

## STUDENT EDUCATION RECORDS AND PRIVACY

The West Fargo School District believes that while collection and use of student information is necessary to provide educational and student support services, the District must implement safeguards to ensure information is appropriately protected and used to serve the best interests of students. The purpose of this policy is to establish such safeguards.

### Definitions

- *Directory information* is defined as personally identifiable information contained in a student education record that is generally considered **not** harmful or an invasion of privacy if disclosed and includes:
  - a. Address
  - b. Grade level
  - c. Name (first and last)
  - d. Photograph
  - e. email address
  - f. Student identification number if it cannot be used alone to access an educational record and is not the student's social security number
  - g. Telephone listing
  - h. parent or guardian contact information
- *Education record* is defined as any record that directly relates to a student and is maintained by the District or by a party acting for the District. This definition excludes law enforcement records and records in the sole possession of the maker used only as a memory aid.<sup>1</sup>
- *Eligible student* means a student who has reached the age of 18.<sup>2</sup>
- *FERPA* stands for the Family Educational Rights and Privacy Act.
- *Legitimate educational interest* is defined as access that is needed in order for a school official to fulfill his/her professional responsibility.<sup>3</sup>
- Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.
- *Permanent record* is defined as a record containing a student's name, address, phone number, record of grades, years enrolled, courses attended, and grades completed.
- *Personally Identifiable Information (PII)* includes information maintained in the student's education record that could be used alone or in combination to trace a student's identity directly or indirectly and would allow a

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<sup>1</sup> 34 CFR 99.3

<sup>2</sup> 34 CFR 99.3

<sup>3</sup> [https://nces.ed.gov/pubs2004/privacy/section\\_4b.asp](https://nces.ed.gov/pubs2004/privacy/section_4b.asp)

reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

- *Record* means any information recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.<sup>4</sup>
- *School official* is defined as an individual who has a legitimate educational interest in accessing student educational records and is affiliated with the District in one of the following capacities:
  - a. An individual employed by the District in an administrative, instructional, or support staff position
  - b. School board members
  - c. Contractors, consultants, volunteers, service providers, or other party with whom the school or District has outsourced institutional services or functions for which the school or District would otherwise use employees; records provided to these third parties must remain directly under the district's control for purposes of maintenance and use and the third party must agree to comply with 34 C.F.R. 99.33(a). Examples include, but are not limited to, school resource officers, interns, student teachers, the district's attorney, PowerSchool, SLDS, learning management software, hot lunch tracking software, Viewpoint, and district alert systems.<sup>5</sup>

### **Designation and Responsibilities of Privacy Officers**

The Superintendent or designee shall serve as Chief Privacy Officer. In this role, the Superintendent is responsible for student information sharing requests from third-party individuals/entities other than parties to which the District reports student information under law. The Superintendent shall also maintain a master list of all individuals and entities having access to student information, including school district personnel listed by title. To ensure this list remains current and is manageable to maintain, it shall not contain names of individuals who have access to data.

The Superintendent may designate privacy officers at the district and building level. These privacy officers are responsible for:

1. Maintaining a list of school personnel by title who have access to student information; this list shall be provided to the Superintendent each time it is updated;
2. Submitting to the Superintendent new requests to share student information with third-party individuals and entities other than parties to which the District reports student information under law;
3. Ensuring that access to student information is granted only to the extent there is a legitimate educational interest and in accordance with this policy and any applicable agreements;

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<sup>4</sup> 34 CFR 99.3

<sup>5</sup> 34 CFR 99.31(a)(1) and 06/28/06 FERPA Opinion

(<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/clarkcty062806.html>)

4. Enforcing this and other applicable district confidentiality and data protection policies;
5. Providing a list of students who have opted-out of directory information to classroom teachers and other district staff who have a need to know.

### **Content of Educational Records**

The education record shall include:

1. Basic identifying information about the student and his/her family;
2. Proof of identity/certified birth certificate;
3. Attendance data;
4. Credits earned, grades, records of achievement in the basic skills and other progress reports;

If appropriate, such information as:

5. Health information, including immunization records;
6. Test results of achievement, aptitude, intelligence, and interest;
7. Records pertaining to the identification, evaluation, placement, and progress of students in special education;
8. Other pertinent information that will enable school personnel to counsel with students and plan appropriate learning activities.

