

# **Navigating Parental Rights under FERPA, Opt-Outs, Code of Conduct Enforcement and Public Comment at Board Meetings**

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Date: April 17, 2026

# Family Educational Rights and Privacy Act (FERPA) – Legal Basics

- FERPA gives parents and eligible students (18 or over) rights to:
  - Inspect and review student’s **education records** within 45 days of a request (34 C.F.R. § 99.10)
  - Seek to amend education records believed to be inaccurate, misleading, or in violation of the student’s rights of privacy (34 C.F.R. § 99.20).  
Disputes to be resolved through a hearing process.
  - Consent to the disclosure of **personally identifiable information** (“PII”) from education records through **prior written consent** (34 C.F.R. § 99.30)

# What do we mean by PII from education records?

- **Education records** are those records that are:
  - Directly related to a student; and
  - Maintained by an educational agency or institution or by a party acting for an agency or institution (34 C.F.R. § 99.3).
- **Personally identifiable information** (“PII”) includes but is not limited to:
  - A student’s name, parent name, address, personal identifier, indirect identifiers, 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 (34 C.F.R. § 99.3).

# Some exceptions to prior consent

- Prior Written Consent of parent/eligible student not required when disclosure is:
  - To a “**school official**” with a legitimate educational interest
  - To officials of another school where the student seeks to enroll
  - To certain federal, state, and local authorities
  - To organizations conducting studies on behalf of educational institutions
  - To comply with a judicial order or lawfully issued subpoena in an administrative hearing in which the hearing officer has the power to issue subpoenas (e.g. Education Law Section 3020-a proceedings)
  - In connection with a **health or safety emergency 45 CFR §99.36**
  - Information designated as “**directory information**” (which is subject to an opt-out for disclosure to third parties)

# Who is a “school official”

- A “school official” under FERPA is any employee (e.g., teachers, principals, staff, and health personnel) or authorized third-party (contractor, volunteer) with a **legitimate educational interest**, meaning they need student record info to perform their job, such as teaching, counseling, financial aid, or discipline, all under the school's direct control and defined in the District's annual notice.
- For example an SRO may be a “school official” under certain circumstances, but this does not mean that the SRO can then share PII with other members of law enforcement without a subpoena or other applicable exception.

# Who is a “school official”

New York State Education Law §2-d and the Commissioner’s Regulations at Part 121 distinguish third parties who may be in receipt of student PII from those deemed to have a legitimate educational interest in the information.

- ❖ School Attorneys

- ❖ School Physicians

- ❖ Educational Related Services Providers who are consultants

# Health and Safety Exception

- If a school determines that there is an **articulable** and **significant** threat to the health or safety of a student or other individuals, it may disclose PII to "appropriate parties" — any person whose knowledge of the information is **necessary** to protect the health or safety of the student or other individuals.
- Appropriate parties under the circumstances may include those such as law-enforcement officers, public-health officials, medical personnel and parents. The school must document the details of each such disclosure, including the reasons for it and to whom it was made.
- This exception applies only to emergencies that are **imminent** or already occurring, and not to the preparation for a possible or eventual emergency. The exception also does not apply to disclosures on a routine, non-emergency basis, such as the routine sharing of non-directory information on students with the local police department (which is generally prohibited without consent).

