

## **Policy ~~8305~~ 330 – Records and Information Security**

**Revised policy and repeal of Policy 8310 (Public Records), Policy 8315 (Information Management), Policy 8320 (Personnel Files), Policy 8330 (Student Records), Policy 2416 (Student Privacy and Parental Access to Information), Policy 2461 (Recording of Board Meetings Involving Students and/or Parents), Policy 8350 (Confidentiality), and Policy 8351 (Security Breach of Confidential Databases) effective upon passage**

*1<sup>st</sup> reading*      January 24, 2019

*2<sup>nd</sup> reading*      February 7, 2019

*3<sup>rd</sup> reading*

**Statutory authority**      (none)

### **Administrative Guidelines**

(none)

The ~~District Board~~ collects, classifies, and retains data/information from and about students, staff, vendors/contractors, and other individuals, about programs and initiatives undertaken by the school system, and about and related to the business of the District. This information may be in hard copy or digital format, and may be stored in the District or offsite with a third party provider.

Data/information collected by the ~~District Board~~ shall be classified as Confidential, Controlled, or Published. Data/information will be considered Controlled until identified otherwise.

Protecting ~~District~~ information resources (as defined in ~~Bylaw 0100 Policy 001~~) is of paramount importance. Information security requires everyone's active participation to keep the ~~District's County's~~ data/information secure. This includes Board members, staff members/employees, students, parents, contractors/vendors, and visitors who use ~~District County~~ technology resources (as defined in ~~Bylaw 0100 Policy 001~~) and information resources.

Individuals who are granted access to data/information collected and retained by the ~~District Board~~ must follow established procedures so that the information is protected and preserved. Board members, administrators, and all ~~District~~ staff members, as well as contractors, vendors, and their employees, granted access to data/information retained by the ~~District Board~~ are required to certify annually that they shall comply with the established information security protocols pertaining to ~~District Board~~ data/information. Further, all individuals granted access to confidential data/information retained by the ~~District Board~~ must certify annually that they will comply with the information security protocols pertaining to confidential data/information. Completing the appropriate section of the Staff Technology Acceptable Use and Safety form (~~Form 7540.04F1~~) shall provide this certification.

All Board members, staff members/employees, students, contractors/vendors, and visitors who have access to Board-owned or managed data/information must maintain the security of that data/information and the ~~District County~~ technology resources on which it is stored.

If an individual has any questions concerning whether this Policy and/or its related administrative guidelines apply to him/her or how they apply to him/her, the individual should contact the ~~District's County~~ Technology ~~Director~~ Coordinator or Information Technology Department/Office the Superintendent.

The Superintendent shall develop administrative guidelines that set forth the internal controls necessary to provide for the collection, classification, retention, access, and security of ~~District Board~~ data/information.

Further, the Superintendent is authorized to develop procedures that would be implemented in the event of an unauthorized release or breach of data/information. ~~These procedures shall comply with the District's legal requirements if such a breach of personally identifiable information occurs.~~

The Superintendent shall require the participation of staff members in appropriate training related to the internal controls pertaining to the data/information that they collect, to which they have access, and for which they would be responsible for the security protocols.

Third-party contractors/vendors who require access to confidential data/information collected and retained by the ~~District Board~~ will be informed of relevant Board policies that govern access to and use of Information Resources, including the duty to safeguard the confidentiality of such data/information.

Failure to adhere to this Policy and its related administrative guidelines may put data/information collected and retained by the ~~District Board~~ at risk. Employees who violate this policy and/or the administrative guidelines promulgated consistent with this policy may have disciplinary consequences imposed, up to and including termination of employment, and/or referral to law enforcement. Students who violate this Policy and/or AGs administrative guidelines will be subject to disciplinary action, up to and including expulsion, and/or referral to law enforcement. Contractors/vendors who violate this Policy and/or AGs administrative guidelines may face termination of their business relationships with and/or legal action by the ~~District Board~~. Parents and visitors who violate this Policy and/or AGs administrative guidelines may be denied access to the ~~District's~~ County technology resources.

The Superintendent shall conduct a periodic assessment of risk related to the access to and security of the data/information collected and retained by the ~~District Board~~, as well as the viability of the continuity of organizational operations plan developed pursuant to Policy ~~8300~~ 380.

#### *Public Records*

The Board of Education recognizes its responsibility to maintain the public records of this County and to make such records available for inspection and reproduction.

The Board will utilize the following procedures regarding the availability of public records. "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context relates to the conduct of the public's business. "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. "Public records" do not include internal memoranda or letters received or prepared by the Board or its employees, medical records, documents containing genetic information, trial preparation records, confidential law enforcement investigatory records, student records, personnel records and any other expectations set forth in WV Code 29B-1-4.

Any person may inspect and copy by hand the public records of this school system during the regular business hours of the office in which such records are maintained, provided that an advance written request to review and/or copy such records is made to the custodian of the records and the custodian has set a date and time for such review. The Superintendent is authorized to grant or refuse access to the records of this County in accordance with the law and the intent of this policy. ~~(See also Policy 8350 — Confidentiality)~~

A person may purchase copies of the County's public records upon payment of a reasonable fee based on the actual cost in making reproductions of records. The Board cannot charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproductions of records. A person who chooses to purchase a copy of a public record may request to have said record duplicated on paper, on which the same medium on which the County keeps the record, or on any other medium on which the custodian or records determines that said record reasonable can be duplicated as an integral part of normal operation. A person who chooses to purchase a copy of a public record may also choose to have that record sent to him/her by United States mail within a reasonable period of time following the request, provided the person making the request pays in advance for said record as well as costs for postage and supplies used in the mailing.

~~Beginning January 1, 2016,~~ The Board shall provide to the Secretary of State, on forms and pursuant to procedures and regulations established by the Secretary of State, information regarding each request it has received for public records pursuant to the West Virginia Freedom of Information Act.

No public record may be removed from the office in which it is maintained except by a Board officer or employee in the course of the performance of his/her duties.

Nothing in this policy shall be construed as preventing a Board member from inspecting in the performance of his/her official duties any record of this County, except student records and certain positions or personnel records.

