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1.0 Purpose

Wasatch Charter School recognizes the importance of confidentiality with regard to sensitive student and family information and will comply with State and Federal laws concerning family educational rights and privacy. The laws referenced in this policy are for summary purposes only. The laws cited in this policy may be referenced for further detail. Any new legislation on school privacy laws will be enforced as well.

This policy provides standards for the protection of private information within the curriculum and other school activities. All Wasatch Charter School staff and parent volunteers are subject to the school’s Confidentiality Policy.

2.0 Definition

Family Educational Rights and Privacy Act (FERPA)

FERPA was enacted as a species of civil rights legislation, designed to assert and protect the rights of students and their parents. According to its sponsors, “The purpose of the Act is two-fold - to assure parents of students’ access to their education records, and to protect such

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individuals’ rights to privacy by limiting the transferability of their records without their consent.” Sources for the principles embraced by Congress in enacting FERPA may be the privacy concept found in common law and, to a lesser extent, the right to privacy that has been found to be an implied right under the U.S. Constitution.

FERPA and Its Protections

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy interests of students. It affords parents the right to access and request their children’s education records be amended, and gives them some control over the disclosure of the information in these records. FERPA generally prevents schools from sharing student records, or personally identifiable information in these records, without the written consent of a parent, except as provided by law.

3.0 Policy Content
Education Records

The term “education records” is defined as all records, files, documents, and other materials containing information directly related to a student; and maintained by the education agency or institution, or by a person acting for such agency or institution. This includes all records regardless of medium, including, but not limited to, handwriting, videotape or audiotape, electronic or computer files, film, print, microfilm, and microfiche. Personal notes made by teachers or other staff are not considered education records if they are:

- kept in the sole possession of the maker;
- not accessible or revealed to any other person except a temporary substitute, and

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- used only as a memory aid.

Records created and maintained by a law enforcement unit for law enforcement purposes are also excluded.

Directory Information

The term “directory information” is used for the portion of the education record that, if disclosed, would not generally be considered harmful or an invasion of privacy. Wasatch Charter School has designated the follow as directory information:

- name, address and, telephone number;
- date and place of birth;
- parent’s email address;
- participation in officially recognized activities and sports;
- dates of attendance;
- awards received;
- most recent previous education agency or institution attended; and
- photographs.

Directory information may be released at the discretion of school officials, without consent, for appropriate reasons. Under the provisions of FERPA, parents must be notified annually of their right to withhold the release of any or all directory information. Schools must honor a parent’s request that their student’s directory information not be released. At the beginning of each school year, students will be sent home with a Directory Notification Form. If parents wish, they may sign the form to withhold the release of their children’s directory info.

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Annual Notification of Rights to Parents

FERPA regulations require schools to give annual notification to parents of their rights under FERPA. The annual notification must ensure that parents understand that they have the right to:

- inspect and review their student’s education record;
- seek to amend the record if they believe it to be inaccurate; and
- consent to disclosures of personally identifiable information, with some exceptions as outlined in the Disclosure of Student Information section below.

At the beginning of each school year, parents will be asked to refer to the Wasatch Charter School Confidentiality Policy located on the school’s website at www.wasatchcharterschool.com.

Disclosure of Student Information

Generally, schools must have written parent permission to release any information from a student’s education records. However, in addition to properly designated “directory information,” FERPA allows disclosure, without consent, to the following parties or under the following conditions:

A Legitimate Educational Interest

School officials with a “legitimate educational interest” may access student records under FERPA. Generally, this refers to individuals in the school who need to know information in the student’s education record in order to perform their professional responsibility.

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Other Schools Into Which a Student is Transferring or Enrolling

Schools that submit a records request or in which a student has enrolled are eligible to receive information from that student’s education records, so long as the disclosure is for purposes related to the student’s enrollment, or transfer. This includes postsecondary institutions to which the student is applying.

Judicial Orders or Lawfully Issued Subpoenas

Schools must release information requested by judicial order or legal subpoena. However, the school must make a reasonable effort to notify the parent in advance of compliance, unless the court or other issuing agency has ordered that the contents of the subpoena not be disclosed, or that the protected education records not be included.

Health and Safety Emergencies

Disclosure to appropriate officials is valid if the information contained in the education record is necessary to protect the health or safety of the student or other individuals. This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student’s education records. When making a disclosure under the health or safety emergency provision in FERPA, schools are specifically required to record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the school disclosed the information.

The Juvenile Judicial System

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Schools may release information to state and local juvenile justice authorities after receiving written certification that the information will not be disclosed to any other agency, organization, or third party without the parent’s permission, except as allowed by state law.