### **Information Release Safeguards**

#### **1. Access by Parents and Eligible Students**

To ensure compliance with parental and eligible student access requirements under FERPA:

- a. The District shall comply with a request by a parent or eligible student to access education records within a reasonable period of time, not to exceed 45 days after receipt of a request.
- b. The district shall develop procedures for a parent/guardian/student to review and amend educational records. These procedures shall include measures to verify the identity of a requesting parent/eligible student. The regulations shall be delineated in district approved guidelines and disseminated annually in accordance with law.<sup>6</sup>

#### **2. Classroom Use of Instructional Tools Requiring Release of Student Information**

Teachers are encouraged to use instructional technological tools that allow for use of an alias or that do not require submission of directory information or PII. Whenever a teacher wishes to use an instructional tool that requires release of directory information, or PII the teacher shall submit a request to the building-level privacy officer. The privacy officer shall check the district's master list of individuals and entities approved to receive student information. If the entity is not on this list or the teacher's request is beyond the scope of information sharing permission previously

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<sup>6</sup> 34 CFR 99.7 and 99.10

granted, the privacy officer shall either deny the teacher's request or submit an information-sharing request to the Superintendent for approval. If the teacher is authorized to use the instructional tool, the building-level privacy officer shall ensure the teacher complies with any parental consent requirements and directory information opt-out requests before using the tool.

### 3. **Data Breaches**

District employees are responsible for informing a privacy officer of any known or suspected breach of PII. When a privacy officer becomes aware of a breach of student PII, s/he shall contact the Chief Privacy Officer. The Chief Privacy Officer shall determine if enactment of data breach response procedures contained in policy IDC and NDCC Ch. 51-30 is appropriate.

### 4. **Information Storage and Destruction**

Student education records shall be reviewed annually and any records unnecessary for progression to the next grade level, not needed for college entrance purposes, not needed for extracurricular participation, not needed for disciplinary purposes, and records that are not part of the permanent record will be shredded or destroyed. Exceptions apply for any content that may reasonably be related to litigation or anticipated litigation (retain for six years after a student turns eighteen), bullying reports (retain in accordance with policy ACEA), concussion documentation (retain in accordance with policy FCAF), executive session tapes (retain for at least six months), PowerSchool records, and special education records (retain in accordance with the Individuals with Disabilities Education Act).

### 5. **Directory Information**

The District may disclose directory information without parental/eligible student consent if it has given parents/eligible students a reasonable amount of time to opt-out of directory information release. Opt-out notices should be provided at the beginning of the school year and when a student otherwise enrolls in the District. These notices shall contain a reasonable deadline of at least 10 days for parents/eligible students to opt out.<sup>7</sup>

The superintendent approves release of directory information as follows:

- a. Publication on the district's website and social media accounts
- b. To superintendent -approved vendors for purposes of sale of school-related items such as, but not limited to, yearbooks, school pictures, graduation items, district apparel, and book orders
- c. To military and college recruiters in accordance with applicable laws (NDCC 15.1-07-25.1 and 20 U.S.C. 7908)
- d. To official district newspaper for purposes of recognizing student accomplishments and coverage of extracurricular events
- e. To school-affiliated groups for purposes of communicating and fundraising

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<sup>7</sup> 34 CFR 99.37

- f. To school-sponsored student publications including, but not limited to, newspapers and yearbooks
- g. When the superintendent receives and approves a directory information release request; directory information shall only be released and used for purposes specified in the release request and the Superintendent shall add approved requestors to the district's master list of individuals and entities having access to student information. The superintendent shall develop criteria in regulations for approving and denying these requests.<sup>8</sup>

Any district employee who wishes to disseminate student directory information to a third party shall contact his/her privacy officer. The privacy officer shall determine if the superintendent has previously approved such release and, if not, deny the request or submit it to the Superintendent for board approval. Upon superintendent approval, he/she shall instruct the privacy officer to ensure compliance with any opt-out requests made by parents.

## 6. **Personally Identifiable Information (PII)**

Any third party requesting or receiving access to student PII must receive superintendent approval unless the third party is required to receive PII under state or federal law.<sup>9</sup> Any school employee who wishes to share PII with a third party shall contact his/her privacy officer. The privacy officer shall determine if the superintendent has previously approved such release and, if not, deny the request or submit it to the Superintendent for approval. Upon superintendent approval of any PII release request, the applicable privacy officer shall inform the requestor of any parental consent requirements (see #7) and ensure the requestor complies with such requirements.