Nothing herein should be construed as requiring the use of the Freedom of Information Act to gain access to public records of the Board. However, if a request is made pursuant to the Act, the procedures set forth therein for response on the part of the Board shall apply.

### *Information Management*

The Board of Education recognizes its responsibility, in certain circumstances, to maintain information created, maintained or otherwise stored by the County outside the "Records Retention Schedule" ~~in AG 8310A~~ published by the West Virginia Department of Education and / or augmented by the Superintendent. In such situations, a "litigation hold" procedure will be utilized to identify and preserve information relevant to a specific matter. "Information" includes both paper documents and electronically stored information ("ESI"). When implementing the "litigation hold," the County will identify individuals in possession or custody of paper documents, ESI and electronic media containing ESI, and inform them of their obligation to preserve the documents and ESI outside the "Records Retention Schedule" ~~in AG 8310A~~. The County will also identify third parties with custody or control over paper documents, ESI, or electronic media storing ESI, and request them to preserve that information. All information falling within a "litigation hold," which is under the control of the County, must be preserved in a readily accessible form and cannot be disposed of under the "Records Retention and Disposal" ~~requirements of AG 8310E~~ Schedule. Failure to comply with a litigation hold notice may result in disciplinary action, up to and including possible termination.

Instances where the Board must maintain information outside the "Records Retention Schedule" ~~in AG 8310A~~ include:

- A. when the Board has specific information and/or written notice from an individual, parent or student of an intent to file an appeal of student discipline to State court;
- B. when the Board has specific information and/or written notice that litigation is imminent even though the litigation has not yet been filed in Federal or State court;
- C. when the Board is served with litigation, including, but not limited to, notice of a lawsuit in Federal or State court, or notice of a student disciplinary appeal to State court;
- D. when the Board receives specific information and/or written notification from an employee, labor union, or other person of an intent to file a claim against the Board, its members, employees or agents at an administrative agency such as the Equal Employment Opportunity Commission, West Virginia Employment Relations Commission, U.S. Department of Education Office for Civil Rights, State Personnel Board of Review, or a Civil Service Commission regarding a claim against the Board, its members, employees or agents;
- E. when the Board receives specific information and/or written notification from an administrative agency such as the Equal Employment Opportunity Commission, West Virginia Employment Relations Commission, U.S. Department of Education Office for Civil Rights, State Personnel Board of Review, or a Civil Service Commission regarding a claim against the Board, its members, employees or agents;
- F. when the Board receives written notification from a third party requesting that the Board maintain information that could be at issue in litigation or potential litigation against that third party;
- G. when the Superintendent recommends the termination of an employee to the Board pursuant to a labor contract;
- H. when the Board explores, contemplates or initiates litigation.

## **DEFINITIONS**

"Documents" includes, but is not limited to, writings, drawings, graphs, charts, photographs, blueprints, sound recordings, images and other data or data compilations stored in any medium from which information can be obtained or translated if necessary.

"ESI" includes, but is not limited to, writings, drawings, graphs, charts, photographs, blueprints, sound recordings, images and other data or data compilations stored in any electronic media from which information can be obtained or translated if necessary. It includes, but is not limited to, e-mails, e-mail attachments, instant messages, word processing files, spreadsheets, pictures, application program and data files, databases, data files, metadata, system files, electronic calendar appointments, scheduling program files, TIFF files, PDF files, MPG files, JPG files, GIF files, network share files, internal websites, external websites, newsgroups, directories, security and access information, legacy data, audio recordings, voice mails, phone logs, faxes, internet histories, caches, cookies or logs of activity on computer systems that may have been used to process or store electronic data.

"Electronic media" includes, but is not limited to, hard drives (including portable hard disk drives "HDD's"), floppy drives, disaster recovery media, and storage media (including DVD's, CD's, floppy discs, Zip discs/drives, Jazz discs/drives, USB memory drives, jump disc/drives, flash discs/drives, keychain discs/drives, thumb discs/drives, smart cards, micro-film, backup tapes, cassette tapes, cartridges, etc.), accessed, used and/or stored on/in/through the following locations: networks and servers; laptop and desktop work computers; home and personal computers; other computer systems; backup computers or servers; archives; personal digital assistants ("PDAs" – including Palm, Blackberry, cellular phone, tablet PC, etc.); pagers; firewalls; audit trails and logs, printers; copiers; scanners; digital cameras; photographic devices; and video cameras and devices. Electronic media shall also include any item containing or maintaining ESI that is obtained by the County for Board member or employee usage or that an employee uses for such purpose (even if privately owned by the Board member or employee) from the date this policy is adopted into the future.

## **Initiation and Removal of a "Litigation Hold"**

The Board or the Superintendent may initiate a "litigation hold" under this policy. If the Superintendent initiates a "litigation hold," s/he or the Board's legal counsel will notify the Board of the reason the Litigation Hold was instituted and its scope. When implementing a litigation hold, the Board or Superintendent may utilize an Electronically Stored Information Team ("ESI Team"). ~~The Board's legal counsel shall be involved in implementation of the "Litigation Hold Procedure" outlined in AG 8315.~~

A "Litigation Hold" shall remain in place until removed by the Board. A "Litigation Hold" may be removed when the litigation or administrative agency matter has been resolved or can no longer be initiated. ~~Any information maintained under this policy shall fall back under the "Records Retention Schedule" in AG 8310A once the "Litigation Hold" is removed.~~

The Superintendent shall develop administrative guidelines outlining the procedures to be followed by Board members and employees when initiating and implementing a "litigation hold," including the involvement of Board's legal counsel. ~~This policy and its related administrative guidelines shall be posted and distributed in the manner described in AG 8315~~

## ***Personnel Files***

It is necessary for the orderly operation of the School System to prepare a personal information system for the retention of appropriate files bearing upon an employee's duties and responsibilities to the County and the County's responsibilities to the employee.

The Board of Education requires that sufficient records exist to ensure an employee's qualifications for the job held, compliance with Federal, State, and local benefit programs, conformance with County rules, and evidence of completed evaluations. Such records will be kept in compliance with the laws of the State of West Virginia.

The Board delegates the maintenance of an employee personal information system to the Superintendent; ~~Business Manager; Assistant Superintendent; and/or Director of Personnel.~~

A single central file shall be maintained, and subsidiary records shall be maintained for ease in data gathering only.

