



Regulation of the Chancellor

Number: **A-820**

Subject: **CONFIDENTIALITY, RETENTION, AND DISCLOSURE OF STUDENT RECORDS AND PERSONALLY IDENTIFIABLE INFORMATION**

Category: **STUDENTS**

Issued: **May 28, 2025**

SUMMARY OF CHANGES

This regulation supersedes Chancellor's Regulation A-820 dated June 29, 2009.

The regulation has been revised to conform to amendments to federal regulations under the Family Educational Rights and Privacy Act (FERPA), the enactment of New York Education Law § 2-d and its implementing regulations, 8 N.Y.C.R.R. Part 121 (Ed Law 2-d), and the Protection of Pupil Rights Amendment, (20 U.S.C. 1232h and its implementing regulations at 34 C.F.R. Part 98). The regulation has been reorganized for clarity and ease of understanding.

The attachments to the regulation have been replaced with hyperlinks.

The substance of the regulation has been modified as follows:

Title:

- Renames regulation from "Confidentiality and Release of Student Records; Records Retention" to "Confidentiality, Retention, and Disclosure of Student Records and Personally Identifiable Information."

Section II (formerly Section III):

- Revises definitions of Disclosure, Education Records, Parent, Personally Identifiable Information (PII), Record, and Student;
- Adds definitions of Authorized Third Party, Breach, Directory Information, School Official, and Student Personally Identifiable Information (Student PII);

Section III (new):

- Clarifies responsibilities of School Officials, including:
 - Prohibits the use of PII for commercial or marketing purposes,
 - Requires encryption of external transmissions of PII,
 - Minimizes the collection of PII, and
 - Requires training on the relevant privacy laws and regulations.

Section IV (formerly Sections II and VII):

- Codifies rights of Parents and Students, including:
 - The right to be notified of a Breach,
 - The right to opt out of certain surveys,
 - The right to have PII safeguarded from being sold or used for any commercial or marketing purpose,
 - The right to have safeguards in place to protect Student PII when it is stored or transferred, and for such safeguards to meet industry standards and best practices, and
 - The right to receive notice of rights under FERPA, Ed Law 2-d, and the Protection of Pupil Rights Amendment (PPRA).
- Clarifies that Parents, including Parents of Students in foster care, retain the rights enumerated in Section IV.A unless a court order, State statute, or other legally binding document specifically states otherwise.

Section V (formerly Section IV):

- Clarifies procedures for fulfilling requests for Education Records;
- Clarifies procedures for fulfilling requests for Education Records that contain Student PII for multiple Students;
- Modifies procedures for fulfilling requests by Restricted Parents (formerly Non-Custodial Parents) for Education Records;
- Removes provision entitling schools and offices to charge a fee for copies of Education Records;
- Incorporates procedures for former Students to request access to Education Records (formerly Section IX);

Section VI (formerly Section V):

- Clarifies procedures for requesting changes to Education Records;
- Replaces description of procedures for appealing decisions relating to changing Education Records with hyperlink to DOE webpage describing such procedures;

Section VII (formerly Section IV):

- Clarifies requirements for obtaining consent to Disclose Student PII;

Section VIII (formerly Sections IV and VI):

- Clarifies permissions for Disclosing PII with neither consent nor a written agreement;
- Clarifies when DOE employees have legitimate educational interests;

- Incorporates Disclosure of PII to other schools or educational institutions for enrollment purposes (formerly Section VI);
- Removes obsolete reference to DOE's Achievement and Reporting Innovation System (ARIS);
- Adds FERPA exception permitting Disclosure of Student PII to the court in legal actions between the DOE and a Parent or Student;
- Clarifies that suspected cases of child abuse and maltreatment may be reported to appropriate parties as a health and safety emergency, consistent with [Chancellor's Regulation A-750](#);
- Adds procedures for designating and Disclosing PII as Directory Information within the school community;
- Adds procedures for designating and Disclosing PII as Directory Information to outside the school community;
- Adds provision allowing Disclosure of Education Records pursuant to the Uninterrupted Scholars Act;
- Incorporates reference to [Chancellor's Regulation A-825](#) into provision concerning right to opt out of Disclosure of Student PII to military recruiters;
- Clarifies that notice to a Parent in advance of disclosing Education Records in accordance with a judicial order or subpoena is not required where a Parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding.

Section IX (new)

- Adds procedures for Disclosures of PII that require a written agreement, pursuant to Ed Law 2-d;
- Adds potential ramifications for Authorized Third Parties that fail to comply with this regulation or their written agreements with the DOE;

Section XII (new)

- Adds procedures for providing notifications of unauthorized Disclosures of PII, pursuant to Ed Law 2-d;

Section XIII (new)

- Adds rights of Parents and Eligible Students under the PPRA;

Section XIV (new)

- Clarifies procedures for external organizations conducting studies on behalf of DOE;

Section XV (formerly Section VIII)

- Clarifies Record retention and destruction obligations pursuant to Ed Law 2-d and the Retention and Disposition Schedule for New York Local Government Records (known as LGS-1);

Section XVI (formerly Section II):

- Adds contact information for filing complaints with the DOE, the New York State Education Department, and the United States Department of Education;
- Includes DOE's obligation to respond to such complaints within a certain time frame;

Section XVII (formerly Section X):

- Updates contact information for inquiries pertaining to this regulation.



