

POLICY ALERT

June, 2015

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POLICY UPDATE: 2015

STUDENT PERSONALLY IDENTIFIABLE INFORMATION

In 2014, with the Louisiana Legislature passage of Acts 677 and 837, School Boards were required to better protect a student's *personally identifiable information* when transferring such information to third parties, including the Louisiana Department of Education (LDOE), which utilizes the information for educational purposes. School Boards met these requirements through revisions and amendments to contracts with vendors and other third parties governing access to and use of such information.

Act 837 enacted La. Rev. Stat. Ann. §17:3914. Subsection C, which was recently amended with the passage of HB 718 by the 2015 Legislature, required School Boards to do two things:

1. By August 1, 2015, assign a unique student identification number, using the system developed by the LDOE, to every student enrolled in a public elementary or secondary school, eliminating the personal use of social security numbers for identification purposes; and
2. Beginning August 1, 2015, greatly restrict the release or sharing of, and access to, student information that is or would be considered as *personally identifiable information*. The Act defines *personally identifiable information* about an individual as:

Information that can be used on its own, or with other information to identify, contact, or locate a single individual, including but not limited to the following:

- A. Any information that can be used to distinguish or trace an individual's identity such as full name, social security number, date and place of birth, mother's maiden name, or biometric records.

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- B. Any other information that is linked or linkable to an individual such as medical, educational, financial, and employment information.
- C. Two or more pieces of information that separately or when linked together can be used to reasonably ascertain the identity of the person.

The above provisions form the basis of revisions to the policy *Student Records*, and the discussion presented here. The restrictions put in place by Act 837 are significant and greatly impact access to and release of student information practices School Boards have utilized in the past.

RELEASE OF STUDENT PERSONALLY IDENTIFIABLE INFORMATION

As we mentioned above, Act 837 of 2014 and HB 718 of 2015 enacted and amended La. Rev. Stat. Ann. §17:3914 to prohibit the access and release of student personally identifiable information to any member of the School Board, or to *any person or public or private entity*, with very limited exceptions. The exceptions allow, in accordance with applicable state or federal law, an official or employee of the School Board to:

1. Provide a student's identification number and aggregate data (statistics, broad classes of information) to the School Board, LDOE, or the Louisiana Board of Elementary and Secondary Education (BESE) **solely** for the purpose of satisfying state and federal reporting requirements.
2. Provide to LDOE information from which enough personally identifiable information has been removed so that any information left over cannot be used to identify a student, for the purposes of auditing, funding, monitoring, or assessing student services.
3. Provide personally identifiable information about a *particular student* to any person or public or private entity for the sharing of *particular information* with the *particular recipient* of the information who has been authorized in writing by the parent or legal guardian, or by the student who has reached the age of majority, or if the information is provided to a person authorized by the state, including the legislative auditor, to audit processes including student enrollment counts. Any recipient of such information *shall maintain* the confidentiality of such information. Failure to maintain this confidentiality is a serious criminal offense and may subject a person to imprisonment of up to six (6) months or a fine of not

more than \$10,000.

4. Provide for the transfer of student information in accordance with La. Rev. Stat. Ann. §17:112.

This particular statute provides for the principal to transfer education records of a current or former student upon a written request from another school where the student has enrolled or is seeking enrollment. Such transfer, whether by mail or otherwise, shall occur within ten (10) business days of the date of receipt of the written request.

So, in summary, the release of student information considered to be personally identifiable may not be released by the School Board except under the four conditions outlined above. This restrictive state legislation serves to negate several provisions of the *Family Educational Rights and Privacy Act* (FERPA). Foremost among these are the declaration of *directory information* and its release without parental consent.

There are, however, two specific statutorily permitted instances in which student information may be released without parental consent that, in our opinion, are unaffected by Act 837 provisions. One is §9528 of the *No Child Left Behind Act* (20 USC 7908), which permits schools to release the names, addresses, and phone numbers of high school students to military recruiters, unless the parents have specifically prohibited the release of this information.

The other instance is the disclosure of particular student information to certain law enforcement officials, in accordance with La. Rev. Stat. Ann. §17:81(N). Both of these provisions remain unchanged in the policy.

While exceptions numbers 1, 2, and 4 listed above appear to be fairly straight forward, exception number 3 involving parental consent for the release of information requires more in-depth review. There are three (3) criteria necessary for personally identifiable information to be authorized in writing by the parent or legal guardian. This information must be:

1. *particular information*,
2. related to a *particular student*, and
3. released to a *particular recipient*.

An additional, but extremely important statutory caveat, is that the particular recipient is **required** to maintain the confidentiality of the information once received.

In order for parents, legal guardians, or students of majority age to authorize the release of information, the specific criteria mentioned above have to be identified *before* authorization can be given. This seems to eliminate the use of a blanket form for authorization, as well as a general blanket authorization at the beginning of the school year. A practical alternative could be a standardized form to be used by employees to fill in the pertinent information each time a request for information is received.

The types of student information that School Boards have released, shared, or published in the past now appear to be generally prohibited. Potential issues include the publishing of athletic rosters, school yearbooks, and school ads listing accomplishments, all of which may include student names and photos.

Here's a more specific example. Recently, there appeared in the local newspaper a list of graduates from several schools, which included names and pictures of valedictorians. Act 837 states that *personally identifiable information* includes an individual's full name. *Full name* is defined in Black's Law Dictionary as "a person's first name, middle name (or middle initial), and surname," and each graduate was indeed identified by his/her first, middle, and last name. After August 1, 2015, even if all other statutory requirements were met, thereby permitting the School Board or school, or an employee, to release such a list to the newspaper, it follows that the newspaper would still be prohibited from printing the list of graduates, and especially the picture and name of the valedictorian, because the newspaper, as the *particular recipient* of the information, would be required to maintain the confidentiality of the information given.

The publishing of other student information released by a school or School Board could also be impacted, such as articles on athletic activities, student clubs, scholarship announcements, and National Merit Finalists and Semi-Finalists. These issues will require extensive discussion by school personnel to understand the Act's curious consequences.

ACCESS TO STUDENT RECORDS

As for access to a student's records, while not as restrictive as the release of information, the Act does stipulate persons to whom access may be granted, and further provides that nothing shall prohibit a person employed by the School Board or other person authorized by the Superintendent from having access to a student's records, all in accordance with policy. Provisions of the Act concerning access to records have been included in the revised policy.

COLLECTION AND DISCLOSURE OF CERTAIN STUDENT DATA

One additional provision of the Act is noteworthy. Subsection K of La. Rev. Stat. Ann. §17:3914 permits the School Board to collect certain personally identifiable information, including social security number, for each student in grades 8-12, but only with permission of the student's parent or legal guardian. In addition, the law states that the School Board **shall** disclose the information collected, *upon request*, only to a Louisiana postsecondary education institution, to be used **solely** for processing applications for admission, and to the *Louisiana Office of Student Financial Assistance*, to be used **solely** for processing financial aid applications and grant program reporting.

Any information so collected must be destroyed by the School Board not later than five (5) years after the student graduates, unless otherwise required by state or federal law or regulation.

CONCLUSION

As you can see, policy *Student Records* has been completely overhauled. The policy now addresses the more restrictive provisions discussed above found in Act 837 of 2014 and amendments recently passed by the Legislature in 2015. The policy still contains pertinent provisions of other laws regarded as not been superseded by Act 837.

In the works - Changes of several policies based on BESE Bulletin revisions; followed by the annual Legislative Update Series!