~~The~~ Any employee shall have access to his/her file upon request.

Personnel records shall not be available to ~~Board members~~ and school administrators except as may be required in the performance of their jobs. Personnel records shall not be available to Board members except as required by motion and vote of the Board at a properly noticed meeting.

#### *Student Records*

In order to provide appropriate educational services and programming, the Board of Education must collect, retain, and use information about individual students. Simultaneously, the Board recognizes the need to safeguard student's privacy and restrict access to student's personally identifiable information.

Student "personally identifiable information" includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that 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 information requested by a person who the ~~District~~ Board reasonably believes knows the identity of the student to whom the education record relates.

The Board is responsible for the records of all students who attend or have attended schools in this ~~District~~ County. Only records mandated by the State or Federal government and/or necessary and relevant to the function of the School or ~~District~~ Board or specifically permitted by this Board will be compiled by Board employees.

In all cases, permitted, narrative information in student records shall be objectively-based on the personal observation or knowledge of the originator.

Student records shall be available only to students and their parents, eligible students, designated school officials, who have a legitimate educational interest in the information, or to other individuals or organizations as permitted by law.

The term "parents" includes legal guardians or other persons standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child). The term "eligible student" refers to a student who is eighteen (18) years of age or older or a student of any age who is enrolled in a postsecondary institution.

Both parents shall have equal access to student records unless stipulated otherwise by court order or law. In the case of eligible students, parents may be allowed access to the records without the student's consent, provided the student is considered a dependent under Section 152 of the Internal Revenue Code.

A school official is a person employed by the Board as an administrator, supervisor, teacher/instructor (including substitutes), or support staff member (including health or medical staff and law enforcement unit personnel); and a person serving on the Board. The Board further designates the following individuals and entities as "school officials" for the purpose of FERPA:

- A. persons or companies with whom the Board has contracted to perform a specific task (such as an attorney, auditor, insurance representative, or medical consultant), and
- B. contractors, consultants, volunteers or other parties to whom the Board has outsourced a service or function otherwise performed by the Board employees (e.g. a therapist, authorized information technology (IT) staff, and approved online educational service providers).

The above-identified outside parties must 1) perform institutional services or functions for which the Board would otherwise use its employees, 2) be under the direct control of the Board with respect to the use and maintenance of education records, and 3) be subject to the requirements of 34 C.F.R. 99.33(a) governing the use and re-disclosure of PII from education records.

Finally, a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his/her tasks (including volunteers) is also considered a "school official" for purposes of FERPA provided s/he meets the above-referenced criteria applicable to other outside parties.

"Legitimate educational interest" is defined as a "direct or delegated responsibility for helping the student achieve one (1) or more of the educational goals of the District" or if the record is necessary in order for the school official to perform an administrative, supervisory, or instructional task or to perform a service or benefit for the student or the student's family. The Board directs that reasonable and appropriate methods (including but not limited to physical and/or technological access controls) are utilized to control access to student records and to make certain that school officials obtain access to only those education records in which they have legitimate educational interest.

The Board authorizes the administration to:

- A. forward student records, including disciplinary records with respect to suspensions and expulsions upon request to a public or private school or district in which a student of this District County is enrolled seeks or intends to enroll, or is instructed to enroll, on a full-time or part-time basis, upon condition that:
  - 1. a reasonable attempt is made to notify the student's parent or eligible student of the transfer (unless the disclosure is initiated by the parent or eligible student; or the Board's annual notification - Form 8330 F9 - includes a notice that the Board will forward education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer);
  - 2. the parent or eligible student, upon request, receives a copy of the record; and
  - 3. the parent or eligible student, upon request, has an opportunity for a hearing to challenge the content of the record;
- B. provide "personally-identifiable" information to appropriate parties, including parents of an eligible student, whose knowledge of the information is necessary to protect the health or safety of the student or other individuals, if there is an articulable and significant threat to the health or safety of a student or other individuals, considering the totality of the circumstances;
- C. report a crime committed by a child to appropriate authorities, and, with respect to reporting a crime committed by a student with a disability, to transmit copies of the student's special education and disciplinary records to the authorities for their consideration;
- D. release de-identified records and information in accordance with Federal regulations;
- E. disclose personally identifiable information from education records, without consent, to organizations conducting studies "for, or on behalf of" the District for purposes of developing, validating or administering predictive tests, administering student aid programs, or improving instruction;

Information disclosed under this exception must be protected so that students and parents cannot be personally identified by anyone other than representative of the organization conducting the study, and must be destroyed when no longer needed for the study. In order to release information under this provision, the District will enter into a written agreement with the recipient organization that specifies the purpose of the study. (See Form 8330 F14) Further, the following personally identifiable information will not be disclosed to any entity: a student's or his/her family member's social security number(s); religion, political party affiliation; voting history; or biometric information.

This written agreement must include: 1) specification of the purpose, scope, duration of the study, and the information to be disclosed; 2) a statement requiring the organization to use the personally identifiable information only to meet the purpose of the study; 3) a statement requiring the organization to prohibit

personal identification of parents and students by anyone other than a representative of the organization with legitimate interests; and 4) a requirement that the organization destroy all personally identifiable information when it is no longer needed for the study, along with a specific time period in which the information must be destroyed.

While the disclosure of personally identifiable information (other than social security numbers, religion, political party affiliation, voting record, or biometric information) is allowed under this exception, it is recommended that de-identified information be used whenever possible. This reduces the risk of unauthorized disclosure.

- F. disclose personally identifiable information from education records without consent, to authorized representatives of the Comptroller General, the Attorney General, and the Secretary of Education, as well as State and local educational authorities;

The disclosed records must be used to audit or evaluate a Federal or State supported education program, or to enforce or comply with Federal requirements related to those education programs. A written agreement between the parties is required under this exception. (See Form 8330 F16)

This written agreement must include: 1) designation of the receiving entity as an authorized representative; 2) specification of the information to be disclosed; 3) specification that the purpose of the disclosure is to carry out an audit or evaluation of a government-supported educational program or to enforce or comply with the program's legal requirements; 4) a summary of the activity that includes a description of methodology and an explanation of why personally identifiable information is necessary to accomplish the activity; 5) a statement requiring the organization to destroy all personally identifiable information when it is no longer needed for the study, along with a specific time period in which the information must be destroyed; and 6) a statement of policies and procedures that will protect personally identifiable information from further disclosure or unauthorized use.