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ABSTRACT

This regulation addresses the confidentiality, retention, and Disclosure of Student Records and Personally Identifiable Information. It supersedes Chancellor's Regulation A-820, Confidentiality and Release of Education Records; Records Retention, dated June 29, 2009.

I. Scope

- A. This regulation incorporates pertinent provisions of (i) the Family Educational Rights and Privacy Act (20 U.S.C. 1232g and its implementing regulations at 34 C.F.R. Part 99, FERPA); (ii) New York Education Law § 2-d and its implementing regulations at 8 N.Y.C.R.R. Part 121 (Ed Law 2-d), (iii) the Protection of Pupil Rights Amendment, (20 U.S.C. 1232h and its implementing regulations at 34 C.F.R. Part 98); and (iv) other relevant laws and regulations.
- B. This regulation applies to all New York City Department of Education (DOE) employees and Authorized Third Parties who receive, have access to, or generate Personally Identifiable Information (PII) on behalf of the DOE.

II. Definitions (listed in alphabetical order)

- A. **Authorized Third Party** means any person or entity, other than a DOE employee, who:
 - 1. functions as a School Official of the DOE; or
 - 2. is conducting a study for or on behalf of the DOE; or
 - 3. is acting as an authorized representative of the DOE in connection with an audit or evaluation of federal or state supported education programs, as defined in FERPA, or for the enforcement of or compliance with the federal legal requirements relating to education programs.
- B. **Biometric Record**, as used in the definition of Student PII, means a Record of one or more measurable biological or behavioral characteristics that can be used for

automated recognition of an individual. Examples include fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics, and handwriting.

- C. **Breach** means the unauthorized acquisition, access, use, or Disclosure of PII by or to a person not authorized to acquire, access, use, or receive the PII.
- D. **Directory Information** means Student PII that has been properly designated as Directory Information in accordance with Section VIII.F of this regulation.
- E. **Disclose** or **Disclosure** means to permit access to, release, transfer, or otherwise communicate PII by any means, including oral, written, or electronic, whether intended or unintended.
- F. **Education Records** means Records that are directly related to a Student and maintained by the DOE or an Authorized Third Party.
 - 1. Education Records include, but are not limited to:
 - a) permanent and other academic-related Records (e.g., the cumulative Record and/or transcript, attendance Records, Individualized Education Programs (IEPs), Records stored in Student information systems);
 - b) Student health and treatment Records;
 - c) incident reports and disciplinary Records;
 - d) Records maintained by guidance personnel and other staff providing Student support services (e.g., Records of guidance intervention, interview notes);
 - e) anecdotal Records (e.g., teacher referrals to the dean, dean's log of follow-up action taken);
 - f) photographs and yearbooks; and
 - g) Records relating to school-sponsored work programs.
 - 2. Records not considered Education Records include:
 - a) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the Record.
 - b) Records on Eligible Students that are: (i) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional capacity or assisting in a paraprofessional capacity; (ii) made, maintained, or used solely in connection with treatment of the Eligible Student; and (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction of the agency/institution.

- c) Records maintained by New York City Department of Health and Mental Hygiene personnel in the schools are also not considered Education Records. They are medical Records subject to their own confidentiality requirements.
 - d) Records created or received after an individual is no longer a Student in attendance and that are not directly related to the individual's attendance as a Student.
 - e) Grades on peer-graded papers before they are collected and recorded by a teacher.
- G. **Eligible Student** means a Student who has reached 18 years of age, even if they are unemancipated or are attending an institution of post-secondary education.
- H. **Parent** refers to the child's parent or guardian or any person in a parental or custodial relationship to the child. This includes birth or adoptive parents, step-parents, legally-appointed guardians, foster parents, and Persons in Parental Relation to a child attending school.
 - 1. **Person in Parental Relation** refers to a person who has assumed the care of a child because the child's parents or guardians are not available, whether due to, among other things, death, imprisonment, mental illness, living outside the state, or abandonment of the child.
 - 2. **Restricted Parent** means (i) a Parent who, according to DOE Records, has had their access to the child or the child's Education Records restricted by a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody; or (ii) an individual who asserts that they are a Parent but who is not identified as a Parent in DOE Records.
- I. **Personally Identifiable Information or PII** includes (i) Student PII, and (ii) identifiable annual professional performance review (APPR) data of school principals and teachers.
- J. **Record** means any information recorded in any way, including but not limited to, handwriting, print, electronic or digital media, videotape, audiotape, film, and audio or video files.
- K. **School Official** means:
 - 1. a DOE employee, or
 - 2. an Authorized Third Party that is providing an institutional service or function for the DOE and who, in order to provide the service of function, either:
 - a) receives, stores or has access to Education Records or PII, or
 - b) generates Education Records or PII on behalf of DOE.
- L. **Student** means any individual who is seeking to enroll in, attends, or has attended a DOE school or educational program.

