

Annual Notices* August 2014

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Numerous federal (and state) laws require school districts to provide students, parents, and/or the public with notices, many of which must be provided at the beginning of the school year. Fortunately, federal agencies or other entities oftentimes have created “model” notices (or provide information useful to creating notices) that can be easily tailored to meet individual district needs. The following article describes some of the notices required by federal law, including the method required to give notice where it is specified in the statutes and/or regulations, and provides links to documents that may be used in writing such notices. This article does not contain a description of employment-related notices required by federal law or notices required by state law.

Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA), reauthorized under the No Child Left Behind Act of 2001, requires state education agencies, school districts, and individual schools to provide numerous notices to parents, the public, and others. Appendix B (pages 34-39 therein) of the U.S. Department of Education’s non-regulatory guidance document, *Parental Involvement Title I, Part A (April 2004)*, contains a chart of the key parental notice requirements under Title I, Part A of the ESEA, identifies who should issue the notices, and when they must be issued. Some of these notices include: annual report cards; progress reviews; schools identified for school improvement, corrective action, or restructuring; parental involvement policies; state education agency complaint procedures; teacher and paraprofessional qualifications; identification of non-highly qualified teachers; student achievement information; an informational meeting on Title I, Part A; a disclosure that the district routinely releases the names, addresses, and phone numbers of secondary students to military recruiters unless parents opt out; and a variety of information about the status of English Language Learners.

- The description of each notice in the chart contains references to the relevant statutory sections and guidance documents, some of which also contain model policies. Download this document at: <http://www.ed.gov/programs/titleiparta/parentinvguid.doc>

Notice that a school has been identified for improvement, corrective action, or restructuring:

Notice to parents that a school has been identified for improvement, corrective action, or restructuring must be given in an understandable and uniform format, including alternative formats upon request,

* See also National School Boards Association, *Policies Required By Federal Law* (August 2014), available at www.nsba.org.

and, “to the extent practicable,” in a language that parents can understand. [34 C.F.R. § 200.36\(b\)](#). In general, notice must be provided to parents directly, through regular mail or e-mail, and “[t]hrough broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families.” [34 C.F.R. § 200.36\(c\)](#).

This notice must include the following:

- An explanation of what the identification means, and how the school compares in terms of academic achievement to other elementary or secondary schools served by the SEA and the LEA. [34 C.F.R. § 200.37\(b\)\(1\)](#).
- The reasons for the identification. [34 C.F.R. § 200.37\(b\)\(2\)](#).
- An explanation of how parents can become involved in addressing the academic issues that led to the identification. [34 C.F.R. § 200.37\(b\)\(3\)](#).
- An explanation of the parents’ option to transfer their child to another public school, including information about transportation to the new school and information on the academic achievement of the new school. Notice must be given at least 14 days before the start of the school year. [34 C.F.R. § 200.37\(b\)\(4\)](#). For further information on the content of the notice, [see Section D in the U.S. Department of Education’s *Public School Choice Non-Regulatory Guidance* at: <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>](#)
- **NOTE:** If the school is in its second year of improvement, corrective action, or restructuring, the notice must also explain how parents can obtain supplemental education services for their child. For more information, see [34 C.F.R. § 200.37\(b\)\(5\)](#) and Section G in the U.S. Department of Education’s *Supplemental Educational Services, Non-Regulatory Guidance* at: <http://www2.ed.gov/policy/elsec/guid/suppsvcsguid.doc>

Family Educational Rights and Privacy Act

Pursuant to the Family Educational Rights and Privacy Act (FERPA), school districts must provide parents/guardians and eligible students (students at least 18 years of age) with annual notice of their rights to inspect and review education records, amend education records, consent to disclose personally identifiable information in education records, and file a complaint with the U.S. Department of Education. [34 C.F.R. § 99.7\(a\)](#). The notice must include the procedure to request and review education records; as well as a statement that records may be disclosed to school officials without prior written consent. This statement should define a school official and also what constitutes a legitimate educational interest. [34 C.F.R. § 99.7\(a\)\(3\)](#). Notice may be provided in any way that is reasonably likely to inform parents of their rights, and must effectively notify parents who have a primary or home language other than English and parents/guardians or eligible students who are disabled. [34 C.F.R. § 99.7\(b\)](#).

- Download the U.S. Department of Education’s *Model Notification for LEA Officials* at: <http://familypolicy.ed.gov/content/model-notification-rights-under-ferpa-elementary-and-secondary-schools>

The Uninterrupted Scholars Act, signed into law in January 2013, allows an LEA to disclose the educational records of students, without the written permission of the parents, to an agency caseworker



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or a representative of the state or local child welfare agency, or a tribal authority, determined to have the right to such access and so long as that agency or authority is legally responsible for the care and protection of the student. These agencies cannot further disclose these records to other parties not authorized by FERPA. 20 U.S.C. § 1232g(b)(1)(L); 34 C.F.R. § 99.33.

