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MEMORANDUM

TO: School Districts and Charter Leaders

FROM: Candice Castillo, Ed.D., Deputy Secretary of Identity, Equity and Transformation
CRC

DATE: January 22, 2025

RE: FERPA Student Privacy - Migrant and Immigrant Students

The purpose of this correspondence is to provide you with information regarding FERPA protections to the privacy of students, and to provide information regarding Immigration enforcement efforts, and limitations that should be remembered involving actions taken at schools. You should please review these protections carefully here, and the broader set of laws, and consult with your legal counsel in certain instances. In any event, you should remember the importance of providing an education to students, in a safe and conducive learning environment regardless of race and documented status.

Under the Family Educational Rights and Privacy Act (FERPA), local school districts and public schools have certain obligations to protect the privacy of their students' educational records. Generally, such records cannot be disclosed without the written consent of the student's parent or guardian, or of the individual student if they have reached the age of 18 (defined by the Act as an "eligible student"). General duties and powers for LEAs under FERPA include:

- 1) Consent for disclosure. Schools and school districts are required to obtain written consent for disclosure of educational records from the student's parent or guardian, or from the student if they have become an "eligible student" by reaching the age of majority at 18.
- 2) Parental or student rights to access the records. FERPA gives parents and eligible students the right to review their educational records, receive copies of the records, or request correction to inaccurate information found within the records.

- 3) Annual notification to parents and eligible students about their rights under FERPA. This notice must include information on accessing those records, and how to file formal complaints if it appears their privacy rights under FERPA have been violated.
- 4) Disclosure of “directory information.” LEAs are permitted to disclose certain information, referred to as “directory information,” without additional consent from either parents or eligible students. Ordinarily, this can include information such as names, addresses, phone numbers, date and place of birth, and participation in officially recognized activities and sports, but LEAs must give parents and eligible students an opportunity to opt out of such disclosures. FERPA defines “directory information” as information contained in an educational record that would not normally be considered harmful or invasive of privacy if disclosed. Schools and school districts must give notice of information it has designated as “directory information,” the right of parents and eligible students to restrict this disclosure, and the period of time during which the parent or eligible student must notify schools in writing that they are opting out of such disclosure. After an eligible student or parent notifies a school or district in writing of their intent to opt out of such disclosure, the LEA must honor that option until otherwise notified. “Directory information” does not generally include information related to race, gender, social security numbers, grades, religion, national origin, country of citizenship, and immigration status.
- 5) Data Security. School districts and schools must take reasonable steps to protect confidential information, including the implementation of appropriate security measures for electronically stored data.

Exceptions. Certain exceptions to disclosure limitations exist under FERPA, permitting disclosure of otherwise confidential information to certain parties under certain circumstances, including disclosures for:

- 1) Disclosure of “directory information.” LEAs are permitted to disclose certain information, referred to as “directory information,” without additional consent from either parents or eligible students. Ordinarily, this includes information such as names, addresses, and phone numbers, but LEAs must give parents and eligible students an opportunity to opt out of such disclosures. FERPA defines “directory information” as information contained in an educational record that would not normally be considered harmful or invasive of privacy if disclosed.

Schools and school districts must give notice of information it has designated as “directory information,” the right of parents and eligible students to restrict this disclosure, and the period of time during which the parent or eligible student must notify schools in writing that they are opting out of such disclosure. After an eligible student or parent notifies a school or district in writing of their intent to opt out of such disclosure, the LEA must honor that option until otherwise notified. “Directory information” does not generally include information related to race, gender, social security numbers, grades, religion, national origin, country of citizenship, and immigration status.

- 2) School officials and personnel with a “legitimate educational interest” may access student records without additional consent. “Legitimate educational interest” includes teachers counsellors and administrators who work with students; the performance of tasks related to education or discipline; providing services to students or families; and performing administrative tasks. Schools must

establish written criteria to determine which school officials have such a legitimate educational interest, which must be included in the annual notification to parents and eligible students, noted above.