M. **Student Personally Identifiable Information** or **Student PII** includes, but is not limited to:

1. the name of the Student;
2. the name of the Student's Parent or other family members;
3. contact information for the Student or Student's family, including but not limited to name, address, email address or telephone number;
4. a personal identifier, such as the Student's identification number, Social Security number, or Biometric Record;
5. other indirect identifiers, such as the Student's date and place of birth;
6. other information, such as school name, grade or class, that, alone or in combination, 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; or
7. information requested by a person who DOE reasonably believes knows the identity of the Student to whom the information relates.

III. **Responsibilities of School Officials**

- A. Keep Education Records and PII confidential. School Officials shall not Disclose or re-Disclose Education Records or PII to any person, organization, agency or other entity in any manner **unless** one of the following three situations applies:
 1. the Parent or Eligible Student has provided consent in accordance with Section VII of this regulation;
 2. the Education Records have been completely de-identified through the redaction or removal of all Student PII; or
 3. a provision of law permits the Disclosure without consent (including but not limited to those found in Sections VIII and IX of this regulation).
- B. Honor the rights of Parents and Eligible Students under this regulation as set forth in Section IV of this regulation.
- C. Comply with legal, regulatory, and New York City Department of Education Institutional Review Board (NYC DOE IRB) requirements governing the collection, retention, dissemination, protection, and destruction of PII.
- D. Safeguard PII from unauthorized use or Disclosure.
 1. Collect and Disclose PII only as necessary to achieve educational purposes or as permitted by law.
 2. Ensure every use and Disclosure of PII benefits the DOE and Students.
 3. Protect PII when it is stored or transferred by using encryption, firewalls and password protection, and ensure such safeguards meet industry standards and best

- practices, including the National Institute for Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity Version 2.0, or any successor thereto;
4. Encrypt any electronic transmissions of PII, including email communications, to external parties.
 5. Minimize the collection, processing and transmission of PII.
 6. Prohibit the use of PII for commercial or marketing purposes, including the sale of student data, or its use or disclosure, whether directly or indirectly, to derive a profit, for advertising purposes or to develop, improve or market products or services to students.
 7. Ensure that Authorized Third Parties do not maintain PII when it is no longer needed for the purpose for which they received it.
- E. Undergo training in data security and privacy legal requirements and responsibilities.
1. All DOE employees must complete training in their data privacy and security responsibilities on an annual basis. Supervisors are responsible for ensuring their staff members complete their annual data privacy and security training.
 2. Authorized Third Parties that access PII must undergo data privacy and security training prior to receiving such access.
- F. Promptly notify DOE at studentprivacy@schools.nyc.gov in the event of a privacy complaint or Breach so that DOE may investigate and follow up as appropriate.

IV. Rights of Parents and Eligible Students Under This Regulation

- A. Parents and Eligible Students possess the following rights which DOE employees and, as applicable, Authorized Third Parties, must honor:
1. To inspect, review or obtain copies of the Student's Education Records maintained by the school(s) a Student attends or has attended (see Section V of this regulation).
 2. To challenge and request that the school amend any portion of the Student's Education Records that is inaccurate, misleading, or otherwise in violation of the Student's privacy rights (see Section VI of this regulation).
 3. To require the DOE to obtain written consent prior to the Disclosure of Student PII, except in those instances specifically permitted under this regulation or otherwise by law (see Sections VII, VIII, and IX of this regulation).
 4. To have Student PII safeguarded from being sold or used for any marketing or commercial purpose.
 5. To have safeguards in place to protect Student PII when it is stored or transferred, and for such safeguards to meet industry standards and best practices.
 6. To be notified of any Breach or unauthorized Disclosure of Student PII (see Section XII of this regulation).

7. To consent to, opt out of, and inspect certain Student surveys and other materials (see Section XIII of this regulation).
8. To file a complaint alleging a denial of rights under FERPA with the United States Department of Education and to file complaints about possible Breaches and misuse of Student data with the New York State Education Department and DOE (see Section XVI of this regulation).
9. To be notified annually of the rights granted by FERPA and PPRA.

B. Transfer of Rights

1. Parents hold the rights listed above until the Student turns age 18. When a Student turns age 18, the Student becomes an Eligible Student, and all rights transfer from the Parent(s) to the Eligible Student.
2. The school may provide the Eligible Student with a waiver which provides that, so long as the Eligible Student continues to attend the school, the Eligible Student authorizes their Parents to exercise all the rights defined in this regulation. A [sample waiver notice](#) is available on the DOE [Data Privacy and Security Policies](#) webpage.

C. Notice of Rights

1. The DOE notifies Parents and Eligible Students annually of their rights regarding Student privacy through the dissemination of the [Annual FERPA Notification](#), the [Parents' Bill of Rights for Data Privacy and Security](#) (PBOR), and the [Annual Protection of Pupil Rights Amendment \(PPRA\) Notification](#).
2. The DOE publishes the [supplemental questionnaires](#) to the PBOR completed by Authorized Third Parties that receive PII pursuant to a written agreement.