Under the audit exception, the District will use "reasonable methods" to verify that the authorized representative complies with FERPA regulations. Specifically, the District will verify, to the greatest extent practical, that the personally identifiable information is used only for the audit, evaluation or enforcement of a government-supported educational program. The District will also ascertain the legitimacy of the audit or evaluation and will only disclose the specific records that the authorized representative needs. Further, the District will require the authorized representative to use the records only for the specified purpose and not to disclose the information any further, such as for another audit or evaluation. Finally, the District will verify that the information is destroyed when no longer needed for the audit, evaluation or compliance activity.

- G. request each person or party requesting access to a student's record to abide by Federal regulations and State laws concerning the disclosure of information.

In addition to the responsibilities above noted, each principal of a school at which a student is enrolled which student has had imposed a suspension or expulsion pursuant to 18A-5-1a, Code of West Virginia, shall record such suspension or expulsion in the West Virginia Education Information System by creating an electronic record within twenty-four (24) hours of the imposition of the same. Each record of such suspension or expulsion shall include the student's name and identification number, the reason for the suspension or expulsion, and the beginning and ending dates of the suspension or expulsion.

The Board will comply with a legitimate request for access to a student's records within a reasonable period of time but not more than forty-five (45) days after receiving the request or within such shorter period as may be applicable to students with disabilities. Upon the request of the viewer, a record shall be reproduced, unless said record is copyrighted, or otherwise restricted, and the viewer may be charged a fee equivalent to the cost of handling and reproduction. Based upon reasonable requests, viewers of education records will receive explanation and interpretation of the records.

The Board shall maintain a record of each request for access and each disclosure of personally identifiable information about a student has been disclosed. Such disclosure records will indicate the student, person viewing the record, their legitimate interest in the information, information disclosed, date of disclosure, and date parental/eligible student consent was obtained (if required).

Only "directory information" regarding a student shall be released to any person or party, other than the student or his/her parent, without the written consent of the parent; or, if the student is an eligible student, without the written consent of the student, except those persons or parties stipulated by the Board's policy and administrative guidelines and/or those specified in the law.

### **Directory Information**

Each year the Superintendent shall provide public notice to students and their parents of the ~~District's~~ Board's intent to make available, upon request, certain information known as "directory information." The Board designates as student "directory information": a student's name; address; telephone listing; photograph; date and place of birth; major field of study; participation in officially-recognized activities and sports; height and weight if a member of an athletic team; dates of attendance; date of graduation and awards received.

School-assigned e-mail accounts shall not be released as directory information beyond this/these limited purpose(s) and to any person or entity but the specific online educational service provider and internal users of the ~~District~~ County's ~~educational~~ technology resources.

Directory information shall not be provided to any organization for profit-making purposes.

Parents and eligible students may refuse to allow the Board to disclose any or all of such "directory information" upon written notification to the Board within ten (10) days after receipt of the Superintendent's annual public notice.

In accordance with Federal and State law, the Board shall release the names, addresses, and telephone listings of secondary students to a recruiting officer for any branch of the United States Armed Forces or an institution of higher education who requests such information. A secondary school student, as defined in West Virginia State Board of Education policy 4350, or parent of the student may request in writing that the student's name, address, and telephone listing not be released without prior consent of the parent(s)/eligible student. The recruiting officer is to sign a form indicating that "any information received by the recruiting officer shall be used solely for the purpose of informing students about military service and shall not be released to any person other than individuals within the recruiting services of the Armed Forces." The Superintendent is authorized to charge mailing fees for providing this information to a recruiting officer.

Whenever consent of the parent(s)/eligible student is required for the inspection and/or release of a student's health or education records or for the release of "directory information", either parent may provide such consent unless agreed to otherwise in writing by both parents or specifically stated by court order. If the student is under the guardianship of an institution, the Superintendent shall appoint a person who has no conflicting interest to provide such written consent.

The Board may disclose "directory information" on former students without student or parental consent, unless the parent or eligible student previously submitted a request that such information not be disclosed without their prior written consent.

The Board shall not permit the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose).

### **Inspection of Information Collection Instrument**

The parent of a student or an eligible student has the right to inspect upon request any instrument used in the collection of personal information before the instrument is administered or distributed to a student. Personal information for this section is defined as individually identifiable information including a student or parent's first and last name, a home or



other physical address (including street name and the name of the city or town), a telephone number, or a Social Security identification number. In order to review the instrument, the parent or eligible student must submit a written request to the building principal at least ten (10) business days before the scheduled date of the activity. The instrument will be provided to the parent or eligible student within five (5) business days of the principal receiving the request.

The Superintendent shall directly notify the parent(s) of a student and eligible students, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when such activities are scheduled or expected to be scheduled.

This section does not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:

- A. college or other postsecondary education recruitment, or military recruitment
- B. book clubs, magazine, and programs providing access to low-cost literary products
- C. curriculum and instructional materials used by elementary and secondary schools
- D. tests and assessments used by elementary and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments
- E. the sale by students of products or services to raise funds for school-related or education-related activities
- F. student recognition programs

The Superintendent ~~is directed to prepare~~ shall develop administrative guidelines so that students and parents are adequately informed each year regarding their rights to:

- A. inspect and review the student's education records;
- B. request amendments if the parent believes the record is inaccurate, misleading, or violates the student's privacy rights;
- C. consent to disclosures of personally-identifiable information contained in the student's education records, except to those disclosures allowed by the law;
- D. challenge Board noncompliance with a parent's request to amend the records through a hearing;
- E. file a complaint with the United States Department of Education;
- F. obtain a copy of the Board's policy and administrative guidelines on student records.

The Superintendent shall also develop procedural guidelines for:

- A. the proper storage and retention of student records including a list of the type and location of records;
- B. informing Board employees of the Federal and State laws concerning student records.

The Board authorizes the use of the microfilm process or electromagnetic processes of reproduction for the recording, filing, maintaining, and preserving of records.