Parental/eligible student consent is not required to release PII under the following circumstances:

- a. The District receives information under 42 U.S.C. 14071 and applicable federal guidelines about a student who is a registered sex offender under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071), and the District has a need to disclose the student's status as a sex offender for safety purposes<sup>10</sup>
- b. In connection with a health or safety emergency under the conditions described in 34 C.F.R. 99.36<sup>11</sup>
- c. If records have been de-identified by the District; third party individuals and entities that receive de-identified information shall be included on the district's master list of individuals and entities having access to student information<sup>12</sup>

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<sup>8</sup> 34 CFR 99.37(d)

<sup>9</sup> SB 2326

<sup>10</sup> 34 CFR 99.31(a)(16)

<sup>11</sup> 34 CFR 99.36

<sup>12</sup> 34 CFR 99.31(b)(1) and SB 2326

- d. To a school official who has a legitimate educational interest in the education records if the following conditions are satisfied:
  - i. Access shall be limited to only information the school official has a legitimate need to know
  - ii. School officials shall use the information only for the purposes for which the disclosure was made and shall not redisclose the information to any other party without proper consent or legal authority
  - iii. Titles of individuals and entities considered school officials shall be included on the district's master list of individuals and entities having access to student information<sup>13</sup>
- e. To a court without a court order or subpoena when the District initiates legal action against a parent/student or a parent/student initiates legal action against the District<sup>14</sup>
- f. To accrediting bodies for purposes of accreditation<sup>15</sup>
- g. To an organization conducting a study for the District to develop, validate, or administer a predictive test; administer student aid programs; or improve instruction so long as the organization has entered into a written agreement with the superintendent in accordance with law; if the organization is conducting a survey of students, the District shall ensure parents are notified in compliance with policy GCC and shall obtain parental consent, if applicable (see #7)<sup>16</sup>
- h. To another school in which the student seeks, intends to, or is already enrolled<sup>17</sup>
- i. To authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and state and local educational authorities for audit or evaluation of federal or state supported education programs or for the enforcement of or compliance with federal legal requirements that relate to those programs<sup>18</sup>
- j. To comply with a judicial order or lawfully issued subpoena; the District must make reasonable attempt to contact the parent/eligible student before disclosure unless the court order instructs otherwise<sup>19</sup>
- k. To the parents of an eligible student who is also a "dependent student" as defined in IRS Section 152<sup>20</sup>

The District will take measures necessary to ensure that individuals and entities to which PII is released shall only have access to information necessary to fulfill their responsibilities under law and to the District. Measures may include, but not be limited to, controlling access to

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<sup>13</sup> 34 CFR 99.31(a)(1)

<sup>14</sup> 34 CFR 99.31(a)(9)(iii)(A)

<sup>15</sup> 34 CFR 99.31(a)(7)

<sup>16</sup> 34 CFR 99.31(a)(6)

<sup>17</sup> 34 CFR 99.31(a)(2)

<sup>18</sup> 34 CFR 99.31(a)(3)

<sup>19</sup> 34 CFR 99.31(a)(9)

<sup>20</sup> 34 CFR 99.31(a)(8)

computer data through password restrictions, controlled access to paper records, and ensuring that any information access agreements required by law are properly executed by the Board.<sup>21</sup>

## 7. **When Parental Consent is Required**

The District must obtain parental/eligible student consent to release student information under the following circumstances:

- a. The superintendent has approved release of PII to an individual or entity not meeting the definition of school official under law and/or not meeting an exception to the parental consent requirement under FERPA
- b. The superintendent has approved release of directory information, other than or in addition to name, or PII to an online service provider for commercial purposes and the impacted students are under 13<sup>22</sup>
- c. When administering a survey funded in whole or in part by the U.S. Department of Education and concerning any of the following areas:
  - i. Political affiliations or beliefs of the student or the student's parent
  - ii. Mental or psychological problems of the student or the student's family
  - iii. Sex behavior or attitudes
  - iv. Illegal, anti-social, self-incriminating, or demeaning behavior
  - v. Critical appraisals of other individuals with whom respondents have close family relationships
  - vi. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers
  - vii. Religious practices, affiliations, or beliefs of the student or student's parent
  - viii. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)<sup>23</sup>

If the District is unable to obtain this consent, it shall not release the impacted student's information.

## **504 Plans and Individual Educational Programs (IEPs)**

Sharing of student information necessary for developing, amending, or implementing an IEP or 504 Plan and sharing student information needed to determine eligibility for special education or disability services are not subject to board approval requirements in NDCC Ch. 15.1-07-25.3 because the District provides these services in fulfillment of requirements under state and federal law.