# Directory Information

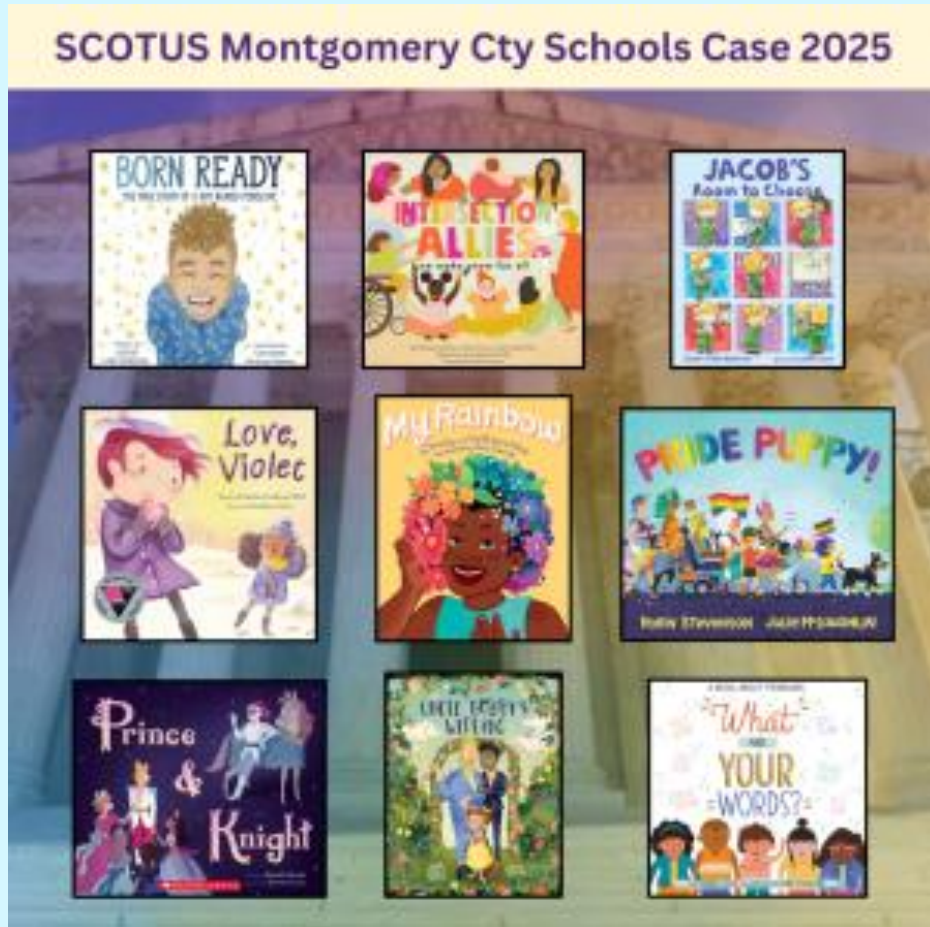
- Schools may disclose PII from a student's education records without prior written consent if the information is properly designated as "directory information" — PII that is not generally considered harmful or an invasion of privacy if disclosed (unless the parent or student 18 or over has opted out).
  - ✓ What is the lawful process for obtaining an opt-out?
- **By Policy Limited Directory Information may be defined.** For example, directory information could be limited to include: name, dates of attendance, photograph/image, voice print, grade level, participation in officially recognized activities and sports, honors and awards received, and e-mail.
- **Further limitations may be placed on what information would be defined as Directory Information to address concerns regarding to whom the information may be disclosed.**

# “Limited Directory Information Disclosure”

- The District’s annual written notice to parents/guardians of students in attendance and eligible students may explain that the District’s disclosure of directory information will be limited to **specific parties and specific purposes only**.
- To allow the District to include directory information in certain **school district publications**, such as the yearbook, newsletters, website, social media, honor roll and other recognition lists, graduation programs, sports rosters activity sheets, and playbills showing students’ roles in drama productions in a timely manner and without the necessity for requesting consent in situations in which it is expected that there would be no significant concern about invasion of privacy or any danger or harm from the disclosure.
- The District may also disclose directory information to **outside organizations/parties** without a parent’s/guardian's/eligible student’s prior written consent but only for school-related activities or purposes. Examples of such outside organizations include, but are not limited to, news organizations for recognition purposes only, companies that manufacture class rings or publish yearbooks.

# CURRICULUM OPT - OUTS

# Mahmoud v. Taylor (United States Supreme Court 2025)



- The Board of Education instructed that elementary school curriculum was to include story books from kindergarten through third grade designed to “disrupt” children’s thinking about sexuality and gender.

