



---

## Annual Notices<sup>1</sup> August 2018

By: Jordan Cooper, NSBA Senior Staff Attorney

Numerous federal laws require school districts to provide students, parents, and/or the public with notices, many of which must be provided at the beginning of the school year. Fortunately, federal agencies or other entities oftentimes have created “model” notices (or provide information useful to creating notices) that can easily be tailored to meet individual district needs. Here, we describe some of the notices required by federal law, including the methods required to give notice where it is specified in the statutes and/or regulations. Where available, we provide links to model notices or guidance documents that may be of assistance in writing such notices. Not included here are employment-related notices required by federal or state law.

### Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA), most recently reauthorized under the *Every Student Succeeds Act of 2015* (ESSA), requires state education agencies, school districts, and individual schools to provide numerous notices to parents, the public, and others. Because ESSA is still fairly new, and several regulatory actions to implement ESSA have yet to be written or are in the proposed rule process, some documents issued under No Child Left Behind Act (NCLB) remain in effect as current guidance until the Department puts out new agency information. Where applicable, NSBA will continue to reference the existing documents until new guidance is published.

For example, Appendix B (pages 34-39 therein) of the U.S. Department of Education’s non-regulatory guidance document, *Parental Involvement Title I, Part A* (April 2004), contains a chart of the key parental notice requirements under Title I, Part A of the ESEA (as amended by NCLB), and identifies who should issue the notices, and when they must be issued. Some of these notice requirements no longer remain accurate after ESSA. For example, notices regarding schools identified for “improvement,” “corrective action” or “restructuring” may no longer apply in your state, as ESSA sets up a different intervention model.

ESSA requires that states and school districts engage families and parents in the work of ensuring positive outcomes for all students. School districts that receive Title I funds must have written family and parent engagement policies with expectations and objectives for implementing meaningful family

---

<sup>1</sup>See also National School Boards Association, *Policies Required by Federal Law* (August 2018).

and parent involvement strategies. They are required to involve family members and parents and in developing district plans and to provide technical assistance to schools on planning and implementing effective family and parent involvement activities to improve student academic achievement and school performance. There is also a new provision added by ESSA requiring that all school districts that receive Title I funds implement an effective means of outreach to parents of English learners, including holding regular meetings for those parents. See the U.S. Department of Education's *Policy Statement on Family Engagement* (May 5, 2016) at: <https://www2.ed.gov/about/inits/ed/earlylearning/files/policy-statement-on-family-engagement.pdf>.

- The description of each notice in the Department's 2004 chart contains references to the relevant statutory sections and guidance documents, some of which also contain model policies. Download this document at: <http://www.ed.gov/programs/titleiparta/parentinvguid.doc>.
- Also, see the Department of Education's *ESSA Assessments under Title I, Part A and Title I, Part B: Summary of Final Regulations* at: <https://www2.ed.gov/policy/elsec/leg/essa/essaassessmentfactsheet1207.pdf>.

Several new ESSA provisions are summarized in *Transitioning to the Every Student Succeeds Act Frequently Asked Questions* (January 2017), which also has information about updates to notice requirements. It is available at: <https://www2.ed.gov/policy/elsec/leg/essa/essatransitionfaqs11817.pdf>.

- States no longer must require LEAs with schools identified as "in need for improvement, corrective action, or restructuring" to provide supplemental education services, public school choice, and notice tied to those, but a state may still require it (pg. 18).
- Schools are no longer required to provide "notice to parents related to the highly qualified status of their child's teacher" (pg. 26).
- States and LEAs are not required to comply with 3302(b) of the ESEA parental notification requirements, mandating that parents must be notified when LEAs fail to meet one or more of the Annual Measurable Achievement Objectives. They must still comply with the requirements of 3302(a) of the ESEA which requires notice, within the first 30 days of school, to parents whose student have been identified as English learners (pg. 29).

The Department of Education provided guidance for the annual report cards (2017) that LEAs must disseminate. Appendix D (pages 69-77) provides a checklist that (1) identifies the components of the report card, and (2) indicates when "disaggregated reporting by student subgroup is required." Checklist 4 also highlights other public reporting requirements under ESEA (as amended by ESSA) that an LEA can, but is not required to, address through the report cards. Annual report card guidance is available at: <https://www2.ed.gov/policy/elsec/leg/essa/essastatereportcard.pdf>.

