

TO: South Kingstown School Committee
FROM: Andrew Henneous, Esq.
DATE: April 26, 2021
RE: FERPA / Directory Information release

I have been asked to provide a legal opinion relative to the release of student names and addresses as allowed by FERPA and South Kingstown School Committee ("Committee") policies. I have attached relevant sections of the two (2) Committee policies below, as well as a FAQ on the issue from the U.S. Department of Education.

The Committee defines "Directory Information" to include student names and address. In doing so, this information may be released without the consent of a parent or eligible student.

However, parents do have the right to "opt out" of this disclosure. As stated in Policy 8220, "Parents and eligible students have the right to prohibit the disclosure of directory information. Directory information is also released to military recruiters in conformance with federal law and institutions of higher education unless requested otherwise by parents. Parents and eligible students will be advised at the beginning of the school year of this right and steps that they must take in order avoid the disclosure of this information."

The District follows this procedure by means of publication of Policy 8220 on their website, as well as various other means (varying between schools¹) such as providing parents and students with an "opt out" forms, references to Committee Policy 8220 in their handbook, or providing the link to Committee policies (including 8225 for student photos and names) generally.² If an eligible student or parent does in fact opt out, that student's directory information should not be provided. If a parent or eligible student does not opt out, they have consented to the release of that information.

¹ It is recommended that a universal, district wide system be implemented consistently in all schools.

² Both practices comply with USDOE guidance that states: "A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including a newsletter, in a local newspaper, or in the student handbook. The school could also include the "directory information" notification as part of the general notification of rights under FERPA. The school does not have to notify a parent or eligible student individually. (34 CFR § 99.37.)"

With regard to Policy 8231, that policy simply restates FERPA guidance and Policy 8220 by requiring consent prior to release. That consent is effectuated at the beginning of each school year if the “opt out” form is not completed and turned in.³ If the will of the Committee is to remove those categories from directory information, Policy 8220 should be amended. If the Committee’s desire is to require a separate and specific consent for certain requests, it should be clearly stated in Policy 8231 and then referenced back in Policy 8220.⁴ **As written, the release of this directory information is supported by federal guidance and Committee policies unless an eligible student or parent has opted out.**

Finally, in this particular instance, a recent mailing from AFL-CIO is what led to the questioning of the process and policy. The District performed a search going back to 2019 and does not have any record of AFL-CIO making such a request. Therefore, although it would have been permissible under current policy, it does not appear that AFL-CIO received the information in question directly from the District.

Policy 8220

Access to Records by Other than Parents

Anyone other than parents, eligible students, and herein authorized personnel of the South Kingstown School Department who wishes to review educational records, or directory information, must make a request to the custodian of the records that is the principal of the school the child attends for school records or the pupil personnel services director for special education records.

The South Kingstown School Department shall disclose information from a student’s educational records only with the written consent of the parent or eligible student, which specifies the records that are to be disclosed, the purpose of the disclosure and the identity of the party, or class of parties, to whom the disclosure may be made. If requested the South Kingstown School Department will provide the parent or eligible student with a copy of the records that have been disclosed. Provided however that the South Kingstown School Department may disclose educational records without the consent of the parent or eligible student in the following circumstances:

1. To school officials who have a legitimate educational interest, as determined by the South Kingstown School Department, in the records when the official is:
 - performing a task or responsibility that is specified in his or her job description, position description or contract agreement;
 - performing a task related to a student’s education;
 - performing a task related to the discipline of a student;

³ This “opt out” form can be completed and turned in at any time during the year as well.

⁴ The Committee is currently undergoing a comprehensive review of all policies and these questions should be discussed and addressed during this process.

- providing a service or benefit to the student and/or the student's family including, but not limited to, health care, parent effectiveness training; counseling, homebound instruction, job placement and financial aid;
 - providing a purchased service, i.e. counseling, evaluation, therapy, consultation, etc.;
 - providing legal representation to the school district.
2. To officials of another school, school system or institution of postsecondary education in which the student is enrolled, or receives services from, seeks or intends to enroll. Unless the request is initiated by the parent or eligible student or the annual notice sent to parents advises them that student records will be sent to a requesting school in which the students seeks or intends to enroll, the South Kingstown School Department will attempt to notify the parent or eligible student of the disclosure and provide the parent or eligible student with a copy of the record that was disclosed. If requested, the parent or eligible student will be given the opportunity to have a hearing on a request to amend the records.
 3. To authorized officials of the U.S. Department of Education, the Comptroller General of the United States, the Attorney General of the United States and state and local education authorities, provided the disclosure is done in conjunction with an audit or evaluation of state-supported or federally supported education programs, or in compliance with federal legal requirements which relate to those programs. Unless the parent or eligible student has given written consent to the disclosure, or the collection of personally identifiable information is specifically authorized by federal law, the information that is provided must be protected in a manner that does not permit personal identification of individuals by anyone but these officials and must be destroyed when no longer needed for these purposes.
 4. In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, the amount of the aid, the conditions for the aid or enforce the terms and conditions of the aid.
 5. To State and local officials or authorities to whom this information is allowed under State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released. Provided that the receiving authority certifies in writing prior to the disclosure that the information will not be disclosed to a third party except with the written consent of the parent, except as required by state law.
 6. To organizations conducting studies for or on behalf of educational agencies or institutions to develop, validate or administer predictive tests (but only if the study does not permit the identification of the of the parents or students by any other than the organization and the information is destroyed when no longer needed for the purposes of the study), administer student aid programs or improve instruction.
 7. To accrediting organizations to carry out their accrediting functions (excluding confidential special education records).
 8. To parents of a dependent student, as defined in § 152 of the Internal Revenue Code of 1986.

9. In compliance with a judicial order or a lawfully issued subpoena, provided that the South Kingstown School Department will make a reasonable effort to advise the parent or eligible student of the order or subpoena so that they may seek protective action. This notification obligation does not apply to certain federal grand jury subpoena and those issued for a law enforcement purposes and the issuing authority has ordered that the existence or contents of the subpoena is not to be disclosed.

10. The disclosure is in connection with a health or safety emergency and the disclosure is necessary to protect the health or safety of the student or other individuals

11. The disclosure of directory information, which consists of the following:

- o Name
- o Participation in recognized activities/sports
- o Address, telephone, and email
- o Weight and height for athletic team members
- o Photograph
- o Degrees, honors, and awards
- o Date and place of birth
- o Dates of attendance and grade level

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12. To the parent of a student who is not an eligible student or to the student.

Policy 8231

D. Confidentiality of Records

In accordance with the Federal Educational Rights and Privacy Act (FERPA) and Committee Policy No. 8220 (Student Confidentiality), school administrators shall ensure that student records are only accessible by school officials for legitimate educational reasons.

If a non-school official seeks access to any student records, the District shall first obtain consent from a parent or guardian of the student prior to disclosure of any student records. This includes the following categories of information identified in Policy No. 8220 as directory information:

- Address, telephone, and email;
- Date and place of birth;
- Dates of attendance and grade level.

The Dept. of Ed. FPCO FAQ states:

5. What is "Directory Information"?

FERPA defines "directory information" as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, "directory information" includes information such as name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including a newsletter, in a local newspaper, or in the student handbook. The school could also include the "directory information" notification as part of the general notification of rights under FERPA. The school does not have to notify a parent or eligible student individually. (34 CFR § 99.37.)