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New FERPA regulations may require updates

by *Julia A. Bauer*
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On Jan. 8, amendments to the federal Family Educational Rights and Privacy Act (FERPA) regulations (34 Code of Federal Regulations (CFR) Part 99) became effective. Two of the more significant changes involve the definition of directory information and a new, more school-friendly health and safety exception. The following article explains these changes and their policy implications.

Directory information and personally identifiable information

A common question fielded by the OSBA legal services division is "What is considered directory information?" The

standard lawyer answer is, "It depends." That answer is not what a caller wants to hear, but in this circumstance, it's good news. The reason it depends is because it is up to the school district to define directory information through policy.

FERPA prohibits schools from disclosing education records and personally identifiable information other than directory information without consent. FERPA permits the district to release directory information only if it annually notifies each of its students' parents of how it defines directory information. Recently, the U.S. Department of Education (DOE) changed the definitions of directory information and personally identifiable information under federal law.

Directory information continues to be defined as "information contained in

an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed." This includes, but is not limited to, "the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, fulltime or parttime); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended" (34 CFR 99.3). Note that Ohio law (Revised Code Section 3319.321) has a more restrictive definition of directory information. Where state law limits federal law in this area, it is recommended that districts follow state law or seek the advice of board counsel.

Under the new regulations, DOE prohibits districts from defining as directory information a student's Social Security number or another student ID number, unless that ID number is used to access computer systems and is used in conjunction with another identifier, such as a password.

The definition of personally identifiable information was changed slightly. It continues to mean: "the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's Social Security number or student number" (34 CFR 99.3).

DOE added the following items to the definition of personally identifiable information: "a biometric record; other indirect identifiers, such as the student's date of birth, place of birth and mother's maiden name; other information that, alone or in



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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; and 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 (targeted requests).” This means that none of this information may be disclosed without obtaining consent from an eligible student or a parent.

The board of education has responsibility for defining “directory information” for the school district. The definition in its annual notice should mirror the district’s student records policy. The district may further limit the definition of directory information in this notice and its policy. For example, some districts limit directory information to the student’s name and age. By doing this, they would need to seek affirmative written consent by eligible students and their parents prior to releasing any information beyond the student’s name and age. If the district fails to notify parents of its directory information policy, the district has no directory information and would need to obtain consent before releasing any

information, unless an exception applied.

When choosing how to define directory information, the district should consider state and federal laws on the topic, as well as looking at the practical necessities of the district. Does the school produce a student directory? What information is or should be included in that directory? The district will want to align its definition with the information it regularly provides in order to save the district the burden of repeatedly obtaining consent.

Health and safety exception

In reaction to the violence at Virginia Tech and a report by DOE and the U.S. Department of Health and Human Services, significant changes were recommended to the regulations regarding the health and safety exception. The report found that fear of violating FERPA, the Health Insurance Portability and Access Act (HIPPA) and other student privacy considerations prevented crucial information from being shared at Virginia Tech.

The new regulations allow districts to “disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the

information is necessary to protect the health or safety of the student or other individuals.”

A new, more relaxed standard allows for school officials to make a judgment call based on the facts and circumstances involved. If, considering the “totality of the circumstances,” the school determines there is an “articulable and significant threat to the health and safety of a student or other individuals,” the school may disclose information to anyone who needs to know the information to protect the individuals involved. As long as there was a rational basis at the time to believe there was an articulable and significant threat, DOE will not second-guess the school. The school is required to record the reason for the disclosure and the parties to whom it was released (34 CFR 99.32).

Some districts may have included in their policies the prior circumstances for information release in a health and safety emergency. It is important to update those policies and any safety plans that may be impacted by this change. It also may be helpful for the school district to state in its policy which officials will have access to and the responsibility for disclosing personally identifiable information in the event of an emergency.

Using Policy Development Quarterly

by Greta Gardner
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Policy Development Quarterly (PDQ) is designed to be a service to Ohio school districts. *PDQ* provides information on policy issues that arise due to changes in legislation on the state and federal levels, as well as standards and rules developed by the State Board of Education. In addition, the state auditor may require districts to adopt specific financial policies.

PDQ contains articles on various issues and provides policies and/or policy language that may help districts develop required or suggested policies. Although

the policy coding system is the OSBA system, the language can be helpful to districts that use other coding systems.

On the back page you will find the policy update section. This section contains various policy and regulation areas that should be reviewed by the district’s board of education and administration. The back page provides a username and password to a Web site containing sample policies that districts can review and edit to fit their needs. Board members, the superintendent and the treasurer receive the information and should review it together.

The policy areas are divided into the following sections:

- New policies, regulations or exhibits to add to the policy manual or handbook or post in a central location.
- Revised policies and regulations. Districts should add new language shown in bold type and delete language in italic type.
- Other policies to serve as reminders. Districts may already have these in their policy manuals.

If the policies listed are required, the code is marked with an asterisk (*).

Reviewing policies

Prior to reviewing the new or revised policies, provide all members with a