Certain notices are now required to the public when a school has been identified for "comprehensive support and improvement" or "targeted support and improvement." When the LEA receives notice from the State that it has been identified for comprehensive support and improvement, the LEA must "promptly notify the parents" of every enrolled student in the school

- (1) that the school has been identified as such, 34 C.F.R. § 200.21(b);
- (2) the reasons for the identification, 34 C.F.R. § 200.21(b); and

- (3) how parents can become involved in the needs assessment under 34 C.F.R. § 200.21(c), and developing and implementing a comprehensive support and improvement plan as described in 34 C.F.R. § 200.21(d); 34 C.F.R. § 200.21(b).

An LEA may provide all students enrolled in a school identified for “comprehensive support and improvement” the option to transfer their child to another public school, including information about transportation to the new school and information on the academic achievement of the new school. 34 C.F.R. § 200.21(h). For further information on the content of the notice, see Section D in the U.S. Department of Education’s *Public School Choice Non-Regulatory Guidance* (2009) available at: <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>. (No update yet since the passage of ESSA).

Additionally, when an LEA receives notice from the State that it has been identified for “targeted support or improvement,” it must “promptly notify the parents” with:

- (1) the reasons for identification: a list of groups and subgroups that are underperforming under 34 C.F.R. § 200.19(b)(1) and low-performing under 34 C.F.R. § 200.19(b)(2). 34 C.F.R. § 200.22(b)(2)(i); and
- (2) how the parents can become involved in developing and implementing the targeted support and improvement plan in 34 C.F.R. § 200.22(c) and 34 C.F.R. § 200.22(b)(2)(ii).

For both classifications, the notice must be given in an understandable and uniform format, and, “to the extent practicable,” written in a language that the parents can understand, or be orally translated. 34 C.F.R. § 200.21(b)(1)-(2); 34 C.F.R. § 200.22(b) (consistent with requirements under § 200.21(b)(1) through (3)). In general, the notice must be provided to parents directly, through regular mail or e-mail, or “other direct means of distribution” and “in a timely manner.” 34 C.F.R. § 200.31(d)(3)(i). The notice must also be provided in an “alternative format accessible to that parent” for a parent who is an individual with a disability as defined by the Americans with Disabilities Act. 34 C.F.R. § 200.21(b)(3).

### Family Educational Rights and Privacy Act

Pursuant to the Family Educational Rights and Privacy Act (FERPA), school districts must provide parents/guardians and eligible students (students at least 18 years of age) with annual notice of their rights to inspect and review education records, amend education records, consent to disclose personally identifiable information in education records, and file a complaint with the U.S. Department of Education. 34 C.F.R. § 99.7(a)(2). The notice must include the procedure to request and review education records, as well as a statement that records may be disclosed to school officials without prior written consent. This statement should define a school official and what constitutes a legitimate educational interest when it comes to accessing a student’s educational records. 34 C.F.R. § 99.7(a)(3). Notice may be provided in any way that is reasonably likely to inform parents of their rights, and must effectively notify parents who have a primary or home language other than English and parents/guardians or eligible students who are disabled. 34 C.F.R. § 99.7(b). The annual notification may be published by various means, including any of the following: in a schedule of classes; in a student handbook; in a calendar of school events; on the school’s website (though this should not be



the exclusive means of notification); in the student newspaper; and/or posted in a central location at the school or various locations throughout the school. See the Department of Education's FERPA General Guidance for Students at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/for-eligible-students.pdf>.

- Download the U.S. Department of Education's *Model Notification of Rights under FERPA for Elementary and Secondary Schools* at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>.

Under FERPA, school districts may disclose directory information if they have given public notice to parents/guardians and eligible students of what information has been designated as directory information, and when and how parents/guardians and eligible students may opt out of allowing the district to disclose their directory information. 34 C.F.R. § 99.37(a). Finally, under ESEA, school districts must provide notice that they routinely release the names, addresses, and phone numbers of secondary students to military recruiters unless parents opt out in writing. 20 U.S.C. § 7908. School districts may provide this military recruiter notice as part of their general FERPA notice.

- Download the U.S. Department of Education's *FERPA Model Notice for Directory Information* at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html>.

FERPA regulations permit LEAs and schools to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both. 34 C.F.R. § 99.37(d). It is up to individual LEAs and schools to decide whether to adopt limited directory information policies and how to implement them. The regulations' directory information exception makes clear that parents/guardians and eligible students may not, by opting out of the disclosure of directory information, prevent an LEA or school from requiring a student to wear or present a student ID or badge. 34 C.F.R. § 99.37(c). While the Department does not require LEAs or schools to establish policies mandating that students wear badges, these are individual decisions that LEAs and schools should make, taking into account local circumstances.