# Mahmoud v. Taylor (Cont.) - Storybook Excerpts Quoted in Majority Opinion

- Storybook #1:
  - Book: “A bathroom, like all rooms, should be a safe space.”
  - Discussion Guide: “When we are born, our gender is often decided for us based on our sex....But at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender.”
- Storybook #2:
  - Book: Prince tells parents he’s “looking for something different [than the ladies he’s met]”.... When the prince meets a knight, they “gaze into each other’s eyes [and] their hearts begin to race.” The whole kingdom applauds “on the two men’s wedding day.”
- Storybook #3:
  - Book: A young girl has a crush on her female classmate, they exchange Valentine’s gifts, then, holding hands, “gallop[] over snowy drifts to see what they might find.”
- Storybook #4:
  - Book: Child tells mother: “Inside I’m a boy” and mother responds, “If you feel like a boy that’s ok” and child says, “I AM a boy....Please help me, Mama. Help me to be a boy.” When the child’s brother says, “You can’t become a boy,” his mother responds, “Not everything needs to make sense. This is about love.”
- Storybook #5:
  - Book: Young girl’s uncle is marrying his boyfriend and says she doesn’t “understand”. Her mother explains, “When grown-up people love each other that much, sometimes they get married.”

# Mahmoud v. Taylor (United States Supreme Court 2025)

- Parents from diverse religious backgrounds challenged Montgomery County Board of Education's policy regarding LGBTQ+-inclusive storybooks in public elementary classrooms. The basis of the challenge was the First Amendment right regarding the exercise of family religious beliefs.
- The Board had previously permitted opt-outs, but then discontinued the practice.
- Court ruled that parents were entitled to a preliminary injunction, meaning the school must provide advance notice before using any of the contested storybooks or materially similar content; parents have right to opt-out.

# Mahmoud v. Taylor (Cont.)

- The court found that the curriculum substantially interfered with religious exercise by promoting values contrary to sincere parental beliefs—triggering strict scrutiny.
- The court opined that the School’s actions went beyond just exposure to objectionable material; here, the storybooks explicitly normalized LGBTQ+ values, demanding active engagement that burdens parental religious exercise.

# Mahmoud v. Taylor (Cont.)

- “It must be emphasized that what the parents seek here is not the right to micromanage the public school curriculum, but rather to have their children opt out of a particular educational requirement that burdens their well-established right to ‘direct the religious upbringing of their children.’”
- “We express no view on the educational value of the Board’s proposed curriculum, other than to state that it places an unconstitutional burden on the parents’ religious exercise if it is imposed with no opportunity for opt outs. Providing such an opportunity would give the parents no substantive control over the curriculum itself.”
- This decision also called for the offer of alternative instruction when the curriculum objectionable to the parents was part of class instructional time.

# Current Opt-Out Rights Under NYS Law

## **New York State Parental Opt-Out Rights:**

- ❖ **HIV Instruction** through parental written request to principal for the pupil not to participate in such instruction if the parent gives a written assurance that such instruction shall be given at home.
- ❖ **Dissections in science classes** – with alternative assignment provided.
- ❖ **Study of Health and Hygiene** which conflicts with a parent's religious beliefs.

# The Code of Conduct and Parental Behavior

- Since the inception of the Project Save Legislation which became effective in 2001 District Codes of Conduct have addressed the behavior of visitors to the schools and behaviors at other school activities.
- Education Law §2801(1)&(2) calls for the establishment of rules of conducts which extend to parents when in school buildings, on school premises, at athletic events, both at District facilities and when school events take place beyond the District's premises.
- Typically, Codes of Conduct vest the duty to make determinations regarding exclusion of parents from buildings, grounds and from school events in the Superintendent of Schools.

# Visitors to the Schools - Policies

- While New York public schools and BOCES are public entities, access to their buildings and activities are subject to restriction by Board of Education Policy.
- Access beyond the public area of a school building, which may be restricted to an entry vestibule during school hours, is generally restricted by policy with some policies allowing for parental visits during open school activities during the school day.
- Some policies extend such restrictions to board of education members and board leadership. *Matter of Silano* 33 Ed. Dept. Rep.20, Decision Nol 12,961 (1993), *Matter of Bruno*, 4 Ed. Dept. Rep. 14, Decision No. 7403 (1964).

