

Davis School District Policy and Procedures

Subject: 11IR-110 Family Educational Rights and Privacy

Index: Individual Rights and Responsibilities

Revised: September 4, 2018

1. PURPOSE AND PHILOSOPHY

To encourage positive parental involvement in the education of children attending Davis Schools and to comply with State and Federal laws concerning family educational rights and privacy, this policy provides standards and procedures for the protection of private information within the curriculum and other school activities; and in the administration of psychological or psychiatric examinations, tests, or treatments, or any survey, analysis or evaluation of students.

2. ACTIVITIES PROHIBITED WITHOUT PRIOR WRITTEN CONSENT

2.1. Prior Written Consent Requirement

2.1.1. Prior written consent of a student's parent/guardian is required if any Davis School District (District) employee or agent plans to administer to a student any psychological or psychiatric examination, test, or treatment, or any survey, analysis or evaluation that has the purpose or evident intended effect of causing the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:

- [a] political affiliations or, except as provided under Utah Code Ann §53G-10-202 or rules of the Utah State Board of Education, political philosophies;
- [b] mental or psychological problems;
- [c] sexual behavior, orientation, or attitudes;
- [d] illegal, anti-social, self-incriminating, or demeaning behavior;
- [e] critical appraisals of individuals with whom the student or family member has close family relationships;
- [f] religious affiliations or beliefs;
- [g] legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and
- [h] income, except as required by law;

2.1.2. Prior written consent is required in all grades, Kindergarten through grade 12.

2.1.3. These prohibitions shall also apply within the curriculum and other school activities unless prior written consent of the student's parent/guardian has been obtained.

2.2. Parental Notice and Consent

2.2.1. Written parental consent is valid only if a parent/guardian has been first given written notice, including notice that a copy of the educational or student survey questions to be asked of the student in obtaining the desired information is made available at the school, and a reasonable opportunity to obtain written information concerning:

- [a] records or information, including information about relationships, that may be examined or requested;
- [b] the means by which the records or information shall be examined or reviewed;
- [c] the means by which the information is to be obtained;
- [d] the purposes for which the records or information are needed;
- [e] the entities or persons, regardless of affiliation, who will have access to the personally identifiable information; and
- [f] a method by which a parent of a student can grant permission to access

or examine the personally identifiable information.

- 2.2.2. For a survey described in 2.1.1, written notice shall include an internet address where a parent can view the exact survey to be administered by the student.
- 2.2.3. Except in response to a situation which a school employee reasonably believes to be an emergency, or as authorized under Utah Code Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements, or by order of a court, disclosure to a parent/guardian must be given **at least two weeks** before information protected under this policy is sought. Following disclosure, a parent/guardian may waive the two-week minimum notification period.
- 2.2.4. A general consent used to approve admission to school or involvement in special education, remedial education, or a school activity does not constitute written consent under this policy.
- 2.2.5. This policy does not limit the ability of a student to spontaneously express sentiments or opinions otherwise protected against disclosure under this policy.

2.3. Duration of Parental Authorization

Unless otherwise agreed to by a student's parent or guardian and the person requesting written consent, the authorization is valid only for the activity for which it was granted; or until the parent withdraws consent during the course of the activity, by submitting a written withdrawal of authorization to the school.

2.4. Well-being of a Student

2.4.1. If a school employee or agent believes that a situation exists that presents a serious threat to the well-being of a student, that employee or agent shall notify the student's parent or guardian without delay. If, however, the matter has been reported to the Division of Child and Family Services (DCFS), it is the responsibility of DCFS to notify the student's parent or guardian.

2.4.2. If a school employee, agent, or school resource officer believes a student is at-risk of attempting suicide, physical self-harming, or harming others, the school employee, agent, or school resource officer may intervene and ask a student questions regarding the student's suicidal thoughts, physically self-harming behavior, or thoughts of harming others for the purposes of:

- [a] referring the student to appropriate prevention services; and
- [b] informing the student's parent or legal guardian.

2.5. Review of District-wide Test/Treatment/Survey/Evaluation

2.5.1. Any psychological or psychiatric examination, test, treatment, or any survey, analysis, or evaluation to be administered District-wide to students shall be submitted annually to the Research, Assessment, and Evaluation Department for review if:

- [a] it is likely to result in disclosure of personal information in the areas listed in 2.1.1 of this policy;
- [b] it is to be administered to entire student body; or
- [c] it is at the request of or to be administered by outside individuals.

2.5.2. Prior to allowing the test's administration, it shall be determined whether the psychological or psychiatric examination, test, treatment, or any survey, analysis or evaluation requires prior parental consent.