The U.S. Department of Education recommends that districts post all FERPA and PPRA (see below) notices, including the directory information policy, on their websites.

- Download the U.S. Department of Education's *Transparency Best Practices for Schools and Districts* at: [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/LEA%20Transparency%20Best%20Practices%20final.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/LEA%20Transparency%20Best%20Practices%20final.pdf) (p. 5).

The Department of Education also provides a *FERPA General Guidance for Students* at: <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>.



## Protection of Pupil Rights Amendment

The Protection of Pupil Rights Amendment (PPRA) requires school districts to adopt several policies regarding surveys of students, instructional materials, physical examinations, personal information used for marketing, and the like related to students. Parents must be notified of these policies at least annually at the beginning of the school year and within a reasonable time period after any substantial change is made to the policies. 20 U.S.C. § 1232h(c)(2)(A).

- Download the U.S. Department of Education's *Model Notification of Rights Under the Protection of Pupil Rights Amendment* at:  
<https://www2.ed.gov/policy/gen/guid/fpco/ppra/modelnotification.html>.

If districts plan to (1) use students' personal information for selling or marketing purposes; (2) administer any survey about any of the eight topics listed in the statute (political beliefs, income, sex behavior or attitudes, etc.); or (3) administer certain non-emergency, invasive physical examinations, districts must directly notify parents at least annually at the beginning of the school year of the specific or approximate dates when these activities are scheduled or expected to be scheduled. 20 U.S.C. § 1232h(c)(2)(B), (c)(2)(C).

- Download the U.S. Department of Education's *PPRA Model Notice and Consent/Opt-Out for Specific Activities* at: <https://www2.ed.gov/policy/gen/guid/fpco/pdf/ppraconsent.pdf>.

The Department of Education lists policies that PPRA requires LEAs to develop, with the consultation of parents. These policies concern privacy, parental access to information, and administration of physical examinations of minors. See more at: <https://www2.ed.gov/policy/gen/guid/fpco/pdf/cover-letter.pdf>.

The U.S. Department of Education recommends that districts post all FERPA and PPRA notices on their websites.

- Download the U.S. Department of Education's *Transparency Best Practices for Schools and Districts* at:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/LEA%20Transparen%20Best%20Practices%20final.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/LEA%20Transparen%20Best%20Practices%20final.pdf) (p. 5).

## Child Nutrition Programs

If school districts participate in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, they must provide both parents and the public with information about free and reduced-price meals and/or free milk near the beginning of each school year. 7 C.F.R. § 245.5. Districts also must provide parents with an application form. Districts may not disclose children's free and reduced eligibility status, unless the requestor of such information falls into one of the categories specified in the National School Lunch Act. 42 U.S.C. § 1758(b)(6)(A)(i)-(v).



The USDA's document entitled *Eligibility Manual for School Meals* contains information on federal requirements regarding the determination and verification of eligibility for free and reduced-price meals in the National School Lunch Program and the School Breakfast Program. The document contains information about what the application for these programs is to contain, including a link to an online application. The document also contains information describing to whom (pp. 83-84), and under what conditions, information regarding free and reduced eligibility status may be disclosed (pp. 83-93).

- Download the *Eligibility Manual for School Meals*, which contains relevant notices in the appendices, at: [https://fns-prod.azureedge.net/sites/default/files/cn/SP36\\_CACFP15\\_SFSP11-2017a1.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP36_CACFP15_SFSP11-2017a1.pdf).

Striving to reduce paperwork, Congress has incorporated three alternative provisions into the standard requirements for annual determinations of eligibility for free- and reduced-price school meals. These alternative provisions are available at: <https://www.fns.usda.gov/school-meals/provisions-1-2-and-3>.

- In schools where at least 80 percent of enrolled students have free or reduced-price meal eligibility, annual notification of program availability and certification only needs to occur once every 2 consecutive school years.

The amended Healthy, Hunger-Free Kids Act of 2010 requires school districts to inform and update the public (including parents, students, and others in the community) about the content and implementation of their local school wellness policies. 42 U.S.C. § 1758b(b)(4). School districts also must periodically measure and report on implementation of their local school wellness policies, including: (1) the extent to which schools under the jurisdiction of the local school district are in compliance with its local school wellness policy; (2) the extent to which the local school wellness policy of the local district compares to model local school wellness policies; and (3) a description of the progress made in attaining the goals of the local school wellness policy. 42 U.S.C. § 1758b(b)(5)(A). The USDA final rules for local school wellness policies, which became effective on August 29, 2016, appear at 7 CFR Parts 210 and 220. See the USDA's Local School Wellness Policy and other child nutrition-related information at: <https://www.fns.usda.gov/tn/local-school-wellness-policy>.

