

# Board of Education Las Cruces Public Schools

## POLICY JRA

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**Related Entries:** JFA, JFAB, JFAC, JRA-R  
**Responsible Office:** Deputy Superintendent for Instruction

### STUDENT RECORDS

#### I. PURPOSE

To establish a policy for the protection of privacy of parents and students of the Las Cruces Public Schools in accordance with the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA), and to grant access to education records and personally identifiable information within education records as permitted by FERPA and IDEA.

#### II. BACKGROUND

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99) protects the privacy of a student's "education records," including information contained within education records. The law gives parents access their child's education records, or in the case of "eligible students," the right to access their own records. In addition, the law prohibits school districts from releasing or otherwise disclosing the education records without parental or eligible student consent, except under certain circumstances. The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1412(a)(8); 1417(c); 34 CFR part 300) also provides protections and rights with regard to special education records.

#### III. DEFINITIONS

- A. For student records governed by this policy, the Las Cruces Public Schools designates as its *custodian of records* for currently enrolled students, *the principal*, and for students who have withdrawn or graduated, *the Associate Superintendent of Instruction*. For special education records governed by this policy, the Las Cruces Public Schools designates as its *custodian of records*, *the Assistant Superintendent of Special Student Services*.
- B. *Directory information* is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. "Directory information" may include information such as name, address, telephone listing, degrees, honors and awards received, grade level, participation in officially recognized activities and sports, and dates of attendance. The Board of Education through this policy has determined what constitutes directory information.
- C. *Education records* are those records that are directly related to a student and are maintained by the District or other educational agency or institution or by a party acting for the agency or institution.

- D. A *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.
- E. An *eligible student* is a student who is either 18 years old or attends a postsecondary school. Once a student reaches 18 years of age or attends a postsecondary school, the parents rights transfer to him/her.
- F. FERPA regulations define a *law enforcement unit* as any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to: (i) enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or (ii) maintain the physical security and safety of the agency or institution. A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student. The Board of Education designates its Public Safety Department as a law enforcement unit and those campus security officers as members of that unit. Accordingly, under FERPA, the Las Cruces Public Schools Public Safety Department may disclose to outside parties, law enforcement unit records including campus security incident reports that were created by the law enforcement unit for a law enforcement purpose without parent or eligible student consent.
- G. FERPA governs the *disclosure* of *personally identifiable information* within education records. *Disclosure* means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means. *Personally identifiable information* includes direct identifiers, such as a student's name or identification number, and the name of the student's parent or other family members; indirect identifiers, such as a student's date of birth, place of birth, and mother's maiden name. Personally identifiable information also includes other 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; and information requested by a person who the District believes knows the identity of the student to whom the education record relates.
- H. *School official* means:
1. An employee, Board member, or agent of the District, including an attorney, a consultant, a contractor, a volunteer, a school resource officer, and any outside service provider used by the District to perform institutional services.
  2. An employee of a facility with which the District contracts for placement of students with disabilities.

3. A contractor retained by a facility with which the District contracts for placement of students with disabilities.

#### **IV. ANNUAL NOTIFICATION**

- A. The Las Cruces Public Schools shall annually notify parents students currently in attendance, or eligible students currently in attendance, of their rights under FERPA and said declaration shall be published annually, consistent with Board Policy, on the Las Cruces Public School's website, in all student handbooks, and on each campus web site. The District shall effectively notify parents who are disabled and parents of students who have a primary or home language other than English.
- B. The notice must inform parents or eligible students that they have the right to:
  1. Inspect and review the student's education records;
  2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
  3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and 34 C.F.R. 99.31 authorize disclosure without consent; and
  4. File with the U.S. Department of Education a complaint under 34 C.F.R. 99.63 and 99.64 concerning alleged failures by the district to comply with the requirements of the Act and 34 C.F.R. part 99.
- C. The notice must include all of the following:
  1. The procedure for exercising the right to inspect and review education records.
  2. The procedure for requesting amendment of records.
  3. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest for disclosing education records to such officials without parent or eligible student consent consistent with FERPA and this policy.
  4. A statement that notifies the parent or student that Las Cruces Public Schools forwards education records on request of the other school to such officials.
- D. The FEPRAs annual notice of rights shall also include the directory information notice containing the types of information the Board of Education has designated as directory information, the procedures that parents and eligible students may take to request that the school not disclose directory information about them, and the period of time within which a parent or eligible student has to notify the school that he or she does not want any or all of those types of information designated as directory information.

**V. ACCESS TO STUDENT RECORDS**

- A. A parent or eligible student shall be given the opportunity to inspect and review the student's education records. Such requests to access education records must be made in writing to the records custodian. The records custodian or designee shall use reasonable procedures to verify the requestor's identity before disclosing student records containing personally identifiable information.
- B. The District shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request. Records may be viewed in person during regular school hours without charge. The District shall respond to reasonable requests for explanations and interpretations of the records. The confidential nature of the student's records shall be maintained at all times, and viewing shall occur only in the Superintendent's, principal's, or counselor's office, or other restricted area designated by the records custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school.
- C. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, District shall provide the parent or eligible student with a copy of the records requested at no cost or make other arrangements for the parent or eligible student to inspect and review the requested records. In all other circumstances, copies of records are available at a per copy cost, payable in advance at the rate the District charges for copying public records. Copies of records must be requested in writing. Parents may be denied copies of records if they fail to follow proper procedures or pay the copying charge. If the student qualifies for free or reduced-price lunches and the parents are unable to pay the copying charges, the fee shall be waived with the approval of the custodian of records.
- D. Except in those instances in which FERPA authorizes disclosure without consent, the District shall not disclose personally identifiable information from the student's education records without a signed and dated written consent, that meets FERPA's consent requirements, from the parent or eligible student.
- E. The District may disclose directory information to third parties without parent or eligible student consent if it has given annual notice as required by this policy of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as directory information. The Board of Education designates and classifies directory information into two separate categories as follows:
  - 1. Items for use only for school-sponsored purposes – All District publications and announcements, as well as communications with vendors whom the District has a contractual relationship for providing goods and services to students. Directory information shall include student name, address, telephone listing, electronic email address, photograph, date of birth, major field of study, degrees, honors, awards, dates of attendance, grade level, enrollment status,