- D. Parents, including Parents of Students in foster care, retain the rights enumerated in Section IV.A unless a court order, State statute, or other legally binding document specifically states otherwise.

V. Right to Inspect and Review Education Records

A. Access to Education Records by Parents and Eligible Students

1. When a Parent or Eligible Student, including a former Student, asks to inspect or review their child's or their own Education Records (including Education Records held by Authorized Third Parties), they shall be provided an expeditious opportunity to do so. A written request is not required.
2. The identity of any Parent or Eligible Student requesting access to Education Records must be promptly authenticated using reasonable methods, such as requesting a copy of a government-issued photo identification, before access is granted.
3. Access to the Education Records shall be provided within a reasonable period of time but not more than forty-five (45) calendar days from receipt of the request or

authentication of the requestor's identity, whichever is later, regardless of whether schools are closed, including during summer recess.

4. School Officials shall respond to reasonable requests for explanations and interpretations of Education Records from Parents or Eligible Students within a reasonable period of time.
5. Parents and Eligible Students may also request copies of Education Records.
 - a) The DOE school or office may only provide a copy of the requested Records. Original Education Records shall be retained in accordance with Record retention obligations (see Section XV).
 - b) If the requested Education Records also contain PII for other Students, the PII of the other Students must be removed or redacted before copies of the Education Record are Disclosed.
 - c) Parents or Eligible Students are entitled to copies of Education Records unless circumstances effectively prevent the Parent or Eligible Student from receiving a copy of the requested Education Records, including circumstances preventing the redaction of PII of other Students from the Education Records. The Record custodian must then provide the Parent or Eligible Student an opportunity to inspect and review the Education Records on site.

B. Access to Education Records by Restricted Parents

1. Upon receipt of a request for Education Records from a Restricted Parent, the DOE school or office must promptly notify the Parent with whom the Student resides (the "custodial Parent") of the request. A [sample notice](#) is available on the DOE [Data Privacy and Security Policies](#) webpage.
 - a) The notice to the custodial Parent must include the name of the person making the request and the date the request was received.
 - b) The notice shall request that the custodial Parent verify the existence of a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes or limits the rights of the Restricted Parent.
 - c) The DOE school or office must fulfill the request from the Restricted Parent in accordance with the procedures described above in Section V.A. within forty-five (45) days unless otherwise prohibited or limited by a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes or limits the rights of the Restricted Parent.
2. The Restricted Parent must be promptly notified after the request is received that the custodial Parent has an opportunity to provide the DOE with evidence of a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes or limits the rights of the Restricted

Parent. During this period, Education Records and Student PII may not be Disclosed to the Restricted Parent.

3. If the DOE school or office reasonably believes that the Disclosure of the requested Education Records could endanger the safety of the Student or a family member, the recipient shall immediately contact Senior Field Counsel or the Office of General Counsel and shall not Disclose the requested Records until such consultation is made.

VI. Right to Request Changes to Education Records

- A. If a Parent or Eligible Student believes the Education Records relating to the Student contain information that is inaccurate, misleading, or in violation of the Student's right of privacy, they may ask that the Education Record be amended. Requests to amend Education Records should be directed to the school, office, or Committee on Special Education (CSE) where the Education Records are maintained. The Parent or Eligible Student should complete a written request that contains the following information:
 1. the information that is claimed to be inaccurate, misleading, or in violation of the Student's privacy rights;
 2. the Education Records in which the Parent or Eligible Student believes the information is contained;
 3. the basis for the claim (i.e., why they believe the information is inaccurate, misleading, etc.); and
 4. the Parent or Eligible Student's proposed change.
- B. The Chairperson, office director, or principal/designee will review the request and make a determination within fifteen (15) school days of receiving it. They may modify or expunge the entry from the Student's Education Records if such action is warranted. Removing, modifying, or expunging an entry is not an admission that the entry was improper or that any person acted improperly by including the entry on the Education Record.
- C. The reviewer shall provide the Parent or Eligible Student with a written response to the request. If the reviewer denies the request in whole or in part, their written determination shall include an explanation of their decision and notice of the Parent or Eligible Student's right to appeal the decision and request a hearing. The appeals process is detailed on the DOE's [Data Privacy and Security Policies](#) webpage.

VII. Right to Provide Written Consent Prior to Disclosure of Education Records

- A. Parents and Eligible Students generally have the right to consent to the Disclosure of Education Records and Student PII. To be valid, consent must:
 1. be in writing;
 2. be signed and dated;

3. specify the Education Records, types of Education Records, or Student PII that may be Disclosed;
 4. state the purpose of the Disclosure; and
 5. identify the party or class of parties to whom the Disclosure may be made.
- B. Consent may be in electronic format if it identifies and authenticates the Parent or Eligible Student as the source of the electronic consent.
- C. Sample consent forms are available on the [Data Privacy and Security Policies](#) webpage. However, DOE employees may honor consent provided in any written format, including electronic or digital consent, provided it meets the requirements in Section VII.A.
- D. Advocates and attorneys representing Students or Parents do not have the right to access Education Records and cannot consent to Disclosure on behalf of the Parent or Eligible Student. Education Records may not be Disclosed to advocates and attorneys without written consent from the Parent or Eligible Student.