3. STUDENT EDUCATION RECORDS MANAGEMENT

Access to Education Records

- 3.1. Parents/guardians have the right to inspect and review all of their student's education records maintained by the District or school. If the education records of a student contain information on more than one student, the parent/guardian may inspect and review or be informed of only the specific information about their student.
- 3.2. The District or school shall give full rights to student education records to either parent (or guardian), unless the District or school has been provided with evidence that there is a court order or legally binding instrument relating to such matters as divorce, separation, or custody that specifically revokes these rights.
- 3.3. Each school shall establish appropriate procedures for the granting of a request by a parent/guardian for access to the education records of their child within a reasonable period of time, but in no case more than forty-five (45) days after the request has been made.

Amendment of Education Records

- 3.4. Parents/guardians may challenge and request the District or school to amend any portion of their student's education record that is inaccurate, misleading or in violation of the privacy rights of the student.
 - 3.4.1. The District or school shall consider the request and decide whether to amend the records within a reasonable amount of time. If the District or school decides not to amend the record as requested, it shall inform the parent/guardian of its decision and of their right to a hearing.
 - 3.4.2. Upon request of a parent or guardian, the District shall provide an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student.
 - 3.4.3. Such hearing shall be informal and shall be conducted by an employee of the District who does not have a direct interest in the outcome of the hearing. (See 34 CFR 99.22)
 - 3.4.4. If, as result of the hearing, the District decides that the challenged information is inaccurate or misleading, the record should be amended accordingly and the parent/guardian informed in writing.
 - 3.4.5. If, as result of the hearing, the District decides that the challenged information is not inaccurate or misleading, the District shall inform the parent/guardian of their right to place a statement in the record, commenting on the challenged information in the record, or stating why they disagree with the decision. Any such document must remain with the contested part of the record for as long as the record is maintained, and shall be disclosed whenever the portion of the record to which the statement relates is disclosed.

Disclosure of Education Records

- 3.5. The District or school may not disclose information from education records without prior parental consent, except as provided by law. Such exceptions include, but are not limited to:
 - 3.5.1. school officials who have a legitimate educational interest;
 - 3.5.2. other schools that have requested the records and in which the student seeks or

- intents to enroll, or where the student is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer;
- 3.5.3. individuals who have obtained court orders or subpoenas;
 - 3.5.4. individuals who need to know in cases of health and safety emergencies;
 - 3.5.5. officials in the juvenile justice system;
 - 3.5.6. a State agency or organization that is legally responsible for the care and protection of the student, including the responsibility to investigate a report of educational neglect;
 - 3.5.7. the Immigration and Naturalization Service (INS) for foreign students attending school under a visa; or
 - 3.5.8. the Attorney General of the United States in response to an *ex parte* order in connection with the investigation or prosecution of terrorism crimes;
 - 3.5.9. organizations conducting studies for, or on behalf of the District, or postsecondary institutions for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction if done under the terms of a written agreement meeting the conditions of [34 CFR 99.35](#) and approved by the Director of Assessment;
 - 3.5.10. authorized representatives of the Secretary of Education or State or local education authorities to conduct an audit evaluation, or enforcement or compliance activity of Federal- or State-supported education programs if done under the terms of a written agreement meeting the conditions of [34 CFR 99.35](#) and approved by the Director of Assessment; or
 - 3.5.11. authorized representatives of the Comptroller General of the U.S. or the Attorney General of the U.S. to conduct an audit evaluation, or enforcement or compliance activity of Federal- or State-supported education programs if done under the terms of a written agreement meeting the conditions of [34 CFR 99.35](#) and approved by the Board of Education.

Directory Information

- 3.6. The District or school may disclose certain directory information for appropriate reasons if it has given parents annual notice of their right to request that their student's directory information not be released by the District or school. The actual means of notification; special letter, inclusion in a bulletin or newspaper article, student handbook; is left to the discretion of each school.
 - 3.6.1. The following information relating to students has been declared directory information:
 - [a] name, address, and telephone number;
 - [b] date and place of birth;
 - [c] major field of study;
 - [d] parent's email address;
 - [e] participation in officially recognized activities and sports;
 - [f] weight and height of members of athletic teams;
 - [g] dates of attendance;
 - [h] degrees, honors, and awards received;
 - [i] most recent previous education agency or institution attended; and
 - [j] photograph.
 - 3.6.2. Appropriate reasons for disclosure of directory information would include, but is not limited to; newspapers for awards, posting in District or schools of awards, student directories, honor roll lists, graduation lists, other school purposes, military recruiters, higher education institutions, etc.

4. EDUCATION EMPLOYEES AND VOLUNTEERS RESPONSIBILITIES

- 4.1. All education employees and volunteers shall maintain appropriate confidentiality pursuant to Federal and State law, and District policies with regard to student performance data and personal identifiable student information.
- 4.2. All education employees, and volunteers have a responsibility to protect confidential student information and access records only as necessary for their assignment (s), and
 - 4.2.1. shall maintain student records in a secure and appropriate place;
 - 4.2.2. shall follow procedures for maintaining confidentiality of electronic records; and
 - 4.2.3. shall not share, disclose, or disseminate passwords for electronic maintenance of student records.
- 4.3. Violations of this policy may result in disciplinary action.