No liability shall attach to any member, officer, or employee of this Board as a consequence of permitting access or furnishing student records in accordance with this policy and regulations.

Any entity receiving personally identifiable information pursuant to a study, audit, evaluation, or enforcement/compliance activity must comply with all FERPA regulations. Further, such an entity must enter into a written contract with the Board delineating its responsibilities in safeguarding the disclosed information. Specifically, the entity must demonstrate the existence of a sound data security plan or data stewardship program, and must also provide assurances that the personally identifiable information will not be re-disclosed without prior authorization from the Board. Further, the entity conducting the study, audit, evaluation, or enforcement/compliance activity is required to destroy the disclosed information once it is no longer needed or when the timeframe for the activity has ended, as

specified in its written agreement with the Board. ~~See Form 8350-14 and Form 8350-16 for additional contract requirements.~~

### *Student Privacy and Parent Access to Information*

The Board of Education respects the privacy rights of parents and their children. In that regard, the following definitions are hereby adopted and shall control in the interpretation of this policy:

#### Definitions:

- A. "Attendance" at an agency or institution includes, but is not limited to:
  - a. attendance in person and having homebound instruction;
  - b. the period during which a person is working under a work-study program.
- B. "Consent" means that:
  - a. the parent has been fully informed of the information set out in this document in his/her native language or other mode of communication, unless it clearly is not feasible to do so;
  - b. the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom;
  - c. the parent understands that the granting of consent is voluntary on the part of the parent.
- C. "Destruction" means physical destruction or removal of personal identifiers so that the information is no longer personally identifiable.
- D. "Directory information" includes, but is not limited to, a student's name, address, telephone listing, date, and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.
- E. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.
- F. "Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.
- G. "Educational institution" or "educational agency or institution" means any public or private agency or institution under the general supervision of the West Virginia Board of Education.
- H. "Education records" means those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution. The term does not include:
  - a. records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other individual except a temporary substitute;
  - b. records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 126-945-7 of West Virginia Board of Education Policy 4350;
  - c. records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business; relate exclusively to the individual in the individual's capacity as an employee, and are not available for use for any other purpose;

However, records relating to an individual in attendance at the agency or institution who is employed as a result of his/her status as a student are education records and are not expected.

  - d. records relating to an eligible student that are:

- i. created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his/her professional or assisting in a paraprofessional capacity;
- ii. created, maintained, or used only in connection with the provision of treatment to the student;
- iii. disclosed only to individuals providing the treatment (provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice);

For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction at the educational agency or institution.

- e. records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution; (An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni).
- I. "Eligible student" means a student who has attained eighteen (18) years of age, or is attending an institution of postsecondary education.
- J. "Exceptional student" means a student having been determined to have an exceptionality in accordance with eligibility under W.Va. 126CSR16, West Virginia Board of Education Policy 2419, "Regulations for the Education of Exceptional Student", (hereinafter, Policy 2419) who receives services under an Individualized Education Program (IEP).
- K. "Financial Aid" means a payment of funds provided to an individual (or payment in kind of tangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.
- L. "Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level: "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.
- M. "Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.
- N. "Party" means an individual, agency, institution or organization.
- O. "Personally identifiable" means that the data or information includes, but is not limited to:
  - a. the name of a student, the student's parent, or other family member;
  - b. the address of the student or student's family;
  - c. a personal identifier such as the student's social security number, or student number;
  - d. a list of personal characteristics that would make the student's identity easily traceable;
  - e. other information that would make the student's identity easily traceable.
- P. "Record" means any information or data recorded in any medium including, but not limited to: handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.
- Q. "Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the U.S. Department of Education acting for the Secretary under a delegation of authority.
- R. "Student" includes any individual who is or has been in attendance at an educational agency or institution, and regarding whom the educational agency or institution collects, maintains, or discloses educational records.

## Surveys

With regard to surveys funded in whole or in part by any program administered by the U.S. Department of Education (ED), prior to administration of such survey, the school or contractor administering such survey must obtain written consent from the student's parent or from the eligible student, before administering the survey, if that survey, analysis, or evaluation might reveal information concerning:

- A. political affiliations or beliefs of the student or his/her parents;
- B. mental or psychological problems of the student or his/her family;
- C. sex behavior or attitudes;

- D. illegal, anti-social, self-incriminating or demeaning behavior;
- E. critical appraisals of other individual with whom respondents have close family relationships;
- F. legally recognized privileged and analogous relationships, such as those of lawyers, physician, and ministers;
- G. religious practices, affiliations, or beliefs of the student or his/her parents;
- H. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such a program).

Additionally, for surveys which are not funded by the U.S. Department of Education, while written consent is not required prior to the administration of such survey, parents have the right to opt their child out of such survey if it solicits information in any of the eight (8) protected areas set forth in A-H. The new requirements do not apply to surveys administered to a student in accordance with the Individuals with Disabilities Act (IDEA).

For purposes of making the right to opt out meaningful, the Superintendent shall ensure that procedures are established whereby parents may inspect any materials used in conjunction with any such survey, analysis, or evaluation.

Further, parents have the right to inspect, upon request, a survey or evaluation created by a third party before the survey/evaluation is administered or distributed by the school to the student. The parent will have access to the survey/evaluation within a reasonable period of time after the request is received by the building principal.

Upon collection of any survey or evaluation which has been administered or distributed to a student, the school, agency or institutional personnel responsible for such collection shall ensure that such survey or evaluation was made available for inspection by the parents of the students to whom the survey or evaluation was administered or distributed prior to its distribution or administration. Should such personnel determine that the survey or evaluation was not made available for inspection prior to its administration or distribution, the surveys or evaluations shall be reviewed to determine whether any of the information elicited therein contains one (1) or more of the items listed in A-H above. If, upon review, it is found that there is information related to one (1) or more of the items listed in A-H, the responsible personnel shall destroy such surveys or evaluations and so advise the contractor or distributor of the survey or evaluation. A redistribution or readministration of the survey or evaluation may be accomplished by following the rules for inspection by parents of the students to whom the survey or evaluation is to be administered or distributed.