Specified Officials for Audit or Evaluation Purposes

This exception refers to federal, state, and local education agencies that must collect data or student information to audit, evaluate, or enforce educational programs.

The Immigration and Naturalization Service (INS) for Foreign Students Attending School Under a Visa

INS requires foreign students attending an educational institution under an F-1 visa to sign the Form-I-20. The form contains a consent provision allowing for the disclosure of information to INS. This consent is sufficiently broad to permit an educational institution to release personally identifiable information of a student who has signed a Form I-20 to the INS for the purpose of allowing the INS to determine the student’s nonimmigrant status.

Ex Parte Orders

Schools must release information in response to an ex parte order from the Attorney General of the United States or his designee in connection with the investigation or prosecution of terrorism crimes. An ex parte order is an order issued by a court of competent jurisdiction without notice to an adverse party.

Parent Consent to Release Student Records

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A parent must provide written consent before a school or school district discloses personally identifiable information from the student’s education records, unless one of the exceptions to FERPA’s general consent rule applies (see Disclosure of Student Information). FERPA requires that a consent be signed and dated by the parent and:

- specify the records that may be disclosed;
- state the purpose of the disclosure; and
- identify the party or class of parties to whom the disclosure may be made.

Documenting Release of Student Record

Generally, a school must maintain a record of “each request for access to and each disclosure of personally identifiable information from the education records of each student.” However, a school need not maintain any information about requests for access to or disclosures of personally identifiable information from education records to the following individuals or organizations:

- the parents of the student;
- a school official with a legitimate educational interest;
- a party who has written consent from the parent;
- a party seeking directory information; or
- a party seeking or receiving information under a subpoena in connection with which the issuing authority has ordered nondisclosure.

When a record of the disclosure is required, the school must note at a minimum; (1) the parties who have requested or received personally identifiable information from the education

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records; and (2) the legitimate interest the parties had in requesting or obtaining the information. Documentation should remain with the education record as long as the record is maintained.

Wasatch Charter School may presume that either parent has authority to inspect and review the education records of their child or consent to disclosure. Evidence denying a parent’s FERPA rights must be furnished to the school in the form of a court order that specifically restricts a parent’s access to their child’s education records. If the school is not familiar with the person, the school may request identification to establish that they are in fact the child’s parent with rights under FERPA. Honor any request within a reasonable time but in no case longer than 45 days. The right of parents to access information is limited to their own child or children. If the education record includes information about other students, that information must be removed prior to disclosure so that parents do not have access to any other child’s records.

Transfer of School Disciplinary Records

When sending a transferring student’s school records to another public or private school - a provision of the No Child Left Behind Act requires transfer of a student’s disciplinary records, with respect to suspensions or expulsions of ten or more school days. When a student is suspended or expelled for ten or more school days, Case Management generates a letter to the student explaining the terms of their suspension or expulsion. A copy of this letter should be placed in the student’s permanent file thereby creating a record which will follow the student when transferring to another school.

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Videotapes

For FERPA purposes, surveillance videotapes (or other media) with information about a specific student are considered education records if they are kept and maintained by the school system, and thereby subject to protection. Videotapes may be reviewed by school officials who have a legitimate educational interest. Parents have the right, upon request to inspect and review their student’s education record. However, if the videotape contains personally identifiable information about a student other than the parent’s own student, and the information cannot be easily separated, in order to limit access to only the relevant student’s information, a school official shall summarize the contents of the videotape and inform the parents of the contents either verbally or in writing.

Due to the involvement of Expeditionary Learning, students may have to the opportunity to participate in promotional videos and other recordings of students’ research and expeditions for school use. At the beginning of each school year, a permission slip will be sent home with students. If a parent does not wish their child to be videotaped, for these reasons, the parent may sign to have their child withheld from being in any videotapes of school work.

Other Federal Laws Protecting Student Privacy

Individuals with Disabilities Education Act (IDEA)

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In addition to the requirements of FERPA which are restated in the IDEA, the IDEA provides additional privacy protections for students who are receiving special education and related services tailored to protect special confidentiality concerns for children with disabilities and their families. Public agencies must inform parents of children with disabilities when information is no longer needed and will be destroyed. The school district must have one official who is responsible for ensuring the confidentiality of any personally identifiable information and must train all persons who are collecting or using personally identifiable information about confidentiality and FERPA.