5. SCHOOL EMPLOYEE ACCESS TO EDUCATION RECORDS

- 5.1. In accordance with state student privacy laws, each school shall create and maintain a list that includes the name and position of each school employee who the public school authorizes to have access to student education records.
- 5.2. The District shall annually provide a training regarding the confidentiality of student data to any employee with access to education records.
- 5.3. A school employee shall annually submit a statement which certifies that the school employee completed the required student privacy training and understands his/her legal and ethical obligation to protect confidential student information.

6. PROHIBITION OF EDUCATION RECORDS USE FOR MARKETING

Student records maintained by the District or school, may not be sold or used for marketing purposes or targeted advertising as defined in Utah Code Ann.§ 53E-9-301(22)

7. COMPLAINT PROCEDURE

- 7.1. Parents who believe their rights have been violated may contact the school's administration or file a complaint as outlined in this policy with:

Family Policy Compliance Office (FPCO)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920
(800) 872-5327 Informal inquires may be sent to FPCO via the following
email address: FERPA@ED.Gov

- 7.2. Complaints should be reported as soon as possible, but not later than 180 days from the date the parent/guardian has learned of the circumstances of the alleged violation.

8. STUDENT RECORDS RETENTION AND DISPOSAL

Student records shall be retained and disposed of according to Utah State Achieves Records Retention Schedule. Student special education records shall be disposed of in accordance with provisions of Utah State Board of Education Special Education Rules §300.610.

DEFINITIONS

“**Directory information**” means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy.

“**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.

“**Education program**” means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

“**Education records**” means those records, files, documents, and other materials which contain personally identifiable information directly related to a student; and are maintained by an educational agency or by a person acting for such agency.

“**Educational neglect**” means that, after receiving a notice of compulsory education violation under section 53G-6-202, the parent or guardians fails to make a good faith effort to ensure that the child receives an appropriate education.

“**Ex parte order**” means an order made by the court upon the application of one party to an action without notice to the other.

“**Legitimate educational interest**” is when a school official needs to review an education record in order to fulfill his or her professional responsibility.

“**School official**” means a person employed by the District as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving as a volunteer; a person serving on the District School Board; a person or company with whom the District or school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist), or to whom the District has outsourced institutional services or functions.

REFERENCES

20 U.S.C. § 1232g - Family Educational Rights and Privacy Act (FERPA)

20 U.S. C. § 1232h - Protection of Pupil Rights Act

20 U.S.C. § 7908 - Armed Forces recruiter access to students Recruiting Information.

20 U.S.C. §7917 – Transfer of School Disciplinary Records.

34 CFR Part 99 - Family Educational Rights and Privacy Act

[Utah Code Ann. §53G-10-203](#) – Expressions of belief.

[Utah Code Ann. Title 53E, Chapter 9, Part 2](#) – Student Privacy.

[Utah Code Ann. Title 53E, Chapter 9, Part 3](#) – Student Data Protection.

[Utah Administrative Code R277-487 - Public School Data Confidentiality and Disclosure.](#)

FORMS AND OTHER LINKS

Model [Letter of Permission\[Classroom Instruction\]](#)

Model [Letter of Permission \[Specific to Sex Education\]](#)

Model [Letter of Permission \[Counseling Session\]](#)

[Directory Information Notice](#)

[Student Data Disclosure Statement](#)

[Utah State Archives Records Retention Schedule](#)

DOCUMENT HISTORY:

Adopted: August 1, 1995

Revised: October 20, 1998

Revised: February 11, 2004 - Added Student Education Records Management and made other technical changes.

Revised: April 6, 2006 - Technical changes. Added definitions for "legitimate education interest" and "school official."

Revised: July 15, 2008 - Technical changes.

Revised: March 17, 2010 - Added parent's email address as directory information.

Revised: February 21, 2012 (by consent) – No substantive changes. Changes made to comply with federal and state rule.

Director of Assessment, Research, and Evaluation will be responsible to manage process of release of PPI for research, audit and evaluation. Outlines responsibility of employee to protect confidential student information. Added complaint procedure for parents who believe their rights have been violated under FERPA.

Revised: May 1, 2012 – Modifies language on sharing PPI with US Comptroller and US Attorney General to conduct audit evaluation or enforcement or compliance activity of Federal- or State-supported education programs. Requires such request to be approved by the Board of Education.

Revised: July 8, 2014 – Minor revisions consistent with changes in federal law and state rule.

Revised: September 5, 2017 – Updated to comply with SB102, which requires public schools to make a list of individuals who are authorized to access education records and to verify they have received training. Reorganized student education records management section.

March 8, 2018 - Education code references updated in accordance with 2018 recodification.

Revised: September 4, 2018 - Updated to comply with state law (2018 SB125). Allows release of student information, without consent, to a state agency investigating a report of educational neglect.