school for school purposes, or gathered by the operator through operation of the site, service, or application for school purposes.

Student Online Personal Protection Act

- Operators are required to maintain reasonable security procedures and practices appropriate to the nature of the covered information and protect that covered information from unauthorized access, destruction, use, modification or disclosure.
- Operators are required to delete a student's covered information if the school requests deletion of covered information under the control of the school.

Student Online Personal Protection Act

- Operators are prohibited from:
 - Engaging in targeted advertising.
 - Using information to amass a profile about a student, except in furtherance of school purchases.
 - Selling or renting a student's information.
 - Disclosing covered information, except for purposes directly related to the school purpose, or regulatory compliance.

Questions?

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