VIII. Disclosures Permitted Without Consent That Do Not Require a Written Agreement

- A. Disclosures to DOE employees with a legitimate educational interest
1. Legitimate Educational Interest
 - a) A legitimate educational interest exists if a DOE employee needs to know or access Student PII to perform their professional responsibilities. Indiscriminate access to Education Records and Student PII by DOE employees is prohibited.
 - b) Whether a DOE employee needs to know or access PII to perform their professional responsibilities is to be determined by the school principal or head of office.
 2. The following individuals are **not** DOE employees for the purposes of this section:
 - a) School Safety Agents and NYPD;
 - b) Members or officers of parent associations or parent-teacher associations;
 - c) Student helpers and family/community volunteers;
 - d) Union officials, except for specifically designated UFT special education liaisons; and
 - e) Other third parties, including but not limited to elected officials, Panel for Educational Policy members and Citywide and Community Education Council members.
 3. Reasonable methods must be used to ensure that DOE employees only have access to Student PII in which they have legitimate educational interests. Such methods may include, but are not limited to, the use of encryption, passwords, and permission settings. If physical or technological access controls are not used, effective administrative policies must be established for controlling access to

education records and compliance with the legitimate educational interest requirement of this section must remain in place.

- B. Disclosures to other schools or educational institutions for purposes related to the Student's intended or actual enrollment or transfer.
- C. Disclosures pursuant to judicial orders or lawfully issued subpoenas. Prior to any Disclosure, the Parent or Eligible Student shall be notified in writing of the subpoena or judicial order to give the Parent or Eligible Student a reasonable opportunity to contest the subpoena or judicial order or seek protection action unless the contents of the subpoena or judicial order are ordered not to be Disclosed. When a Parent is a party to a court proceeding involving child abuse and neglect or dependency matters, and the order is issued in the context of that proceeding, notice to the Parent is not required.
- D. Disclosures to the court in a legal action between the DOE and a Parent or Student where the Student's PII is relevant for the DOE to defend itself or to proceed with legal action against the Parent or Student.
- E. Disclosures pursuant to a health or safety emergency
 - 1. DOE employees may Disclose Student PII to appropriate parties if a health and safety emergency exists and Disclosure of Student PII is necessary to protect the health or safety of the Student or other individuals. A health or safety emergency is a situation which presents imminent danger or which requires the immediate need for information in order to avert or diffuse an articulable and significant threat, such as an active investigation of a violent crime including, but not limited to, homicide, arson, robbery, sex offenses, weapons possession, or assault where there are reasonable grounds to believe that a current or former Student is a suspect or has information concerning the investigation that is necessary to protect the health or safety of one or more Students or others. Questions about whether a health and safety emergency exists should be directed to Senior Field Counsel.
 - 2. DOE employees may Disclose Student PII to appropriate parties where necessary to report suspected cases of child abuse or maltreatment pursuant to [Chancellor's Regulation A-750](#).
- F. Disclosure of Directory Information
 - 1. Disclosures of Directory Information Within the School Community
 - a) In accordance with Section VIII.F.3 below, DOE schools and offices may designate and Disclose Student PII as Directory Information as follows:
 - (1) DOE schools and offices may designate only the following Student PII as Directory Information: name; age; grade level; schools attended; dates of enrollment; images of the Student; information about the Student's participation in school sports and activities; and honors, awards, or other prizes received by the Student.

- (2) DOE schools and offices may only designate Student PII as Directory Information for the following purposes:
 - i. use in school publications such as yearbooks, playbills, graduation programs, sports team rosters, and school newspapers; and
 - ii. announcements about Student achievements such as honor rolls or awards.
 - b) DOE schools and offices may only Disclose Directory Information pursuant to this section to members of the school community, which includes DOE staff, other Parents and Students, and guests at school or DOE events.
2. Disclosures of Directory Information Outside the School Community
 - a) In accordance with Section VIII.F.3 below, Student PII may be designated as Directory Information and Disclosed outside the school community subject to the following limitations:
 - (1) Any Student PII that could be considered sensitive or cause a violation of privacy upon release shall not be designated as Directory Information. This includes, but is not limited to, Social Security numbers; Student identification numbers (such as OSIS numbers); grades; test and exam scores; daily attendance; race, ethnicity, or other demographic information; special education status; multilingual learner status; and disciplinary history.
 - (2) DOE must enter into a written agreement with the party receiving the Directory Information. The written agreement must include data privacy and security terms requiring recipient of Directory Information to keep the Directory Information confidential and secure in accordance with FERPA, Education Law 2-d, and this regulation.
 - (3) The designation and Disclosure of Directory Information must be approved by the DOE's Chief Privacy Officer.
 - b) Notice of the designation and Disclosure of Directory Information must be publicly posted on the DOE website.
3. Designation of Directory Information
 - a) To designate Student PII as Directory Information, Parents and Eligible Students (including former Students where applicable) must be provided with a Directory Information notice that includes:
 - (1) The types of Student PII to be designated as Directory Information;
 - (2) The right of Parents and Eligible Students to opt out of having their Student PII designated as Directory Information;
 - (3) The recipient of the Directory Information;

