

MEMORANDUM

To: Charter School Board Chairs, Principals and Operations Leaders

From: Ralph Rossi, Executive Deputy Director and General Counsel,
SUNY Charter Schools Institute

Date: May 28, 2019

Re: FERPA Reminder

While the Charter Schools Institute updates its current guidance on the *Confidentiality of Student Records* (available at <http://www.newyorkcharters.org/confidentiality-student-records/>), the Institute would like to remind schools of their basic obligations under the Family Educational Rights and Privacy Act (known as “FERPA”) (20 U.S.C. § 1232g) and the privacy provisions of the Individuals with Disabilities Education Act (known as the “IDEA”) (20 U.S.C. § 1417(c)) (which incorporates FERPA privacy protections).

- Absent parent consent, schools cannot release education records or personally identifiable information (“PII”) in education records to the press or any third party, unless the third party is covered by an exception to FERPA.¹
 - FERPA does not contain an exception to school non-disclosure in cases where parents make PII public even if the parents are using PII against the school in a complaint or lawsuit.
- Schools must provide parents access to their students’ education records either to inspect them or ask for copies.²
- Schools must also provide parents the opportunity to challenge the content of education records, and provide a hearing process to do so if the parents believe the school’s records are inaccurate, misleading or violate the student’s privacy rights.³

Schools that violate FERPA risk losing federal funding for federal programs such as Title I and IDEA Part B.⁴

The FERPA regulations, 34 C.F.R. Part 99, which are written in a FAQ format, provide more information on these and other topics, and are available on the U.S. Department of Education’s website at: <https://studentprivacy.ed.gov/node/548/>. Remember that federal law treats charter schools as their

¹ 20 U.S.C. § 1232g(b)(1), (2).

² *Id.* at § 1232g(a)(1)(A).

³ *Id.* at § 1232g(a)(2).

⁴ *Id.* at § 1232g(b)(1), (2).

own Local Educational Agencies (LEAs) for purposes of FERPA. Other useful resources for schools include:

- USDOE Cover Letter to Annual Notices
(https://studentprivacy.ed.gov/sites/default/files/resource_document/file/cover-letter.pdf);
- FERPA Notice to Superintendents
(https://studentprivacy.ed.gov/sites/default/files/resource_document/file/superint-notice.pdf);
and,
- FAQs – Disclosure Avoidance
(https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FAQs_disclosure_avoidance_0.pdf).

As always, please contact any member of the Institute’s Counsel’s Office with any questions.