# Visitors to the Schools Policies

While parents of students do not themselves have the right to observe their child in the classroom, in the case of a child classified under IDEA, a parents evaluator conducting an Independent Educational Evaluation of the child has the right to observe the child in their educational placement.

- The United States Department of Education Office of Special Education Programs (OSEP) has noted that, although neither the IDEA nor its implementing regulations give parents a general right to observe their children in a district classroom, "there may be circumstances in which access may need to be provided."
- For example, if parents invoke their right to an IEE of their child, and the evaluation requires observing the child in the educational placement, the evaluator may need to be provided access to the placement (*Letter to Mamas*, 41 IDELR 10 [OSEP 2004]; see *Application of a Child with a Disability*, Appeal No. 07-013).

# Public Speaking at Board of Education Meetings

- *Appeal of Martin*, 32 Ed. Dept. Rep. 381, Decision No. 12,861 (1992):  
“Board members are representatives chosen by the people to govern the affairs of a school district and as such have an obligation to keep the residents informed and to provide channels of communication through which residents may express their opinion .... Thus boards of education should encourage to have their residents participate at their meetings...The reason for public participation is to enable board members to understand the concerns of the residents they represent. Since board members represent only the residents of the district, these are the individuals who should be heard. Furthermore, since there is no statutory obligation by boards of education to have public comment, boards cannot be compelled to give non-residents a public forum.” (*Id.* at 383.)

# Public Speaking Rights at Board of Education Meetings

- First Amendment Speech of those entitled to speak.
- Prohibition against content-based discrimination under *Lamb's Chapel v. Center Moriches UFSD*, 508 U.S. 384 (1993).
- Liability in interrupting speech and qualified good faith immunity.
- *Musso v. Hourigan*, 836 F.2d 736 (2d. Cir. 1988).
- Protocols to maintain public control over meetings without violating First Amendment Speech rights and preserving the meeting chair's qualified good faith immunity in the event of a civil rights action under 42 U.S.C. §1983.

# Public Speaking Rights at Board of Education Meetings

## **Excerpt from Modern Board Policy on Public Speaking at Board Meetings:**

- The Board encourages public expression at Board meetings. The Board will designate a specific portion at the beginning of its meeting for public speakers' comments for a period of up to 30 minutes on (a) agenda items only and an additional period of up to 30 minutes shall be provided for public speakers' participation at the end of the meeting for (b) any matter related to the affairs of the District. Each speaker shall be allowed up to three minutes speaking time during the course of a public comment session. In the interest of protecting privacy rights, no student's name shall be mentioned during the public comment session and no employee's name shall be mentioned, regardless of whether the intended comment is one of criticism or praise. Shortly before the beginning of each public comment period, the District Clerk will make an announcement that the sign-up sheet for the period will be collected and anyone wishing to speak should sign-up before the sheet is collected.
- In the event that there is time remaining during the portion of the meeting allocated for speaking on agenda items, by a consensus of the Board, speaking on any matter related to the affairs of the District may be moved up to begin during the portion of the meeting allocated for speaking on agenda items.

# Public Speaking Rights at Board of Education Meetings

## Excerpt from Modern Board Policy on Public Speaking at Board Meetings:

- All speakers shall direct their remarks to the Board of Education from the speaking location designated by the presiding Board officer. If the speaker has a petition or handout, the same shall be presented only to the District Clerk or the clerk *pro tem* of the meeting for distribution to the members of the Board and Superintendent of Schools.
- A speaker whose conduct disrupts the meeting such that the speaker's comments may not be heard by the Board may lead to a brief recess during a public speaking session for the time necessary to restore order to the meeting. A public speaker whose conduct is so disruptive of the meeting that it causes the speaker's inability to continue with their speech during the allotted time will be asked to leave the speaker's location and shall forfeit that person's right to speak at the meeting. If a speaker's words or gestures causes a degree of disruption among the audience of such nature that the business of the Board may no longer be conducted in a safe, orderly, and/or timely manner, the meeting may be adjourned to another date and time.

THE END

QUESTIONS?