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ASSOCIATION POLICY SERVICES – JOE BROTT, DIRECTOR

This edition of *Policy Notes* provides an explanation of the changes to mandatory, recommended, and optional policies contained in the *MTSBA Master Policy Manual*. A summary of the changes to affected policies is listed below.

ANNUAL NOTICES REQUIRED BY FEDERAL LAW

Numerous federal 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. Federal agencies or other entities oftentimes have created “model” notices (or provide information useful to creating notices) that can easily be tailored to meet individual district needs. The following describes some of the notices required by federal law, including methods required to give notice.

Elementary and Secondary Education Act (ESEA)

The Elementary and Secondary Education Act requires state education agencies, school districts, and individual schools to provide numerous notices to parents, the public, and others. 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; a disclosure that the district routinely releases the names, addresses, and phone numbers of secondary students to military recruiters unless parents opt out; and information about the status of English language Learners. A description of each notice can be accessed by downloading the 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, and, “to the extent practicable,” in a language that parents can understand. 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.”

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.
- The reasons for the identification.
- An explanation of how parents can become involved in addressing the academic issues that led to the identification.
- 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.
- 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.

Family Educational Rights and Privacy (FERPA)

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\(a\)\(2\)](#). 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\(b\)](#).

The Uninterrupted Scholars Act allows a school to disclose educational records of students, without the written permission of the parents, to an agency caseworker 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](#).

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.

Protection of Pupil Rights

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\(c\)\(2\)\(A\)](#).

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\(c\)\(2\)\(B\)](#), [\(c\)\(2\)\(C\)](#).

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 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 their local school wellness policies. [42 U.S.C. § 1758b\(b\)\(4\)](#). School districts also must periodically measure and report on implementation of their local school wellness policies, including: (1) the extent to which schools under the jurisdiction of the local school district are in compliance with its local school wellness policy; (2) the extent to which the local school wellness policy of the local district compares to model local

school wellness policies; and (3) a description of the progress made in attaining the goals of the local school wellness policy. [42 U.S.C. § 1758b\(b\)\(5\)\(A\)](#).

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

[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, reinspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. [40 C.F.R. §§ 763.84\(c\), \(f\), 763.93\(g\)\(2\)](#).

- Click to download the [Model Annual AHERA Notice Letter](#)

[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\(e\)\(3\)\(C\)\(iii\)](#).

[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 federal and/or state 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.

[Individuals with Disabilities Education Act \(IDEA\)](#)

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\(d\)\(1\)\(a\)](#); [34 C.F.R. § 300.504\(a\)](#). A school district may post a copy of the procedural safeguards on its website. [20 U.S.C. § 1415\(d\)\(1\)\(b\)](#); [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 the IDEA by email, if the LEA makes this option available. [20 U.S.C. § 1415\(n\)](#); [34 C.F.R. § 300.505](#).

NOTE: The procedural safeguards notice requirements in the IDEA also apply to parents of homeless children with disabilities.

Policies Required by Federal Law

Below is a list of federal laws and regulations that require a policy, written procedure or form.

--*Notice of Non-Discrimination and Grievance Procedure*: Policy 3210 (Equal Education, Nondiscrimination and Sex Equity) (Students), Policy 5010 (Equal Employment Opportunity and Nondiscrimination) (Employees), Policy 1700 (Uniform Complaint Procedure)

--*Asbestos Management Plan*: Policy 8420 (District-Wide Asbestos Program), Yearly notification form

--*Americans with Disabilities Act*: Policy 4316 (Accommodating Individuals with Disabilities), Policy 1700 (Uniform Complaint Procedure)

--*Healthy, Hunger-Free Kids Act of 2010*: Policy 2510 (School Wellness)

--*Children's Internet Protection Act (CIPA)*: Policy 3612P (Acceptable Use of Electronic Networks)

--*Copyright Act*: Policy 2312 (Copyright), Policy 2312P (Copyright Compliance)

--*Drug-Free Workplace Act*: Policy 5226 (Drug-Free Workplace)

--*Fair Labor Standards Act*: Every employer of employees subject to the FLSA's minimum wage provisions must post, and keep posted, a notice explaining the FLSA in a conspicuous place in all of their schools so as to permit employees to readily read it.

--*Family Medical Leave Act*: Policy 5328 (Family Medical Leave). MTSBA has two models; one for

districts that offer FML, and one for districts that are not required (based on employees) to offer FML. Employers must post a poster (can obtain from the U.S. Department of Labor) that includes all of the information regarding the FMLA.

--*Health Insurance Portability and Accountability Act (HIPAA)*: Policy 5510 (HIPAA)

--*Individuals with Disabilities Act (IDEA)*: Policy 2161P (Special Education)

--*McKinney-Vento Homeless Assistance Act*: Policy 3125 (Education of Homeless Children)

--*No Child Left Behind (NCLB)*: Policy 2160-2160P (Title I Parent Involvement), Policy 4600 (No Child Left Behind)

--*Moving Ahead for Progress in the 21st Century*: Policy 5228-5228P (Drug and Alcohol Testing for School Bus Drivers and Commercial Vehicle Drivers), Policy 5226 (Drug-Free Workplace)

--*Protection of Pupil Rights Amendment (PPRA)*: Policy 2132 (Student and Family Privacy Rights), Policy 3410 (Student Health/Physical Screenings/Examinations)

--*Section 504 of the Rehabilitation Act*: Policy 2162-2162P (Section 504 of the Rehabilitation Act of 1973)

--*Safe & Drug Free Schools & Communities Act*: Policy 3310 (Student Discipline), Policy 3311 (Firearms and Weapons),

--*Title IX of the Education Amendments of 1972*: Policy 3210 (Equal Education, Nondiscrimination and Sex Equity)

--*Uniformed Services Employment and Reemployment Rights Act of 1994*: Policy 5322 (Military Leave), Employers must provide notice to persons entitled to rights and benefits under USERRA. The notice requirement may be met by posting the notice where employers customarily place notices for employees. [USERRA Poster](#)

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