- 3) Other schools, school districts, or to postsecondary institutions where the student is enrolled or planning to enroll.
- 4) The Comptroller or Attorney General of the United States, or to the Secretary of the United States Department of Education, or to other state or local authorities for purposes of audit or evaluation.
- 5) Purposes of evaluation for financial aid for which the student has applied, so long as such disclosures are to make determinations of eligibility, amounts, or conditions of aid, or enforcement of the terms of financial aid.
- 6) State or local officials within the juvenile justice system, so long as such disclosures are made pursuant to state law.
- 7) Purposes of conducting studies for educational institutions or agencies related to the development of educational policies or programs intended to improve educational instruction.
- 8) Disclosure related to accreditation procedures.
- 9) Disclosure to parents of dependent students as defined by the Internal Revenue Service.
- 10) Emergencies involving health or safety.
- 11) Compliance with court orders or subpoenas, so long as a reasonable effort is made to provide notice to parents and eligible students.
- 12) Disclosure to law enforcement if such request falls under one of the enumerated FERPA exceptions. Before complying with such requests, school officials should consult with legal counsel to ensure the request is valid, and appropriately narrowly tailored to the request. Certain information that might be considered “directory information” might not be disclosed, as it is linked to protected non-directory information. For example, schools and school districts would typically need consent to disclose names and addresses of undocumented students because that information may implicitly reveal protected information, such as immigration status and national origin.
- 13) Disclosure to School Resource Officers (SRO) is permitted only under ordinary FERPA constraints, such as the school official exception. Thus, the SRO would only be permitted to access the information if they have a “legitimate educational interest.” Otherwise, SROs must be treated the same as other law enforcement officers.
- 14) FERPA requires notification to parents and eligible students *before the disclosure occurs*, unless a court rules otherwise.
- 15) Service providers and contractors are generally included as agents of the school and must operate under the same strictures as other school officials. They should insist upon proper warrants before

disclosure of potentially confidential information and should consult their legal counsel regarding the propriety of such requests, warrants, and subpoenas.

For more information on the allowable exceptions, please see 34 CFR 99.31 and other relevant sections of 34 Part 99.

Immigrant and Migrant Students.

Immigrant and migrant students continue to face significant barriers that do not affect their more secure peers. There are special considerations pertaining to such students and protection of their privacy under FERPA. The Supreme Court of the United States (SCOTUS) decision in *Plyler v. Doe*, 457 U.S. 202 (1982) established the rights of all students to a public education, regardless of their immigration status (please note that while FERPA also applies to higher education, the *Plyler* decision applies only to public education, Kindergarten through 12th Grade).

The *Plyler* Court, recognizing the fundamental importance of access to public education, noted, “[w]e cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”

The *Plyler* case originated in Texas, where state law would withhold funds from school districts that were designated for the education of any students who were not lawfully admitted to the United States, and further allowed school districts to charge tuition for undocumented students.

SCOTUS found that, because the Texas law denied a public education to a “discrete group of innocent children” and did not further a “substantial state interest,” the law violated the Equal Protection Clause

Efforts to chill the participation of immigrant and undocumented students in public education have nevertheless continued since the *Plyler* decision. Onerous school registration demands for documentation that is difficult for immigrant families to obtain likely violate *Plyler*. Procedural measures to make matriculation and education of English learner students would likely violate the *Plyler* decision.

Conclusion

In summary, you should always remember that federal laws for protections for students’ privacy under FERPA. While there may be an increase in immigration enforcement action nationwide according to declared policy priorities in the next administration, it is that much more important to already review again the FERPA protections and other applicable FERPA laws, to ensure you remain in compliance with federal laws. You should consult with your legal counsel as well broadly and for specific instances. You should always remember the importance of educating your students in a safe and conducive learning environment.

cc: Secretary Designate MDP
Office of General Counsel