- NOTE: The referenced *Model Notification for LEA Officials* does not currently include the new exception under the Uninterrupted Scholars Act.

Under FERPA, school districts may disclose directory information if they have given public notice to parents/guardians and eligible students of what information has been designated as directory information, and when and how parents/guardians and eligible students may opt out of allowing the district to disclose their directory information. 34 C.F.R. § 99.37(a). Finally, under ESEA school districts must provide notice that they routinely release the names, addresses, and phone numbers of secondary students to military recruiters unless parents opt out. 20 U.S.C. § 7908. School districts may provide this military recruiter notice as part of their general FERPA notice.

- Download the U.S. Department of Education's *Model Notice for Directory Information* at: <http://familypolicy.ed.gov/content/ferpa-model-notice-directory-information>

FERPA regulations permit LEAs and schools to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both. 34 C.F.R § 99.37(d). It is up to individual LEAs and schools to decide whether to adopt limited directory information policies and how to implement them. The regulations' directory information exception makes clear that parents/guardians and eligible students may not, by opting out of the disclosure of directory information, prevent an LEA or school from requiring a student to wear or present a student ID or badge. 34 C.F.R. § 99.37(c). While the Department does not require LEAs or schools to establish policies mandating that students wear badges; these are individual decisions that LEAs and schools should make taking into account local circumstances.

Protection of Pupil Rights Amendment

The Protection of Pupil Rights Amendment (PPRA) requires school districts to adopt a number of policies regarding surveys of students, instructional materials, physical examinations, personal information used for marketing, and the like related to students. Parents must be notified of these policies at least annually at the beginning of the school year and within a reasonable time period after any substantial change is made to the policies. 20 U.S.C. § 1232h(c)(2)(A).

- Download the U.S. Department of Education's *Model Notification of Rights Under the Protection of Pupil Rights Amendment* at: <http://familypolicy.ed.gov/content/model-notification-rights-under-protection-pupil-rights-amendment-ppra>

If districts plan to: (1) use students' personal information for selling or marketing purposes; (2) administer any survey about any of the eight topics listed in the statute (political beliefs, income, sex behavior or attitudes, etc.); or (3) administer certain non-emergency, invasive physical examinations, districts must directly notify parents at least annually at the beginning of the school year of the specific

or approximate dates when these activities are scheduled or expected to be scheduled. 20 U.S.C. § 1232h(c)(2)(B), -(c)(2)(C).

- Download the U.S. Department of Education's *PPRA Model Notice and Consent/Opt-Out for Specific Activities* at: <http://www2.ed.gov/policy/gen/guid/fpco/pdf/ppraconsent.pdf>

Child Nutrition Programs

If school districts participate in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, near the beginning of each school year, they must provide both parents and the public with information about free and reduced price meals and/or free milk. 7 C.F.R. § 245.5. Districts also must provide parents with an application form. Districts may not disclose children's free and reduced eligibility status, unless the requestor of such information falls into one of the categories specified in the National School Lunch Act. 42 U.S.C. § 1758(b)(6)(A)(i)-(v).

The USDA's document entitled *Eligibility Manual for School Meals* contains information on federal requirements regarding the determination and verification of eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. The document contains a information about what the application for these programs is to contain, including a link to an online application. The document also contains a chart describing to whom (p. 71), and under what conditions, information regarding free and reduced eligibility status may be disclosed (pp. 69-78, and Appendix C).

- Download the *Eligibility Guidance for School Meals Manual*, which contains relevant notices in the appendices, at: <http://www.fns.usda.gov/cnd/guidance/EliMan.pdf>
- Download the Sample Family Friendly Free and Reduced-Price School Meals Application Package (available in 34 translations) at: <http://www.fns.usda.gov/sites/default/files/english.pdf>
- Download USDA's Prototype Household Application for SY2014-15, "Free and Reduced Price School Meals Application and Verification Forms": www.fns.usda.gov/sites/default/files/cn/SP45-2014a.docx

The amended Healthy, Hunger-Free Kids Act of 2010 requires school districts to inform and update the public (including parents, students, and others in the community) about the content and implementation of the local school wellness policy. 42 U.S.C. § 1758b(b)(4). School districts also must periodically measure and report on implementation of the local school wellness policy, including: (i) the extent to which schools under the jurisdiction of the local school district are in compliance with the local school wellness policy; (ii) the extent to which the local school wellness policy of the local district compares to model local school wellness policies; and (iii) a description of the progress made in attaining the goals of the local school wellness policy. 42 U.S.C. § 1758b(b)(5)(A). [Note: USDA issued proposed rules on February 26, 2014 regarding local school wellness policies. As of the date of publication of this 2014 Annual Notices publication, no final rules have issued.]

