

Parent Notification and Guide to Student Information Privacy **in Hawaii's Public Schools**

Each year the Hawaii Department of Education (HIDOE) is required to notify parents, legal guardians and eligible students (those 18 years of age and older) of certain rights related to the privacy of students' education records in Hawaii Public Schools. In our efforts to provide this information to families, HIDOE reviewed state and federal regulations related to student information privacy and developed this *Guide*.

You may find information about student privacy on the Hawaii Public Schools' Student Information Privacy webpage by using this internet link: <http://bit.ly/FERPAHI>.

In some cases, more detailed information may be available from the U.S. Department of Education's webpage, using this internet link: <https://studentprivacy.ed.gov/> or HIDOE's Student Privacy webpage using this internet link: <http://bit.ly/2SVqymF>. Internet links to additional information are provided throughout this *Guide*. If you do not have access to the internet, your school will provide the copies of the information available at the internet links upon request.

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

FERPA is a federal law (20 U.S.C.A.1232g) and regulation (34 CFR §99) that protects students' personally identifiable information (PII) and any information directly related to a student that is maintained by HIDOE in student education records. Hawaii Administrative Rules Chapter 8-34 (HAR §8-34) provides further protection of student information maintained by HIDOE. Schools, Complex Area offices, District offices, and HIDOE State offices maintain student information in paper form (such as cumulative, Special Education, and English Language Learner files, etc.) and electronic formats (such as Longitudinal Data System, Student Information System, electronic Comprehensive Student Support System, etc.). Educational records containing student information may include enrollment forms, report cards, transcripts, disciplinary letters, and more. PII includes any information, alone or in combination, that 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.

FERPA and HAR §8-34 give parents, legal guardians, and eligible students certain rights with respect to students' education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the school administrator receives a request for access.

Parents, legal guardians, or eligible students who wish to inspect their or their child's education records should submit to the school administrator, a written request that identifies the records they wish to inspect. The school administrator will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the school's principal to amend their child's or their education record should write the school principal, clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the

decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses PII from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest is set forth in HIDOE's annual notification for FERPA rights. A school official typically includes a person employed by the school or school district as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer, contractor, or consultant who, while not employed by the school, performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the school discloses education records without consent to officials of another school or school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer.

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by HIDOE to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

In some cases, a stepparent may be considered a "parent" under FERPA if the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from that home. An eligible student may grant privileges to others to view her/his education record by submitting to their school a written consent thereby granting permission to that person. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to the child's educational records. A grandparent or other caretaker who is acting in the absence of the parent(s) may also be considered a "parent" under FERPA.

A parent or legal guardian may grant privileges to others to view their child's education records by submitting to the child's school a written consent thereby granting permission to that person. Examples of this include a father who grants permission to his girlfriend or the student's grandparent to have access to the child's education records. If an individual the student is living with submits to the school a "Caregiver Consent Affidavit" pursuant to Hawaii Revised Statutes §302A-482, that individual has the right to view the child's education records as the child's caregiver.

Who is responsible for protecting student information?

All employees and volunteers of HIDOE may come across student information, whether intentionally or by accident; therefore, everyone in our schools and HIDOE offices is responsible for protecting student information.

When is consent not required to release student information?

Generally, HIDOE must have written consent from the parent, legal guardian, or eligible student to disclose any PII or information from a student's education record. However, FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. § 99.32 of the FERPA regulations requires the school to record the disclosure of education records, except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student –

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in § 99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(3) are met. (§ 99.31(a)(1)) To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of § 99.34. (§ 99.31(a)(2))
- To authorized representatives of the U.S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student's State. Disclosures under this provision may be made, subject to the requirements of § 99.35, in connection with an 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. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf, if applicable requirements are met. (§§ 99.31(a)(3) and 99.35)
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§ 99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to § 99.38. (§ 99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction, if applicable requirements are met. (§ 99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§ 99.31(a)(7))

- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§ 99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena if applicable requirements are met. (§ 99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to § 99.36. (§ 99.31(a)(10))
- Information the school has designated as “directory information” if applicable requirements under § 99.37 are met. (§ 99.31(a)(11))
- To an agency caseworker or other representative of a State or local child welfare agency or tribal organization who is authorized to access a student’s case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student in foster care placement. (20 U.S.C. § 1232g(b)(1)(L))
- To the Secretary of Agriculture or authorized representatives of the Food and Nutrition Service for purposes of conducting program monitoring, evaluations, and performance measurements of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, under certain conditions. (20 U.S.C. § 1232g(b)(1)(K))

Directory Information

HIDOE may disclose appropriately designated “directory information” without written consent, unless you have advised HIDOE to the contrary in accordance with HIDOE’s procedures.

Directory Information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent’s, legal guardian’s, or eligible student’s prior written consent. Outside organizations include, but are not limited to, companies that manufacture or market class rings or publish yearbooks, online educational vendors providing assessments or curriculum, and institutions of higher learning for the limited purpose of encouraging college attendance. In addition, two federal laws require HIDOE, which receives assistance under the Elementary and Secondary Education Act of 1965, as amended (ESEA), to provide military recruiters, upon request, with the following information - names, addresses and telephone listings – unless a parent, legal guardian, or eligible student have advised HIDOE that they do not want this information disclosed without their prior written consent. Directory Information will be listed on a student’s school identification badge if the school requires students to wear identification badges.

HIDOE has designated the following information as Directory Information:

- Student’s name;
- Address;
- Telephone number;
- Date and place of birth;
- Dates of attendance (i.e., enrollment/withdrawal dates);
- Grade (class) level;
- Participation in officially recognized activities and sports;
- Weight and height of members of athletic teams;
- Awards received, including honors and Certificates of completion (e.g. diploma);
- The most recent previous educational agency, institution, or school attended; and
- Graduation date.

If a parent, legal guardian, or eligible student does not want HIDOE to disclose the information designated above as Directory Information from the student's education record without prior consent, then parents, legal guardians, or eligible students must submit a legibly written, dated, and signed request to the school indicating so.

Parents, legal guardians, and eligible students should be aware that choosing to opt out will prevent the release, without prior written consent, to colleges, prospective employers, companies providing class rings or photographs, and to other organizations or individuals. The student's information would be kept out of the yearbook, school newspaper, graduation commencement program, sports activity sheets, honor roll, etc. The parent, legal guardian, or eligible student would have to consent to each requested release for such information to be released.

Opt out requests will be accepted at any time during the school year and will be effective from the date of receipt at the school (i.e., prior disclosures will remain unless the material which contains the prior disclosure is reprinted). If a parent, legal guardian, or eligible student does not file an opt out request, student information may be released to the extent that laws, regulations, or policies authorize such disclosure, without consent.

The "Notice for Directory Information" may be found at <http://bit.ly/hidoedirectoryinfo>.

What is the Protection of Pupil Rights Amendment (PPRA)?

PPRA affords parents, legal guardians, and eligible students certain rights regarding the conduct of surveys, collection and use of information for marketing purposes, and certain physical exams. These include, but are not limited to, the right to:

- Consent before students are required to submit to a survey that concerns one or more of the following protected areas ("protected information survey") if the survey is funded in whole or in part by a program of the U.S. Department of Education -
 1. Political affiliations or beliefs of the student or student's parent;
 2. Mental or psychological problems of the student or student's family;
 3. Sexual behavior or attitudes;
 4. Illegal, anti-social, self-incriminating, or demeaning behavior;
 5. Critical appraisals of others with whom respondents have close family relationships;
 6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
 7. Religious practices, affiliations, or beliefs of the student or student's parents; or
 8. Income, other than as required by law to determine program eligibility.
- Receive notice and an opportunity to opt a student out of –
 1. Any other protected information survey, regardless of funding;
 2. Any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent and not necessary to protect the immediate health and safety of a student, except for hearing, vision, or scoliosis screenings, or any physical exam or screening permitted or required under State law; and
 3. Activities involving collection, disclosure, or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others.
- Inspect, upon request and before administration or use -

1. Protected information surveys of students, created by a third party;
2. Instruments used to collect personal information from students for any of the above marketing, sales, or other distribution purposes; and
3. Instructional material used as part of the educational curriculum.

