



CHIEF PRIVACY OFFICER
(518) 474-0937
E-mail: privacy@nysed.gov

TO: School District Superintendents
BOCES Superintendents
Charter School Leaders
Data Protection Officers

FROM: Louise DeCandia, Chief Privacy Officer

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Directory Information

This memorandum provides general guidance regarding the use of Directory Information as defined in and authorized by the Family Educational Rights Privacy Act (FERPA).¹ Education Law § 2-d does not prohibit schools from using the Directory Information exception under FERPA.

Directory Information is information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance that a school may disclose without parental consent. The release of Directory Information under FERPA is authorized by federal regulations.² An educational agency must comply with these provisions when implementing a Directory Information policy. That section requires that educational agencies notify parents and eligible students of:

- The types of personally identifiable information (PII) the education agency has designated as directory (i.e., name, grade, etc.)
- The right of parents or eligible (i.e., over 18) students to refuse to let the educational agency designate any or all those types of information about the students as directory; and
- How a parent or eligible student can notify the educational agency in writing that they do not want any or all of those types of information about student designated directory.

Educational agencies can also implement a Limited Directory policy in accordance with 34 CFR § 99.37(d). Limited Directory disclosure policies require the

¹ 20 USC § 1232g [see 1232g (a) (5) (A) and (B)]; 34 CFR Part 99 [see 34 CFR Part 99.3 "Directory Information"].

² Disclosure is authorized by 34 CFR 99.31 (a) (11) and is subject to the conditions described in 34 CFR 99.37.

educational agency to allow the agency to limit its directory designation to specific parties, for specific purposes, or both. Any such terms must be reflected in the public notice.

Education Law 2-d compliance

Education Law 2-d does not reference or explain how it relates to FERPA's Directory Information exception. However, the State Education Department's implementing regulations contemplate the continued recognition of Directory Information. Section 121.1(t) of the Commissioner's regulations defines "unauthorized disclosure or unauthorized release" as "any disclosure or release not permitted by federal or State statute or regulation"

Nevertheless, Education Law 2-d imposes additional requirements that educational agencies must consider when disclosing or releasing information—even if the disclosure is authorized by FERPA. When sharing PII, educational agencies must ensure that:

- the release of any information, including Directory Information, will benefit students and the educational agency;³ and
- a student's PII is not being sold or released for any commercial or marketing purpose, defined as the sale of student data or its use or disclosure for purposes of receiving remuneration, whether directly or indirectly, for advertising purposes, or to develop, improve or market products or services to students.⁴

This document is not meant to serve as legal advice from NYSED. Educational agencies should work with their attorneys to ensure that their Directory Information policy complies with FERPA and Education Law § 2-d and that parents and eligible students have notice thereof—including *conspicuous notice on their websites*—and the ability to opt-out if desired. Questions can be sent to privacy@nysed.gov

Additional information on Directory Information can be found here:
<https://studentprivacy.ed.gov/training/b-cs-student-directory-information>
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/A%20parent%20guide%20to%20ferpa_508.pdf
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/An%20Eligible%20Student%20Guide%20to%20FERPA_0.pdf

³ Education Law § 2-d (5) (b); 8 NYCRR 121.5 (c) (1).

⁴ 8 NYCRR 121.2 (a).