- (4) The specific and exclusive purposes for which the Directory Information will be Disclosed; and
 - (5) The deadline for Parents and Eligible Students to opt out of having their Student PII designated as Directory Information.
 - b) The Directory Information notice must be written and distributed in a manner reasonably likely to be seen by the Parent or Eligible Student.
 - c) Parents and Eligible Students shall be provided a minimum of thirty (30) calendar days from the date of the notice to opt out of having their Student PII designated as Directory Information. Students who enroll in a DOE school after the initial notice period must also be provided notice and be granted a minimum of thirty (30) calendar days to opt out of having their Student PII designated as Directory Information.
 - d) Upon completion of the notice and opt-out process, the designated Student PII for Parents and Eligible Students who have not opted out shall be deemed Directory Information and may be Disclosed without consent to the recipients and for the purpose identified in the Directory Information notice.
 - e) DOE schools and offices must honor requests from Students and Parents to opt out, including requests received after the initial notice and opt-out period.
- G. Disclosures to authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the Secretary of Education of the United States; or New York State educational authorities, including the New York State Education Department. Disclosures to the above authorized representatives may only be made in connection with an audit or evaluation of federal or state supported education programs, as defined in FERPA, or for the enforcement of or compliance with the federal legal requirements relating to education programs.
- H. Pursuant to the Uninterrupted Scholars Act, schools may Disclose Education Records without consent of the Parent or Eligible Student to foster care agency staff or other representatives of the state or local child welfare agency who have access to a Student's case plan while the Student is in the care or protection of that agency.
- I. In accordance with § 9528 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (P.L. No. 107-110), schools must give military recruiters the names, addresses, and telephone numbers of secondary school Students if such information is requested. However, Parents and Eligible Students may opt out and request that such information not be Disclosed to military recruiters without their written consent pursuant to [Chancellor's Regulation A-825](#).
- J. Other Disclosures authorized by law.

IX. Disclosures Permitted Without Consent That Require a Written Agreement

- A. DOE may Disclose PII without consent to the following Authorized Third Parties upon entering into written agreements:

1. Authorized Third Parties who function as School Officials while performing specified services. An Authorized Third Party may be considered a School Official if it:
 - a) performs an institutional service or function for which the DOE would otherwise use employees;
 - b) is under the direct control of the DOE with respect to the use and maintenance of the PII it receives as set forth in the written agreement;
 - c) is subject to the requirements of Sections III and XI of this regulation governing the use and re-Disclosure of PII; and
 - d) completes the [DOE's Data Privacy and Security Compliance Process for Third-Party Vendors](#).
 2. Organizations conducting studies for or on behalf of the DOE
 - a) The study must be limited to one or more of the following purposes:
 - (1) to develop, validate, or administer predictive tests;
 - (2) to administer Student aid programs; or
 - (3) to improve instruction.
 - b) The term "organization" as used in this section includes, but is not limited to, federal, state and local agencies, and independent organizations.
 - c) DOE employees working outside their official responsibilities, such as conducting research for a degree program, may not use or access PII for research purposes without a written agreement.
 3. Authorized representatives of the DOE in connection with an audit or evaluation of federal or state supported education programs, as defined in FERPA, or for the enforcement of or compliance with the federal legal requirements relating to education programs.
- B. All Authorized Third Parties that access PII shall comply with the DOE's [Data Privacy and Security Policies](#).
- C. Written agreements with Authorized Third Parties accessing PII shall include the following:
1. Data privacy and security terms requiring Authorized Third Parties to keep PII confidential and secure in accordance with FERPA, Education Law 2-d, and this regulation;
 2. A data security and privacy plan that outlines how the Authorized Third Party will safeguard PII;
 3. Additional information security requirements as deemed appropriate by the DOE's Chief Information Officer and Chief Information Security Officer, or their designee(s).

4. A copy of the [DOE's Parents' Bill of Rights for Data Privacy and Security \(PBOR\)](#); and
 5. A completed Supplemental Information Questionnaire, which shall be posted on the [DOE website](#).
- D. Authorized Third Parties that fail to comply with this regulation or their written agreements with DOE may be subject to the following:
1. Suspension or termination of access to DOE data;
 2. Legal damages and/or injunctions;
 3. Civil and/or criminal penalties under New York State and Federal law; and/or
 4. Disqualification from bidding on any contract with DOE that involves sharing PII, as set forth in New York State law.