The USDA published a guide on July 25, 2017 that highlights requirements for accommodating children with disabilities who participate in School Meal Programs. That guide is available at: <https://fns-prod.azureedge.net/sites/default/files/cn/SP40-2017a1.pdf>

With the help of school food service staff, LEAs must implement procedures to enable parents and guardians to request modifications to meal services for their children with disabilities. 7 C.F.R. §§ 15b.25, 15b.6 (b). LEAs must notify parents and guardians of both the process to (1) request meal modifications that accommodate the child's needs and (2) for resolving disputes. The hearing process must follow the necessary procedural requirements: notice, right to counsel, opportunity to participate, examination of the record. <https://fns-prod.azureedge.net/sites/default/files/cn/SP26-2017os.pdf>

According to "Local School Wellness Policy: Guidance and Q&As" (2017), the USDA does not specify a specific timeline for updates to the wellness policies. Ideally, however, the policy should be updated



after conducting a triennial assessment. 7 C.F.R. § 210.31(e)(3). The updates are dependent on the structure of the LEA's policy. The LEAs are required to notify the public about the content of the policies annually and discuss any updates. 7 C.F.R. § 210.31(d)(2). They must also inform the public about the progress made towards meeting the goals of the local school wellness policy. 7 C.F.R. § 210.31(d)(3).

For model and sample policy language endorsed by the USDA, see below:

- <https://healthymeals.fns.usda.gov/local-wellness-policy-resources/local-school-wellness-policy-process/model-and-sample-policy>.
- [http://uconnruddcenter.org/files/Pdfs/Model\\_Wellness\\_Policy\\_rev%203-3-16.pdf](http://uconnruddcenter.org/files/Pdfs/Model_Wellness_Policy_rev%203-3-16.pdf).
- Download *School District Wellness Policies: Where do they Stand and What do you Need to Know?*, a presentation by the CDC at:  
[http://www.cdc.gov/healthyyouth/npao/pdf/PowerPoint\\_for\\_CDC\\_BTG\\_Local\\_School\\_Wellness\\_Policy\\_Briefs\\_School\\_Year\\_12\\_13.pdf](http://www.cdc.gov/healthyyouth/npao/pdf/PowerPoint_for_CDC_BTG_Local_School_Wellness_Policy_Briefs_School_Year_12_13.pdf).
- Guidance for school authorities:  
<https://www.fns.usda.gov/sites/default/files/cn/FSMCguidance-sfa.pdf>, and
- <https://www.fns.usda.gov/school-meals/guidance-and-resources>.

### Asbestos Hazard Emergency Response Act

The Asbestos Hazard Emergency Response Act (AHERA) requires school districts to inspect their buildings for asbestos-containing building materials, and develop, maintain, and update an asbestos management plan. School districts must annually notify parents, teachers, and employee organizations in writing of the availability of the management plan and planned or in-progress inspections, re-inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. 40 C.F.R. §§ 763.84(c), (f), 763.93(g)(2).

### McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act requires school districts, through their homeless student liaisons, to provide public notice of the education rights of the homeless students enrolled in their districts. 42 U.S.C. § 11432(e)(3)(C)(i). Such notice is to be disseminated in places where homeless students receive services under this Act, including schools, family shelters, and soup kitchens. 42 U.S.C. § 11432 (g)(6)(A)(vi). The notice must be in a "manner and form" understandable to homeless students and their parents/guardians, "including, if necessary and to the extent feasible," in their native language. 42 U.S.C. § 11432(e)(3)(C)(iii).

- The U.S. Department of Education has issued guidelines for States, which address ways a State may (1) assist LEAs to implement McKinney-Vento, as amended by ESSA, and (2) review and revise policies and procedures, along with LEAs, that may present barriers to the identification, enrollment, attendance, and success of homeless children and youths in school. Download the guidelines at: <https://www.gpo.gov/fdsys/pkg/FR-2016-03-17/pdf/2016-06073.pdf>.