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<sup>21</sup> 34 CFR 99.31(a)(3)(ii)

<sup>22</sup> Children's Online Privacy Protection Act, 16 CFR 312

<sup>23</sup> Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h; 34 CFR Part 98

**Policy Violations**

Failure by a district employee or volunteer to comply with this policy, other district confidentiality requirements, or any improper disclosure of student information by a school employee or volunteer shall result in disciplinary action up to and including dismissal in accordance with applicable law. Failure by a third party to comply with this policy, any information-sharing agreements between the District and third party, or any improper disclosure of student information by the third party may result in termination of the third-party's access to student information and termination of the district's agreement with the third party if permitted under the terms of such agreement.

**Training**

School officials employed or volunteering for the District shall receive information and/or training on confidentiality requirements pertaining to student education records and consequences for breaching confidentiality. The District shall also provide training to applicable school personnel on the procedures for requesting to release student information contained in this policy.

*Adopted: 03/22/76*

*Reviewed:*

*Revised: 11/24/80*

*11/12/85*

*05/24/99*

*01/09/12*

*02/16/16*

## STUDENT EDUCATION RECORDS ACCESS & AMENDMENT PROCEDURE

### Reviewing an Educational Record

The District will comply with a parent/guardian/eligible student's right to inspect educational records. This right will be granted using the following procedure:

1. A request to view an educational record shall be granted by the deadline in law (45 days).
2. A request may be made orally or in writing to the building principal.
3. The principal shall notify the parent/guardian/eligible student of the time and place when a record may be inspected.
4. The building principal shall require the requestor to submit/show a form of state or federally-issued identification to verify the identity of the requestor if the requestor is unknown to the principal.
5. The principal or designee shall be present when the parent/guardian/eligible student reviews the record.

If circumstances prevent a parent/guardian/eligible student from reviewing the educational record at the school office, the District shall prepare and mail a copy of the record or make alternative arrangements for the parent/guardian/eligible student to review the record. Any expense incurred from copying and/or mailing a record may be charged to the parent/guardian/eligible student at state rates, except as prohibited by law.

### Amending an Educational Record

A parent/guardian/eligible student has the right to request an amendment to any portion of the educational record s/he believes to be inaccurate, misleading, or in violation of the student's right to privacy. A parent/guardian /eligible student shall use the following procedure to dispute or request an amendment to an educational record. This procedure shall not be used to dispute a grade, disciplinary decision, or opinions/reflections of a school official contained in an educational record.

1. Any request to amend an educational record shall be made in writing and submitted to the building principal.
2. The principal shall review the request within a reasonable time and approve or deny it. The principal's decision shall be submitted to the parent/guardian/eligible student. If the principal denies the amendment request, s/he shall inform the parent/guardian/eligible student of his/her right to request an appeals hearing.
3. Requests for an appeals hearing shall be submitted to the Superintendent. The hearing shall be held within a reasonable time after the appeal request has been made.
4. The Superintendent or designee shall serve as the hearing officer. A representative of the parent/guardian/eligible student's choosing may accompany the parent/guardian/eligible student at the parent/guardian/eligible student's expense. The parent/guardian/eligible student shall have a full and fair opportunity to present evidence related to the amendment request.

5. The decision of the Superintendent or designee, based solely on the evidence presented at the hearing, is final and binding and shall be submitted in writing to the parent/guardian/eligible student at a reasonable time after the hearing.
6. If the Superintendent or designee denies the amendment request, s/he will notify the parent/guardian/eligible student within a reasonable time of his/her right to submit a written response commenting on the contested material and/or explaining the disagreement with the hearing officer's decision. This written response shall be retained and, when applicable, disseminated in accordance with law.

*Adopted: 11/08/16*

*Reviewed:*

*Revised:*

**Request for Hearing on Student Records**

I have come to an impasse with \_\_\_\_\_, Principal of \_\_\_\_\_ School, concerning the records of \_\_\_\_\_ . I hereby request a hearing on this matter, and it is my understanding that this will be scheduled within fifteen (15) days of this application.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

*The parent (or student) should retain a copy and send the original to:*

*Superintendent of West Fargo Public Schools  
207 Main Avenue West, West Fargo ND 58078.*

**NOTICE OF DIRECTORY INFORMATION**

The Family Educational Rights and Privacy Act (FERPA), a federal law, requires that West Fargo Public Schools, with certain exceptions, obtain your written consent prior to the release of personally identifiable information from your child's education records. However, West Fargo Public Schools may disclose appropriately designated "directory information" without written consent, unless you have advised your child's school to the contrary in accordance with district procedures.

Directory information is information that is generally not considered harmful or an invasion of privacy if released. West Fargo Public Schools has designated the following information as directory information: student's name, address, telephone number, email address, picture, parent or guardian contact information, district-issued student ID number and grade level.