X. Recording of Requests for Access and Disclosures

- A. A Record of each request for access and each Disclosure of Student PII must be maintained, as well as the names of state and local educational authorities and federal officials and agencies listed in Section VIII.G of this regulation that may make further Disclosures of Student PII without consent under Section XI.
- B. The Record must be maintained with the Education Records of the Student as long as the Records are maintained.
- C. For each request or Disclosure for which a Record must be maintained, the Record must include:
1. the parties who have requested or obtained Student PII;
 2. the legitimate educational interest the parties had in requesting or obtaining the Student PII; and
 3. the Student PII actually Disclosed.
- D. A copy of the Record of further Disclosures maintained under Section X.H of this regulation must be obtained and made available in response to a Parent's or Eligible Student's request to review the Record required under Section X.A of this regulation.
- E. The following information must be recorded when Disclosing Student PII under the health or safety emergency exception in Section VIII.E of this regulation:
1. the articulable and significant threat to the health or safety of a Student or other individuals that formed the basis for the Disclosure; and
 2. the parties to whom the Student PII was Disclosed.
- F. Sections X.A through E of this regulation do not apply if the request was from, or the Disclosure was to:
1. the Parent or Eligible Student;
 2. a School Official;

3. a party with consent from the Parent or Eligible Student; or
4. a party seeking or receiving the Records in accordance with:
 - a) a Federal Grand Jury or other law enforcement subpoena and the issuing court/agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
 - b) an Ex Parte Court Order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.
- G. Except as provided in Section X.H of this regulation, if the DOE Discloses Student PII with the understanding authorized under Section XI of this regulation, the Record of the Disclosure required under this section must include:
 1. the names of the additional parties to which the receiving party may Disclose the Student PII on behalf of the DOE; and
 2. the legitimate educational interests which each of the additional parties has in requesting or obtaining the Student PII.
- H. A state or local educational authority or federal official or agency listed in Section VIII.G of this regulation that makes further Disclosures of Student PII under Section XI of this regulation must record the names of the additional parties to which it Discloses Student PII on behalf of the DOE and their legitimate educational interests in the Student PII, if the Student PII was received from:
 1. an educational agency or institution (e.g., the DOE) that has not recorded further Disclosures; or
 2. another state or local educational authority, or federal official or agency listed in Section VIII.G of this regulation.
- I. A State or local educational authority or Federal official or agency that records further Disclosures of Student PII under this Section X.H may maintain the Record by the Student's class, school, district, or other appropriate grouping rather than by the name of the Student.
- J. Upon request of the DOE, such officials and agencies that maintain a Record of further Disclosures must provide a copy of the Record of further Disclosures to the DOE within a reasonable period of time not to exceed 30 days.

XI. Redisclosures of Student PII

- A. Student PII may be Disclosed only on the condition that the party to whom the Student PII is Disclosed will not Disclose the Student PII to any other party without the prior consent of the Parent or Eligible Student. The officers, employees, and agents of a party that receive information under this Section XI.A of this regulation may use the Student PII, but only for the purposes for which the Disclosure was made.

- B. Section XI.A of this regulation does not prevent the DOE from Disclosing Student PII with the understanding that the party receiving the Student PII may make further Disclosures of the information on behalf of the DOE if:
1. Disclosure of Student PII without consent is otherwise permitted; and
 2. The DOE has complied with the requirements of this regulation; or a party that receives a court order or lawfully issued subpoena and re-Discloses Student PII on behalf of the DOE in response to that order or subpoena under Section VIII.C of this regulation must provide the notification required under Section VIII.C of this regulation.

XII. The Right to Be Notified of Breaches and Unauthorized Disclosures of PII

- A. Parents, Eligible Students, and employees shall be notified of a Breach or unauthorized Disclosure of PII in the most expedient way possible and without unreasonable delay, but no more than sixty (60) calendar days after the DOE discovers the Breach or unauthorized release, unless such notification would interfere with an ongoing investigation by law enforcement or cause further Disclosure of PII by Disclosing an ongoing security vulnerability. Where notification is delayed under these circumstances, the DOE shall notify affected Parents, Eligible Students, and employees within seven (7) calendar days after the security vulnerability has been remedied or the risk of interference with the law enforcement investigation ends.
- B. Notifications required by this section shall be clear, concise, use language that is plain and easy to understand, and to the extent available, include:
1. a brief description of the Breach or unauthorized release;
 2. the dates of the incident and the date of discovery, if known;
 3. a description of the types of PII affected;
 4. an estimate of the number of records affected;
 5. a brief description of the DOE's investigation or plan to investigate; and
 6. contact information for representatives who can assist Parents or Eligible Students that have additional questions.
- C. Notification must be directly provided to the affected Parent, Eligible Student, and employees by email, telephone, or first-class mail to their last known address.

XIII. Rights Under the Protection of Pupil Rights Amendment (PPRA)

- A. No Student shall be required to participate without prior written consent of the Parent or Eligible Student in any survey, analysis, or evaluation that reveals information concerning the following areas (Protected Areas):
1. political affiliations or beliefs of the Student or Student's Parent;
 2. mental or psychological problems of the Student or Student's family;

3. sex behavior or attitudes;
 4. illegal, anti-social, self-incriminating, or demeaning behavior;
 5. critical appraisals of others with whom respondents have close family relationships;
 6. legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
 7. religious practices, affiliations, or beliefs of the Student or Student's Parent; or
 8. income, other than as required by law to determine program eligibility.
- B. Optional surveys, analyses, or evaluations that reveal information concerning the above Protected Areas shall not be administered to Students without providing Parents and Eligible Students notice and an opportunity to opt out of participating.
- C. The Parent or Eligible Student shall have a right to inspect, upon request, the following prior to their administration or use:
1. Any survey that solicits information concerning the Protected Areas listed above; and
 2. Any instructional materials used as part of the Student's educational curriculum.
- D. Parents and Eligible Students must receive notice and an opportunity to opt out of participating in any nonemergency, invasive physical examination or screening that is required as a condition of attendance, administered and scheduled by the school in advance, and is not necessary to protect the immediate health and safety of the Student or other Students.