- In March 2017, the U.S. Department of Education updated the “*Education for Homeless Children and Youths Program Non-Regulatory Guidance*.” This document highlights the key changes brought about by ESSA. It is available at:  
<https://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716updated0317.pdf>
  - For notice requirements under “tips for establishing an effective dispute resolution process”, see page 33.
- Other resources available from the U.S. Department of Education:
  - <https://www2.ed.gov/policy/elsec/guid/secletter/160726.html> (Dear Colleague Letter: educational rights of homeless children and youths), and
  - <https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf> (fact sheet)
- The National Center for Homeless Education (funded by the U.S. Department of Education) has created free Educational Rights posters (in black/white or color; English/Spanish; parents/students) that can be downloaded or ordered at:  
[http://center.serve.org/nche/pr/er\\_poster.php#youth](http://center.serve.org/nche/pr/er_poster.php#youth).

### Title VI, Title IX, Section 504, the Age Discrimination Act, Title II of the Americans with Disabilities Act, and the Boy Scouts of America Equal Access Act

Several federal statutes protect the rights of beneficiaries not to be discriminated against in programs or activities receiving federal and/or state financial assistance. Specifically, the following statutes prohibit discrimination: Title VI (race, color, ethnicity, and national origin); Title IX (sex and pregnancy); Section 504 and Title II of the Americans with Disabilities Act (disability); and the Age Discrimination Act (age). The Boy Scouts of American Equal Access Act requires public schools to provide equal access to the use of school property to the Boy Scouts and other designated youth groups.

The regulations implementing the above statutes require school districts to notify students, parents, and others that they do not discriminate on the basis of race, color, ethnicity, national origin, sex, pregnancy, disability, or age, and that they provide equal access to the Boy Scouts and other designated youth groups. Title VI, 34 C.F.R. § 100.6(d); Title IX, 34 C.F.R. § 106.9; Section 504, 34 C.F.R. § 104.8; Age Discrimination Act, 34 C.F.R. § 110.25; Title II, 28 C.F.R. § 35.106; Boy Scouts Act, 34 C.F.R. § 108.9. The regulations contain minor differences relating to the required content of the notices and the methods used to publish them.

- Download the U.S. Department of Education’s *Notice of Non-Discrimination*, which describes the content requirements of notices under these statutes, including the methods of notification required by Title IX and Section 504, and contains a sample notice of non-discrimination school districts may use to meet the requirements of all of the above statutes, at:  
<http://www2.ed.gov/print/about/offices/list/ocr/docs/nondisc.html>.
- **NOTE:** The notice must include the identity and contact information of the coordinators designated to handle complaints under Title IX (34 C.F.R. § 106.8), Section 504 (34 C.F.R. § 104.8), the Americans with Disabilities Act (28 C.F.R. § 35.107), and the Age Discrimination Act (34 C.F.R. § 110.25).



## Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act (IDEA), school districts must give parents of a child with a disability a copy of its procedural safeguards one time per year, and upon initial referral or parental request for an evaluation, the filing of a first request for a due process hearing, a disciplinary action constituting a change in placement, and at the request of a parent. 20 U.S.C. § 1415(d)(1)(a); 34 C.F.R. § 300.504(a). A school district may post a copy of the procedural safeguards on its website. 20 U.S.C. § 1415(d)(1)(b); 34 C.F.R. § 300.504(b). The notice must fully explain the IDEA's procedural safeguards in an easily understandable manner, and in the native language of the parents unless it is clearly not feasible to do so. 20 U.S.C. § 1415(d)(2); 34 C.F.R. § 300.504(c), (d).

Parents may choose to receive the procedural safeguards notice and other notices under the IDEA by email, if the LEA makes this option available. 20 U.S.C. § 1415(n); 34 C.F.R. § 300.505.

- Download the U.S. Department of Education's *Model Form: Procedural Safeguards Notice* at: [http://idea.ed.gov/download/modelform Procedural Safeguards June 2009.pdf](http://idea.ed.gov/download/modelform%20Procedural%20Safeguards%20June%202009.pdf).
- **NOTE:** The procedural safeguards notice requirements in the IDEA also apply to parents of homeless children with disabilities. For more information, see Question B-2 in *Questions and Answers on Special Education and Homelessness* by the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education at: <http://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>.

The U.S. Department of Education analyzed when and how parents must be notified before "records containing personally identifiable information are destroyed under Part B of IDEA." The question considered was whether "under 34 C.F.R. § 300.624, a school district must specifically notify parents at the time the district intends to destroy [a student's] records or whether such notice must be provided at the time the records are no longer needed." The Department's letter responds that under the IDEA, parents must be informed when the personally identifiable information is no longer needed to provide services. <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/osep-letter-to-zacchini-2-27-17.pdf>.