According to a USDA memorandum, school districts can implement the requirement for informing and updating the public about the content and implementation of the local school wellness policy by



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developing or disseminating printed or electronic materials to families of school children and other members of the school community at the beginning of the school year, and posting the local school wellness policy and an assessment of its implementation on the district or school website. According to the memorandum, the information must be made available to the public in an accessible, easily understood manner.

- Download the memorandum at: http://www.fns.usda.gov/sites/default/files/SP42-2011_os.pdf.

Asbestos Hazard Emergency Response Act

The Asbestos Hazard Emergency Response Act (AHERA) requires school districts to inspect their buildings for asbestos-containing building materials, and develop, maintain, and update an asbestos management plan. School districts must annually notify parents, teachers, and employee organizations in writing of the availability of the management plan and planned or in-progress inspections, re-inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. 40 C.F.R. §§ 763.84(c), (f), 763.93(g)(4).

- Download the *Model Annual AHERA Notice Letter* at: <http://yosemite.epa.gov/R10/OWCM.NSF/d14dabb756dc1fb3882565000062f164/c18ad083691dcdc38825672f0058649d!OpenDocument>

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act requires homeless student liaisons to provide public notice of the education rights of homeless students. 42 U.S.C. § 11432(e)(3)(C)(i). Such notice is to be disseminated in places where homeless students receive services under this Act, including schools, family shelters, and soup kitchens. The notice must be in a “manner and form” understandable to homeless students and their parents/guardians, “including, if necessary and to the extent feasible,” in their native language. 42 U.S.C. § 11432(e)(3)(C)(iii).

- The National Center for Homeless Education (funded by the U.S. Department of Education) has created **free** Educational Rights posters (in black/white or color; English/Spanish; parents/students) that can be downloaded or ordered at: http://center.serve.org/nche/pr/er_poster.php#youth.

Title VI, Title IX, Section 504, the Age Discrimination Act, Title II of the Americans with Disabilities Act, and the Boy Scouts of America Equal Access Act

A number of federal statutes protect the rights of beneficiaries not to be discriminated against in programs or activities receiving financial assistance. Specifically, the following statutes prohibit discrimination: Title VI (race, color, ethnicity, and national origin); Title IX (sex and pregnancy); Section 504 and Title II of the Americans with Disabilities Act (disability); and the Age Discrimination Act (age). The Boy Scouts Act requires public schools to provide equal access to the use of school property to the Boy Scouts and other designated youth groups. The regulations implementing the above statutes require school districts to notify students, parents, and others that they do not

discriminate on the basis of race, color, ethnicity, national origin, sex, pregnancy, disability, and age, and that they provide equal access to the Boy Scouts and other designated youth groups. Title VI, 34 C.F.R. § 100.6(d); Title IX, 34 C.F.R. § 106.9; Section 504, 34 C.F.R. § 104.8; Age Discrimination Act, 34 C.F.R. § 110.25; Title II, 28 C.F.R. § 35.106; Boy Scouts Act, 34 C.F.R. § 108.9. The regulations contain minor differences relating to the required content of the notices and the methods used to publish them.

- Download the U.S. Department of Education's *Notice of Non-Discrimination*, which describes the content requirements of notices under these statutes, including the methods of notification required by Title IX and Section 504, and contains a sample notice of non-discrimination school districts may use to meet the requirements of **all** of the above statutes, at: <http://www2.ed.gov/print/about/offices/list/ocr/docs/nondisc.html>
- **NOTE:** The notice must include the identity and contact information of the coordinators designated to handle complaints under Title IX (34 C.F.R. § 106.8), Section 504 (34 C.F.R. § 104.8), the Americans with Disabilities Act (28 C.F.R. § 35.107), and the Age Discrimination Act (34 C.F.R. § 110.25).

Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act (IDEA), school districts must give parents of a child with a disability a copy of its procedural safeguards only one time per year; but also upon initial referral or parental request for an evaluation, the filing of a first request for a due process hearing, a disciplinary action constituting a change in placement, and at the request of a parent. 20 U.S.C. § 1415(d)(1); 34 C.F.R. § 504(a). A school district may post a copy of the procedural safeguards on its website. 20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(b). The notice must fully explain the IDEA's procedural safeguards in an easily understandable manner, and in the native language of the parents unless it is clearly not feasible to do so. 20 U.S.C. § 1415(d)(2); 34 C.F.R. § 300.504(c), (d). Parents may choose to receive the procedural safeguards notice and other notices under IDEA by e-mail, if the LEA makes this option available. 20 U.S.C. § 1415(n); 34 C.F.R. § 300.505.

- Download the U.S. Department of Education's *Model Form: Procedural Safeguards Notice* at: http://idea.ed.gov/download/modelform_Procedural_Safeguards_June_2009.pdf
- **NOTE:** The procedural safeguards notice requirements in the IDEA also apply to parents of homeless children with disabilities. For more information, see Question B-2 in *Questions and Answers on Special Education and Homelessness* by the Office of Special Education and Rehabilitative Services and the Office of Elementary and Secondary Education at: <http://www.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.doc>.