XIV. Requirements for External Studies

- A. All requests by external organizations to conduct studies for the purpose of research or evaluation must be reviewed and approved by the DOE Research and Policy Support Group (RPSG) and the NYC DOE IRB.
- B. Studies may include any activities that involve using a method of obtaining information, including individual or group activity, that is not solely for the purpose of academic instruction or direct provision of services to Students, families, or staff, and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs, or feelings.
- C. DOE is not required to initiate a study or agree with or endorse the conclusions or results of a study.

XV. Records Retention, Storage, and Destruction

- A. Obligation to Destroy PII When No Longer Needed by the DOE
1. Except as specified under the New York State Archives' Retention and Disposition Schedule for New York Local Government Records (known as [LGS-1](#)), PII must be destroyed when no longer needed by the DOE.

2. Authorized Third Parties must destroy or return PII to the DOE when the Authorized Third Parties no longer require the PII for the purposes for which it was received or in accordance with the terms of the written agreement under which the PII was provided to the Authorized Third Party.
 3. The appropriate method of destruction shall be selected based on the media in which the PII is stored (i.e., hard copy or electronic file), and the sensitivity of the PII. Appropriate methods of destruction may include shredding, burning or certified/witnessed destruction of physical materials or verified erasure of magnetic media. De-identification of PII is not a permissible method of destruction.
 4. School Officials must consult LGS-1 before disposing of any Education Records.
 5. No Education Record may be destroyed if it is the subject of an outstanding request for inspection or review by a Parent or Eligible Student.
- B. Record Storage and Destruction
1. Schools, programs, offices, and other locations that retain Education Records and other confidential Records must take steps to protect the confidentiality of Records and PII when they are retained on site, discarded, or placed in storage. This applies both to physical and electronic Records. When Records containing confidential information are to be disposed of, they must be securely shredded or otherwise securely destroyed to ensure that the confidential information is destroyed.
 2. To the greatest extent practicable, schools should retain at the school site all Education Records for at least 10 years after the Student has graduated or has reached the age of 27, whichever is later. Schools may make off-site arrangements to store permanent Education Records for Students who graduated or left the New York City school system, provided that such arrangements do not alter the school's responsibility for such Records. Boxes containing materials designated for archiving must be carefully labeled for delivery to the storage facility to ensure that confidentiality is preserved and that the documents can be retrieved easily and efficiently at a later date. Boxes containing Education Records must be clearly labeled on the outside that they contain Education Records. Indexes of documents sent to storage must be maintained at/by the school.
 3. Schedule LGS-1 must be consulted when sending documents to storage to determine if they can be destroyed at a later date. Some Records, such as the Student's cumulative education Record, must be retained permanently. However, many school Records may be destroyed six years after the Student graduated or would have normally graduated from high school, such as the Student's registration Record, teacher comments, correspondence and transfer or discharge notices. For DOE purposes, Records should not be destroyed until the Student has reached, at a minimum, the age of 27. If boxes sent to storage contain Records that may be destroyed at a later date, the form on the outside of the box must indicate a Record

destruction date. A copy of the form must be maintained by the designee of the sending site.

Please note: Special education files of Students with disabilities shall be retained until the year the Student has reached the age of 32.

XVI. The Right to Submit Complaints

- A. Parents, Eligible Students, and DOE employees have the right to file a complaint with the DOE about possible Breaches of PII or violations of FERPA, PPRA or Education Law 2-d.

1. DOE must respond to complaints within a reasonable period. If DOE requires more than 60 days, or if the response may compromise security or impede a law enforcement investigation, DOE must provide the complainant with a written explanation that includes the anticipated response date.

2. Complaints to the DOE may be made to:

DOE Chief Privacy Officer
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
or by email to: Studentprivacy@schools.nyc.gov

- B. Parents, Eligible Students, and DOE employees have the right to file a complaint with the New York State Education Department about possible Breaches. Complaints to the New York State Education Department may be made to:

Chief Privacy Officer
New York State Education Department
89 Washington Avenue
Albany, NY 12234
or by email to: privacy@nysed.gov

- C. Parents and Eligible Students have the right to file a complaint with the United States Department of Education if they believe the NYC DOE failed to comply with FERPA's or PPRA's requirements. Such complaints may be filed with:

Student Privacy Policy Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520
or by email to: FERPA.Complaints@ed.gov

XVII. Inquiries

Inquiries pertaining to this regulation should be addressed to:

DOE Chief Privacy Officer
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007
Telephone: 212-374-6888
Email: studentprivacy@schools.nyc.gov