Health Insurance Portability and Accountability Act (HIPAA)

There is a broad exemption in HIPAA’s Privacy Rules that excludes health information contained in an education record. Health records maintained by an education agency or institution subject to FERPA, including immunization records and school nurse records, would be considered “education records” and subject to FERPA because they are:

- directly related to the student;
- maintained by an education agency or institution, or a party acting for the agency or institution; and
- not excluded from the definition of education records as treatment or sole-possession records.

Protection of Pupil Rights Amendment (PPRA) and Utah Family Educational Rights and Privacy Act

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After taking notice of what were perceived as abuses of family privacy and parental autonomy by some educators, and following a pattern established under federal law since 1978 (PPRA), the Utah Legislature adopted, in 1994, a state law designed to ensure that family privacy and parents’ involvement in their children’s education would be respected in all aspects of the public school curricula and activities.

The Utah legislation affords parents and students additional protections that do not exist under current federal law:

- the legislation clarifies, from the outset, that public educators have a duty to protect the privacy of students, parents, and their families;
- the protections apply regardless of the source of funding;
- the protections apply to all aspects of the curricula and school activities;
- the protections apply whether the information is personally identifiable or not;
- the protections apply not only to close personal and familial relationships of the student but also other family members; and
- the consent is only valid for the activity for which it was granted.

A Utah statute makes it possible to tailor enforcement to meet unique local needs rather than federal priorities.

A Wasatch Charter School employee must obtain prior written consent from a student’s parent if the employee plans to administer any psychological or psychiatric examination, test, treatment, or any survey, analysis or evaluation that has the purpose or evident intended effect of causing the student to reveal information, whether the information is personally identifiable or not, concerning the student’s or any family member’s:

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- political affiliations or, except as provided under UCA §53A-13-101.1 or rules of the Utah State Board of Education, political philosophies;
- mental or psychological problems;
- sexual behavior, orientation, or attitudes;
- illegal, anti-social, self-incriminating, or demeaning behavior;
- critical appraisals of individuals with whom the student or family member has close family relationships;
- religious affiliations or beliefs;
- legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and
- income, except as required by law.

The prohibitions above also apply within the curriculum and other school activities unless prior written consent is obtained.

At least two weeks before the test/treatment/survey/analysis/evaluation is administered or information listed above is sought, unless the parent chooses to waive the two-week minimum notification period.

Parents and families of students have protected privacy rights in the public education setting. It is reasonable for parents to have adequate time to make important decisions. Parents may wish to contact the school employee to discuss proposed curriculum, assignments, or testing or alternatives to the objectionable activity. Therefore, the waiting period provided in FERPA is a reasonable accommodation to parents. Written parental consent is valid only if the parent has been given notice and a reasonable opportunity to obtain written information regarding:

- the information and relationships that will be examined or requested;

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- how the records or information will be examined or reviewed;
- the means by which the information will be obtained;
- the purposes for which the records or information are needed;
- the entities or persons (public or private) who will have access to the personally identifiable information; and
- how a parent can give permission to access or examine the personally identifiable information.

The authorization is valid only for the activity for which it was granted, or until the parent withdraws consent by submitting a written withdrawal of authorization to the school principal, during the course of the activity.

The law requires a response from the parent before the student can participate in discussion of protected areas or subject matter. The student would have to be excluded until the parent responds.

Legislation specifically applies “whether the information is personally identifiable or not.” Parents do not need to be notified before students participate in anonymous surveys.

The act specifically exempts spontaneous expression, the use of any part of the curriculum or school activity “in which the purpose or evident intended effect is to cause the student to reveal” prohibited information is not allowed. Nothing in the act was intended to restrict the right of a student to exercise “free speech” and related rights allowed by other state legislation which exempts the school from protected information that is spontaneously shared.

The statute specifically exempts school employees who are responding to a situation that they “reasonably believe to be an emergency” or who are acting in compliance with state child

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abuse reporting laws or a court order. State law and State Board of Education rules provide that “when any person. . .has reason to believe that a child has been subjected to” this situation, he/she “shall immediately notify the nearest peace officer, law enforcement agency, or office of the State Division of Child and Family Services (DCFS).”

When a school employee believes that “a situation exists which presents a serious threat to the wellbeing of the student,” the employee is directed to “notify the student’s parent or guardian without delay.” Examples could include abusing drugs or illegal contraband, promiscuous sexual activity, attempted suicide, or involvement in criminal or delinquent conduct. However, when the matter has been reported to DCFS, it is the responsibility of the Division to notify the student’s parent or guardian of any possible investigation or take other appropriate action.

4.0 Relevant Procedures, Guidelines & Restrictions

5.0 Policy Owner

6.0 Exhibits / Appendices / Forms

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7.0 Supporting Information

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