- participation in officially recognized activities and sports, weight and height of members of athletic teams, and student identification number or identifiers that cannot be used alone to gain access to electronic education records.
2. Items for all other purposes – Directory information shall include student name, address, photograph, degrees, honors, awards, grade level, enrollment status, participation in officially recognized activities and sports, and weight and height of members of athletic teams.
- F. A parent may continue to have access to his or her child’s records under specific circumstances after the student has attained 18 years of age or is attending an institution of higher education, without eligible student consent if the disclosure meets the conditions in 34 C.F.R. 99.31(a), including if the eligible student is a dependent for tax purposes or in the case of a health or safety emergency.
- G. A school official shall be allowed access to student records without parent or eligible student consent if he or she has a legitimate educational interest in the records. A school official has a legitimate educational interest in a student’s records when he or she is:
1. Working with the student;
  2. Considering disciplinary or academic actions, the student’s case, or an individualized education program for a student with disabilities;
  3. Compiling statistical data;
  4. Reviewing an education record to fulfill the official’s professional responsibility; or
  5. Investigating or evaluating programs.
- H. All contractors, or other parties to whom the District has outsourced institutional services or functions, provided with student records shall remain under the direct control of the District with respect to the use and maintenance of personally identifiable information from education records and shall follow the same rules as employees concerning privacy of the records.
- I. The District may disclose personally identifiable information from an education record to appropriate parties without parent or 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. In making a determination, the District will take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.
- J. Transcripts and Transfer of Records
1. The District may request transcripts from previously attended schools for students transferring into District schools; however, the ultimate responsibility for obtaining transcripts from sending schools rests with the parent or student, if 18 or older.

2. For purposes of a student's enrollment or transfer, the District shall promptly forward educational records upon request from other school districts without parent or eligible student consent. The annual notice of rights under FERPA shall include a notice that the District forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.
- K. The District may disclose personally identifiable information from an education record of a student without parent or eligible student consent if the disclosure is to comply with a judicial order or lawfully issued subpoena. The District will make such disclosure only after it has made a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action, unless FERPA regulations provide otherwise.
- L. The District shall comply with the Federal Child Abuse Prevention and Treatment Act (CAPTA) and New Mexico's Abuse and Neglect Act, NMSA 1978, Section 32A-4-3(E). Under CAPTA and New Mexico's Abuse and Neglect Act, notwithstanding FERPA, a law enforcement agency or the New Mexico Children Youth and Families Department shall be given access to any of the records pertaining to a child abuse or neglect case maintained by a registered nurse, a visiting nurse, a schoolteacher, a school official, or a social worker acting in an official capacity, except as otherwise provided in the Abuse and Neglect Act.
- M. Records Responsibility for Students in Special Education
1. The Assistant Superintendent of Special Student Services shall be responsible for ensuring the confidentiality of any personally identifiable information in records of students in special education.
  2. The District shall comply with FERPA and the Individuals with Disabilities Education Act (IDEA) with respect to any personally identifiable data, information, and records collected or maintained under the IDEA.
  3. The District shall comply with a request by parents to inspect and review their child's special education records without unnecessary delay and before any meeting regarding an IEP, or any special education due process hearing or resolution session, and in no case more than 45 days after the request has been made.

## **VI. AMENDING RECORDS**

- A. Within fifteen (15) business days of the record custodian's receipt of a request to amend records, the District shall notify the parents in writing of its decision on the request and, if the request is denied, of their right to a hearing. IF a hearing is requested, it shall be held within ten (10) District business days after the request is received.
- B. Parents shall be notified in advance of the date, time and place of the hearing., An administrator who is responsible for the contested records and who hot have a direct interest in the outcome of the hearing shall conduct the hearing. The parents shall be

given a full and fair opportunity to present evidence and, at their own expense, may be represented at the hearing.

- C. The parent shall be notified of the decision in writing within ten (10) District business days of the hearing. The decision shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and reasons for the decision. If the decision is to deny the request, the parents shall be informed that they have thirty (30) District business days within which to exercise their right to place in the record a statement commenting on the contested information and/or stating any reason for disagreeing with the District's decision.

**III. REGULATION AND PERIODIC REVIEW**

The Superintendent shall promulgate a regulation for the implementation of this policy. This policy shall be reviewed on an ongoing basis in accordance with the Board of Education policy review process.



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*Board of Education, President*

4/16/19

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*Date Approved*

**History:** Formerly Policy 330 Revised 11.01.05, Revised 11.012.18

**Legal:** 10 U.S.C. 503, 20 U.S.C. § 1232g; 34 CFR Part 99; 20 U.S.C. §§ 1412(a)(8), 1417(c); 34 CFR §§300.610 through 300.627; NMSA 1978, § 32A-4-3(E)