Additionally, parents have the right to inspect, upon request, any instructional material used as part of the educational curriculum of the student. The parent will have access to the instructional material within a reasonable period of time after the request is received by the building principal. The term instructional material means instructional content that is provided to student, regardless of its format, including printed and representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or assessments.

### **Parents Rights**

~~An educational agency or institution~~ The Board shall give full rights to either parent unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to parental rights, that specifically revokes those rights.

### **Student Rights**

For the purpose of this part, whenever a student has attained eighteen (18) years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parents transfer to the student.

### **Annual Notification of Rights**

~~The Board or the School, as the Board shall determine,~~ The Superintendent shall annually ~~notify~~ cause notification of parents of students currently in attendance, or eligible students currently in attendance, of their rights under this policy. The notice must inform parents or eligible students that they have the right to:

- A. inspect and review the student's education records;

- B. seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- C. consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that such consent is not required by law or policy;
- D. file with the U.S. Department of Education a complaint as described in 126-94-27 of the West Virginia Board of Education's Policy 4350;
- E. ~~the right to~~ inspect U.S. Department of Education (ED) or Non-ED funded surveys;
- F. be informed of the specific or approximate dates of any non-emergency, invasive physical examination or screening;
- G. be informed of the Board policies with respect to surveys, parental inspection, student data collection for marketing or selling purposes, and physical examinations or screenings;
- H. ~~the right to~~ opt out of – remove their child from – participation in the following activities:
  - a. activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information, or otherwise providing information to others for that purpose;
  - b. the administration of any third party (i.e., non-ED funded) survey containing one (1) or more of the eight (8) items described in A-H above;
  - c. any non-emergency, invasive physical examination or screening that is:
    - i. required as a condition of attendance;
    - ii. administered by the school and scheduled by the school in advance;
    - iii. not necessary to protect the immediate health and safety of the student, or of other students;
    - iv. the notice must include all of the following:
      - 1. the procedure for exercising the right to inspect and review education records
      - 2. the procedure for requesting amendment of records under 126-94-12 of the West Virginia Board of Education's Policy 4350
      - 3. a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest
      - 4. types of information designated as directory information and procedures as set forth hereinbelow for a parent's or eligible student's refusal to allow information to be so designated
      - 5. the procedure for disclosure of education records without consent to officials of another school district in which the student seeks to enroll

~~An educational agency or institution~~ The Superintendent may shall cause provide this notice to be provided by any means that are reasonably likely to inform the parents or eligible students of their rights, ~~provided, that, such agency or institution shall effectively notify parents or eligible students~~ including those who are disabled.

~~Additionally, an agency or institution of elementary or secondary education~~ this notice shall effectively notify parents who have a primary or home language other than English.

Parents of exceptional students, and eligible students who are exceptional, shall receive notice of rights under IDEA, included in the procedural safeguards notice.

Parents of students or the eligible students have the right to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information, including the right to refuse to permit the designation of names, addresses, and telephone listings of their children as directory information for purposes of providing the information to military recruiters.

#### **Prior Consent for Disclosure Not Required**

~~An educational agency or institution~~ The Board may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or eligible student if the disclosure is:

- A. to other school officials, including teachers, within the educational agency or institution who have been determined by the agency or institution to have legitimate educational interest;
- B. to officials of another school or school system, or institution of postsecondary education, in which the student seeks or intends to enroll, provided the agency or institution:
  - a. makes a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, unless the transfer of records is initiated by the parent or eligible student at the sending agency or institution, or the agency or institution includes in its annual notice that it forwards education records on request to other agencies or institutions in which a student seeks or intends to enroll;
  - b. provides the parent of the student or the eligible student, upon request, a copy of the record that was transferred;
  - c. provides the parent of the student or the eligible student; upon request, an opportunity for a hearing;
- C. to the Comptroller General of the United States, the Secretary, or State and local educational authorities provided such disclosure is in connection with the audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to these programs;

Except when written consent of the parent of a student or an eligible student has been obtained for disclosure, or when the collection of personally identifiable information is specifically authorize by Federal or State law, any information collected under this section of the policy shall be protected in a manner that does not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with Federal and State legal requirements.

- D. in connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as to:
  - a. determine the eligibility of the student for the financial aid;
  - b. determine the amount of the financial aid;
  - c. determine the conditions which will be imposed regarding the financial aid;
  - d. enforce the terms or conditions of the financial aid;
- E. to State and local officials or authorities to whom this information is specifically allowed:
  - a. allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released;
  - b. allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, when such reporting or disclosure concerns the juvenile justice system, subject to the certification in writing, to the educational agency or institution, by the officials and authorities to whom the records are disclosed, that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student;
- F. to organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of:
  - a. developing, validating, or administering predictive tests;
  - b. administering student aid program, or improving instruction; provided that the studies are conducted in a manner that will not permit the personal identification of students and their parents by individual other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted;
  - c. the term "organizations" includes, but is not limited to Federal, State, and local agencies, and independent organizations;
- G. to accrediting organization in order to carry out their accrediting functions;
- H. to parents of a dependent student;

- I. to comply with a judicial order or lawfully issued subpoena; provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action; unless the disclosure is in compliance with:
  - a. a Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;
  - b. any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;
  - c. if the educational agency or institution initiates legal action against a parent or student and has complied with this section, it may disclose education records that are relevant to the action to the court without a court order or subpoena;
- J. to appropriate parties in health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals;
- K. the disclosure is information the educational agency or institution has designated as "directory information";
- L. the disclosure is to the parent of a student who is not an eligible student or to the student;
- M. the disclosure is to an alleged victim of any crime of violence, as that term is defined in 18 U.S.C. 16, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of the crime with respect to that crime;
- N. to the Attorney General of the United States or his/her designee in response to an exparte order in connection with the investigation or prosecution of terrorism crimes specified in Sections 2332(g)(5)(B) and 2331 of Title 18, U.S. Code:

Such an exparte order waives the requirement to record the disclosure of information from a student education record and insulates the school, agency or institution and its officials from liability to any person for production of such information.

### **Disciplinary Information**

If a student transfers to another school in the State, the principal of the school from which the student transfers shall provide a written record of any disciplinary action taken against the student to the principal of the school to which the student transfers, subject to the requirements set forth above in, ~~Prior Consent for Disclosure Not Required. 18A-5-1a, Code of West Virginia, Section 4155, No Child Left Behind Act~~ Federal and State law and policy.

