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Priority Briefing

FERPA Regulations Revised Effective January 3, 2012

The Family Educational Rights and Privacy Act (“FERPA”) is a federal law that protects the privacy of students’ education records and affords parents and adult students certain rights to inspect and review education records, to seek to amend these records, and to consent to the disclosure of personally identifiable information from education records.

Amendments to the FERPA regulations, Title 34, Part 99 of the Code of Federal Regulations, were issued last Friday, December 2, 2011, with an effective date of January 3, 2012. Many states, including Illinois, have enacted legislation providing for a statewide longitudinal data system to collect and maintain educational and student data to inform educators about improving instruction, and the main purpose of the amendments is to clarify and ensure that student privacy is protected while data is collected and accessed (1) to improve educational accountability and transparency, and (2) in the evaluation of educational programs.

Directory Information to Include Student ID Numbers If Designated as Directory Information

The FERPA amendments revise the definition of “directory information,” which may be disclosed without parental or student consent, to include a student ID number, user ID, or other personal identifier used by a student for purposes of accessing or communicating in electronic systems. However, this applies only if the personal identifier cannot be used to gain access to education records, except in conjunction with factors that authenticate the user’s identity, such as a PIN or password possessed only by the authorized user. Under the amendments, a parent or student may not opt out of directory information disclosures for the purpose of preventing a school from requiring students to wear, display, or disclose a student ID card or badge that

exhibits information that has been properly designated by the school as directory information in its public notice of FERPA rights.

Consistent with this amendment, we recommend that school districts designate student ID numbers on ID cards and badges as directory information.

Revisions to Studies and Audit Disclosure Exceptions

Additional provisions were added to the FERPA regulations to clarify the “studies” exception that allows for the disclosure of personally identifiable information from education records, without consent, to organizations conducting studies, for, or on behalf of schools, to develop or validate tests, administer student aid programs or improve instruction. The “audit or evaluation” exception, which allows disclosure of information from education records to federal, state or local authorities for audit, evaluation or compliance activities, was also amended. Both of these exceptions require that the parties execute a written agreement that (1) describes the information to be disclosed, (2) requires that the information be used only for the purpose stated in the agreement, (3) describes methods to protect the personal information from further disclosure or other uses, and (4) to destroy the information when no longer needed for the purposes stated in the agreement.

Appendix A of the FERPA amendments provides guidance regarding the methods and written agreements required by schools to utilize these exceptions to disclosure.

Appendix B to the FERPA amendments provides a revised Model Notification of Rights under FERPA for Elementary and Secondary Schools. The revised Model Notification now includes a more expansive description of the situations in which a school may disclose a student’s personally identifiable information without prior written consent.

If we can be of further assistance with regard to your district’s or cooperative’s student records policy, procedures, or practices, please contact one of our attorneys in our Flossmoor office – (708) 799-6766 or our Oak Brook office - (630) 928-1200.