

POLICY REGARDING THE PRIVACY OF STUDENT INFORMATION IN THE BOSTON PUBLIC SCHOOLS

The Family Educational Rights and Privacy Act (FERPA) and Massachusetts student records laws mandate the confidentiality of records and other materials that are directly related to a student and that are maintained by an educational agency (“student education records”). The Boston Public Schools (BPS) is legally responsible to respect and protect parents’ and eligible students’ rights to privacy and control of their student education records. BPS is also responsible for ensuring the safety of its students and schools. Boston School Police officers maintain safe learning environments for students and staff through proactive partnerships with the schools they serve. Law enforcement partners play an important role in preserving the safety of school communities by responding to incidents and investigating criminal activity. This policy affirms both the district’s legal obligations with respect to student education records and, subject to those obligations, its commitment to cooperating with law enforcement in its investigation of criminal activity to ensure that our schools are safe places for learning.

The Boston Public Schools will at all times maintain a Superintendent’s Circular that explains state and federal laws concerning the confidentiality and disclosure of student education records, and that direct internal procedures for responding to requests for such records.

Adhering to Federal and State Laws Governing Access to and Disclosure of Student Record Information

FERPA and state law provide that a parent or guardian and an eligible student (defined by state regulations as any student that is 14 or older and/or in grade nine or above), have a legal right to control access to the student’s education record.

These laws generally prohibit school districts from providing third parties, including law enforcement entities, with student education records without the prior written consent of the parent/guardian or eligible student. This prohibition includes an oral disclosure or any written disclosure containing information obtained from a student’s education record. However, the relevant laws also contain exceptions under which BPS may disclose otherwise protected student education records, including (but not limited to): 1) if there is a valid judicial order or lawfully issued subpoena to which BPS is required to comply; 2) if the information requested is “directory level information,” and 3) in a health and safety emergency which meets the definitional standards set forth in law. [FERPA does not apply to information an individual obtains through personal knowledge or observation, even if a student education record exists which contains such information, unless the individual had an official role in making a determination that generated the student education record.](#)

BPS will notify all students and parents of their rights annually by means of the “Guide to the Boston Public Schools for Students & Families.” The Guide will identify the limited types of information that may be legally released without consent. Beginning with the 2020-2021 School Year, “directory level information” shall be limited to the following: student’s name, age, grade level, and dates of enrollment. By September 30 or some other date each year chosen and published by BPS, parents and students shall have a right to inform the school that such information shall not be released without their consent.

The Superintendent shall issue guidance on protocols for applying other exceptions to the consent requirement.

Establishing Clear Internal Protocols to Maintain Consistency and Accountability

In protecting students’ privacy by ensuring that student education records are only disclosed in accordance with law, the importance of maintaining clear internal protocols is paramount and ensures consistency and accountability. BPS will maintain a Superintendent’s Circular that clearly sets forth the district’s legal obligations and internal protocols for sharing student education records with requesters—including students and parents, third parties, and law enforcement entities. In addition, BPS will review its current internal safety procedures to ensure that the number and types of reports and other documentation it generates in response to safety incidents are the minimum necessary to comply with legal obligations and to ensure a safe, secure school community.

Law Enforcement Requests

- Under the law, records of a school district’s “law enforcement unit,”¹ like Boston School Police, are not considered student education records if they are created and maintained by the law enforcement unit for a law enforcement purpose. However, creating and sharing law enforcement unit records with third parties, including the Boston Police Department and the MBTA Transit Police, still requires established protocols to ensure that such records do not contain protected student education information and that they are shared only after review and approval by appropriate individuals. BPS will adhere to the following principles:
- Boston School Police reports, in any form, shall not be generated solely for the purpose of documenting student conduct for school disciplinary purposes.

¹ A “law enforcement unit” is an individual, department or division of a school or district, that is officially authorized or designated by the school to (1) enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law; or (2) to maintain the physical security and safety of the agency or institution. 34 CFR § 99.8(a)(1).

Schools shall use the approved student information system (SIS) for this purpose.

- If a Boston School Police report, in any form, contains information obtained from a student's education record (other than directory level information) or if the report is provided by a Boston School Police officer to a school official for the school's own use, the report will be considered a student education record subject to FERPA and state law. Such report may only be shared under one of the legal exceptions to the consent requirement.

BPS shall develop an internal protocol for approving the disclosure of Boston School Police records to law enforcement entities, including the Boston Police Department School Unit and Transit Police. Such review shall include approval at the Central Office level as determined by the Superintendent. Such process may exempt Central Office review in circumstances under which records are shared: (1) in connection with a health or safety emergency, consistent with law; (2) in connection with incidents which the Boston Police Department has sole jurisdiction to investigate, examples of which include homicide or sexual assault (for which only Boston Police Department officers may complete incident reports); and (3) in connection with reports of suspected abuse or neglect of a child, pursuant to G.L. c. 119, §§ 51A and 51B.

Training

On an annual basis, all BPS employees must complete a training, either online or in person, on the district's obligations under this policy, FERPA and other relevant laws regarding the privacy of student education records. All BPS employees will be required to acknowledge in writing that they have read and understood this policy and the Superintendent's Circular required by this policy.