The ~~educational agency~~ Board includes in the records of a student with a disability under West Virginia Board of Education Policy 2419 a statement of any current or previous disciplinary action that has been taken against the student and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled students.

The statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information related to the safety of the student and other individuals involved with the student.

If the student transfers from one ~~(1)~~ school to another, the transmission of any of the student's records must include both the student's current Individualized Education Program (IEP) and any statement of current or previous disciplinary action that has been taken against the student.

~~A public agency~~ Whenever reporting a crime committed by a student with a disability under Policy 2419 is reported, the Director of Special Education shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime is reported, but only to the extent permitted by this policy's provisions regarding disclosure of education records.

### **Record of Disclosure Required to be Maintained**

~~An educational agency or institution~~ The Board shall require that for each request for access to and each disclosure of personally identifiable information from the education records of a student maintain a record be kept with the education records of the student that indicates the:

- A. parties who have requested or obtained personally identifiable information from the education records of the student;
- B. date access was given;
- C. legitimate interest these parties had in requesting or obtaining the information.

~~If an educational agency or institution~~ the Board discloses information with the understanding that the party receiving the information may make further disclosures, the record of disclosure must include the names of the additional parties to which the receiving party may disclose the information on behalf of the ~~educational agency or institution~~ Board and the legitimate educational interests each of the additional parties has in requesting the information.

Records do not have to be kept for disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials, or to disclosures of directory information, or to a party seeking or receiving the records as directed by a Federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

#### **Limitation on Redisclosure**

~~An educational agency or institution~~ The Board may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that:

- A. The personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purpose for which the disclosure was made.
- B. ~~An educational agency or institution~~ The Board may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if the parties meet the requirements set forth above with regard to prior consent and the maintenance of records.
- C. This limitation on disclosure does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas, to disclosures of directory information or to disclosures to a parent or student. Except for these disclosures, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.
- D. If the ~~agency or institution~~ Board determines that a third party improperly rediscloses personally identifiable information from education records, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five (5) years.

#### **CONDITIONS FOR DISCLOSURE OF DIRECTORY INFORMATION:**

- A. The names, addresses, and telephone listings of secondary school students are hereby designated as directory information for the purposes of providing the information to military recruiters. This designation shall be effective upon the Board giving notice of the categories of personally identifiable information so designated; the right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information, including the right of the parent to refuse to permit the designation of names, addresses, and telephone listings of their children as directory information for purposes of providing the information to military recruiters; and, the period of time within which the parent of the student or the eligible student must inform the agency or



institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student. ~~The Board may, by Order, establish additional directory information.~~

- B. The Board shall provide access to established directory information to any person or group which makes students aware of educational, occupational, and career opportunities available in the armed services.
- C. The Board may provide access to established directory information to other persons or groups as determined by proper Board action.

#### **Safeguards for Exceptional Students, Information Collected Under West Virginia Board of Education Policy 2419**

- A. ~~Each participating school, agency or institution~~ The Board and its schools shall protect the confidentiality of personally identifiable information at collection, disclosure and destruction stages.
- B. ~~One (1) official collecting at each school, agency or institution serving exceptional students~~ The Superintendent generally and each school principal specifically shall assume responsibility for ensuring the confidentiality of any personally identifiable information collected under West Virginia Board of Education Policy 2419.
- C. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under this policy and Policy 2419.
- D. The Board and its schools shall maintain for public inspection, a current listing of the names and positions of those employees within the school, agency or institution who may have access to personally identifiable information of identified special students.

#### **Collection and Use of Student Social Security Numbers**

- A. A social security number is personally identifiable information and must, therefore, be used in compliance with the other provision of this policy, the Family Educational Rights and Privacy Act, and the provisions of 18-2-5f. ~~No public or private elementary or secondary school~~ shall display any student's social security number for identification purposes on class rosters or other lists provided to teachers, on student identification cards, in student directories or other listings, on public postings or listing of grades, or for any other public identification purpose unless specifically authorized or required by law.
- B. The student social security number may be used for internal record keeping purposes or studies.
- C. The student social security number or alternative number is required for enrollment or attendance in public schools.
- D. The Board must request from the parent, guardian, or responsible person the social security number of each child who is currently enrolled in the school system.
- E. Prior to admittance to a public school, the Board must request from the parent, guardian, or responsible person the social security number of each child who is to be enrolled.
- F. The Board must inform the parent, guardian, or other responsible person that, if s/he declines to provide the student social security number, the Board will assign the student an alternate nine (9) digit number as designated by the West Virginia Board of Education.
- G. For any student who is attending a public school and for whom a social security number has not been provided, the Board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.

#### **Marketing or Selling of Personal Information**

The Board will not allow the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information (or otherwise providing that information to others for that purpose).

~~The Superintendent is directed to provide notice directly to parents of students enrolled in the District of the substantive content of this policy at least annually at the beginning of the school year, and within a reasonable period of time after any substantive change in this policy. In addition, the Superintendent is directed to notify parents of students in the District, at least annually at the beginning of the school year, of the specific or approximate dates during the school year~~

~~when the administration or any survey by a third party that contains one or more of the items described in A through H on page 5 are scheduled.~~

For purposes of this policy, the term "parent" includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the welfare of the child).

#### *Recording of ~~Board~~ Meetings Involving Students and/or Parents*

#### **Recording of IEP Team and 504 Team Meetings**

The recording of IEP Team meetings and 504 Team meetings is prohibited unless it is necessary in order for a parent to understand the IEP process or 504 process and/or his/her child's IEP or 504 Plan, or is otherwise necessary to implement other parental rights under the IDEIA, Section 504 of the Rehabilitation Act of 1973, as amended, and/or the Americans with Disabilities Act, as amended.