The primary purpose of directory information is to allow the district to include this type of information from your child's education records in certain school-related materials, news releases, on school webpages and social media pages, etc. Directory information can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, colleges/universities and companies that manufacture class rings or publish yearbooks. In addition, two federal laws require school districts receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to provide military recruiters, upon request, with three directory information categories--names, addresses and telephone listings--unless parents have advised the school district that they do not want their student's information disclosed without their prior written consent.

If you do not want West Fargo Public Schools to disclose directory information from your child's education records, you must indicate your preferences on the Annual Notification and Opt-Out Form within 30 days of enrolling at WFPS.

**End of West Fargo School District Exhibit FGA-E**

**Request to Withhold Directory Information  
Annual Notification & Opt-Out Form**

FGA-E  
**PK-5**

Student's First Name: \_\_\_\_\_

Student's Last Name: \_\_\_\_\_

Student's Grade Level:    PK    K    1    2    3    4    5

**A response is required for each of the five statements below.**

My child CAN be included in the yearbook (this includes individual, class, and other group pictures).

YES                       NO

My child CAN be included in the use of *SeeSaw* for communication, student learning portfolios and reflection. Each student has a safe, secure journal on the *SeeSaw* app that they add work to, in order to share what they are learning at school. Parents are notified each time new work is added.

YES                       NO

My child CAN be included in school-related materials that are formatted as documents, videos, or website content. This includes, but is not limited to, school and district newsletters, daily announcements, promotional pieces, PTA/O related events, birthday/friendship lists, activity and event programs, the school website, and all district-affiliated websites.

YES                       NO

My child CAN be included in posts made directly to classroom, school, and district social media accounts (*Facebook, Twitter, YouTube, Instagram, etc.*). This does not apply to the sharing of school-related materials to a social media account.

YES                       NO

My child CAN be included in school-hosted media events, including video, photography and verbal interviews with radio, television and print media (*Fox, Valley News Live, WDAY, Forum/Pioneer, etc.*).

YES                       NO

Parent's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***This form must be completed on an annual basis.***

**Request to Withhold Directory Information  
Annual Notification & Opt-Out Form**

FGA-E

**6-8**

Student's First Name: \_\_\_\_\_

Student's Last Name: \_\_\_\_\_

Student's Grade Level:     6                      7                      8

**A response is required for each of the four statements below.**

My child CAN be included in the yearbook, in individual, class, and other group pictures and video.

YES                       NO

My child CAN be included in school-related materials, including but not limited to commencement programs, school and district newsletters and other promotional pieces, honor rolls, activity and event programs, and all district websites.

YES                       NO

My child CAN be included on social media accounts (*Facebook, Twitter, YouTube, Instagram, etc.*) associated with their classroom, school and the school district.

YES                       NO

My child CAN be included in school-hosted media events, including video, photography and verbal interviews with radio, television and print media (Fox, Valley News Live, WDAY, Forum/Pioneer, etc.).

YES                       NO

Parent's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*NOTE: This form must be completed on an annual basis.*

**Request to Withhold Directory Information  
Annual Notification & Opt-Out Form**

FGA-E  
**9-12**

Student's First Name: \_\_\_\_\_

Student's Last Name: \_\_\_\_\_

Student's Grade Level:    9                      10                      11                      12

**A response is required for each of the four statements below.**

<p>My child CAN be included in the yearbook, in individual, class, and other group pictures and video.</p> <p>YES <input type="checkbox"/>                      NO <input type="checkbox"/></p>
<p>My child CAN be included in school-related materials, including but not limited to commencement programs, school and district newsletters and other promotional pieces, honor rolls, activity and event programs, and all district websites.</p> <p>YES <input type="checkbox"/>                      NO <input type="checkbox"/></p>
<p>My child CAN be included on social media accounts (<i>Facebook, Twitter, YouTube, Instagram, etc.</i>) associated with their classroom, school and the school district.</p> <p>YES <input type="checkbox"/>                      NO <input type="checkbox"/></p>
<p>My child CAN be included in school-hosted media events, including video, photography and verbal interviews with radio, television and print media (Fox, Valley News Live, WDAY, Forum/Pioneer, etc.).</p> <p>YES <input type="checkbox"/>                      NO <input type="checkbox"/></p>

*OPTIONAL (check all that apply)*

My child's directory information may NOT be released to:

- Colleges/Universities
- Military Recruiters

Parent's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

*NOTE: This form must be completed on an annual basis.*