These rights transfer from the parent or legal guardian to the student when the student reaches 18 years of age or becomes an emancipated minor under state law.

HIDOE developed policies regarding these rights, as well as arrangements to protect student privacy in the administration of protected information surveys and the collection, disclosure, or use of personal information for marketing, sales, or other distribution purposes. HIDOE will directly notify parents of these policies at least annually, at the start of each school year, and after any substantive changes. HIDOE will also directly notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted below and will provide an opportunity for the parent to opt his or her child out of participation of the specific activity or survey. HIDOE will make this notification to parents at the beginning of the school year, if HIDOE has identified the specific or approximate dates of the activities or surveys at that time. For surveys and activities scheduled after the school year starts, parents will be provided reasonable notification of the planned activities and surveys listed below and be provided an opportunity to opt their child out of such activities and surveys. Parents will also be provided an opportunity to review any pertinent surveys. The following is a list of the specific activities and surveys covered under this direct notification requirement:

- Collection, disclosure, or use of personal information for marketing, sales or other distribution;
- Administration of any protected information survey not funded in whole or in part by the U.S. Department of Education; and
- Any non-emergency, invasive physical examination or screening as described above.

The “Notification for Rights Under the Protection of Pupil Rights Amendment (PPRA)” is found using this internet link: <http://bit.ly/hidoeppra>

Parents who believe their rights have been violated under PPRA may file a complaint with:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Military Recruiters’ Request for Information

HIDOE provides the local Inter-Service Recruitment Council, upon their request, with secondary students’ names, addresses and telephone listings (including unlisted numbers) as required by the Every Student Succeeds Act (ESSA). Although military recruitment focus their efforts on high school juniors and seniors, the law allows for the gathering of this information from the broad category of “secondary” students, defined as students in grades 7 through 12. If the parent or legal guardian of a secondary student or an eligible student does not want HIDOE to provide the requested information to military recruiters, the parent, legal guardian, or eligible student must “opt out.” Parents, legal guardians, or eligible students must make a written request restricting the release of student information to military recruiters. The school will accept a signed and dated letter from the parent, legal guardian, or eligible student. Alternatively, the school will accept a completed and signed HIDOE “opt-out” form. A pre-formatted “opt out” form is available at your school and using this internet link: <http://bit.ly/hidoemilitaryrecruiters>.

Institutions of Higher Learning: Request for Student Information

ESSA requires HIDOE to provide to institutions of higher learning, upon their request, the name, address, and telephone number of secondary students. If requested, HIDOE must provide the names, addresses, and telephone numbers for each 11th and 12th grade student served by HIDOE. In addition, HIDOE may share the names, addresses, and telephone numbers of 11th and 12th grade students to facilitate the awarding and/or recruitment of scholarship and/or financial aid opportunities. If the parent or legal guardian of a student or an eligible student does not want HIDOE to provide the requested information to institutions of higher learning, the parent, legal guardian, or eligible student must “opt out.” Parents, legal guardians or eligible students must make and submit to the school a written request restricting the release of student’s information to institutions of higher learning. The school will accept a signed and dated letter from the parent, legal guardian, or eligible student. Alternatively, the school will accept a completed and signed “opt-out” provided by HIDOE. A pre-formatted “opt out” form is available at your school upon request or found using this internet link: <http://bit.ly/2OwYy5E>

Complaints or Questions

Parents, legal guardians, or eligible students who have questions or feel their rights have been violated may contact:

HIDOE

Mail:

Data Governance and Analysis Branch
Department of Education
P.O. Box 23804
Honolulu, Hawaii 96804

Email: ferpa@notes.k12.hi.us

Phone: (808) 784-6050

U.S. Department of Education

Mail:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920

Phone: 1-800-USA-LEARN (1-800-872-5327)