- A. If a parent believes that audio recording an IEP Team or 504 Team meeting is necessary, s/he should notify Director of Special Education in writing, preferably at least two (2) school days before the IEP Team or 504 Team meeting, of his/her desire to audio record the meeting and the reason the recording is required. The Director of Special Education will notify the parent at least one (1) school day before the meeting if s/he intends to deny the parent's request to record the meeting.
- B. If the Board representative denies the request, s/he will state in writing the reasons for the denial. Authorized exceptions to the general prohibition against the audio recording of IEP Team meetings and 504 Team meetings will typically involve situations when a parent or other IEP Team or 504 Team member has a disability recognized under Section 504/ADA or a language barrier that would interfere with the individual's ability to understand and/or meaningfully participate in the IEP process or 504 process. The Board representative may ask for documentation of the existence of any such disability or language barrier. If a parent is permitted to audio record the meeting, s/he must use his/her own recording device and the Board will also record the meeting.

#### **Recording of Other Board Meetings Involving Students and/or Parents (e.g., Parent Teacher Conferences)**

Parents are prohibited from audio recording meetings with the Board unless a parent or Board staff member has a disability recognized under Section 504/ADA or a language barrier that would preclude the individual's ability to understand and/or participate in the meeting. The Board representative may ask for documentation of the existence of any such disability or language barrier. If a parent is permitted to audio record the meeting, s/he must use his/her own recording device and the Board will similarly record the meeting.

~~Video recording of Board meetings is strictly prohibited.~~ Audio recording of executive or closed sessions of the Board are strictly prohibited, except that audio recording of formal hearings held by the Board in closed session shall not be considered under this prohibition.

Using covert means to make a recording (audio or video) of any meeting or activity at a school, on school property, or at a school sponsored function is expressly prohibited. This includes placing recording devices within a person's book bag or otherwise concealed on the person.

If the Board audio records any meeting, the resulting recording shall become a part of the student's educational record and will be maintained in accordance with State and Federal law.

#### *Confidentiality*

State and Federal law requires that student education records be maintained as confidential. ~~See Policy West Virginia Board of Education Policy 4350.~~ This policy and State and Federal law further exempts certain information and records from public disclosure. Accordingly, the Board of Education is obligated to take appropriate steps to maintain certain information and records as confidential. Individuals who have access to student education records may not remove them from Board property without express permission from their building principal or supervisor. An individual

authorized to remove student education records from school property is responsible for the safety and security of the records and for returning them to the County intact. Confidential information and records may not be disclosed except as authorized by Board policy and administrative guidelines. Individuals who have access to confidential information and records while employed by the Board are reminded that their legal obligation to maintain such confidences extends beyond their term of employment in the County and they are prohibited from releasing, disclosing or otherwise disseminating confidential information or records subsequent to leaving the Board's employ. ~~The Board directs the Superintendent to prepare~~ shall develop administrative guidelines concerning Board employees' duties to maintain certain information and records as confidential consistent with the State ~~Board Policy 4350 referenced above~~ law and policy.

It is further the policy of the Board of Education that when the County receives in trust from a public agency information identified as confidential (whether such information is confidential by West Virginia Statutory or Case Law, Federal Statutory or Case Law or duly adopted State or Federal regulation), the Board will maintain the confidentiality of said information to the maximum extent permitted by the law.

The following portion of this policy applies only to identified confidential information received from a public agency.

In order to prohibit the unauthorized disclosure of information identified as confidential by the sending public agency, the Board may seek to obtain court protection by:

- A. denying requests for release of such information absent subpoena or court order;
- B. pursuing motions to quash or protective orders to prohibit unauthorized disclosure.

When possible, the Board will attempt to notify the public agency which provided the information of the request for release of such information prior to complying with the request.

#### *Security Breach of Confidential Databases*

It is the policy of the Board of Education that when unauthorized access or acquisition of data occurs, which would compromise the confidentiality or security of personal information maintained by the ~~District Board~~ District Board on a database, the ~~District Board~~ District Board will take appropriate action to assess the risk, and notify the affected individuals in accordance with law.

#### **Scope**

This policy applies to any security breach involving employees, consultants, vendors, contractors, outside agencies and employees of such agencies, and any other parties having a business relationship with the ~~District Board~~ District Board and handling personal information on the ~~District's Board's~~ District Board's behalf. It is expected that those offices, individuals or entities operating, maintaining, and using databases containing personal information will effectively control access to the databases to protect against unauthorized access, acquisition, modification, use or disclosure of personal information.

In order to better protect personal information and facilitate the investigation of incidents of unauthorized access, employees shall not store personal information on a personal computer, server or other data storage equipment not owned or maintained by the ~~District Board~~ District Board.

#### **Security Breach and Personal Information – Definitions**

A "security breach" means the unauthorized access to and acquisition of computerized data that compromises the security or confidentiality of personal information owned or licensed by the ~~District Board~~ District Board and that:

- A. causes a material risk of identity theft or other fraud to the person or property of a resident of the State;
- B. reasonably is believed to have caused a material risk of identity theft or other fraud to the person or property of a resident of the State; or
- C. reasonably is believed will cause a material risk of identity theft or other fraud to the person or property of a resident of the State.

Unauthorized access of information will not be considered a security breach if:

- A. the employee or agent acted in good faith in accessing the data;
- B. the access was related to the activities of the District Board or the employee's or agent's job-related duties; and
- C. the employee or agent did not use the personal information for an unlawful purpose or subject the information to further unauthorized disclosure.

Also, the acquisition of personal information pursuant to a search warrant, subpoena, or other court order, or pursuant subpoena, order or duty of a regulatory State agency, will not be considered a security breach.

For purposes of this policy, personal information means an individual's name, consisting of the individual's first name or first initial and last name, in combination with and linked to any of or more of the following (when the information is not encrypted, redacted, or altered by any method or technology in such a manner that the information is effectively obscured or unreadable):

- A. Social Security number;
- B. driver's license number or State identification card number; and/or
- C. account number or credit or debit card number, in combination with and linked to any required security code, access code, or password that would permit access to an individual's financial account.

#### **Discovery of Security Breach and Notification**

If an employee suspects, discovers and/or determines that a security breach has occurred, the employee shall promptly notify his/her immediate supervisor and the Superintendent, in writing.

The Superintendent shall determine and implement the steps necessary to correct the unauthorized access and requirements for notifying those individuals whose personal information may have been compromised.

~~The Superintendent and shall develop and implement administrative guidelines related to this policy to this effect.~~