

PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

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The purpose of the Parents' Bill of Rights is to inform parents (including legal guardians or persons in parental relation to a student, but generally not the parents of a student who is 18 years of age or older) of the legal requirements regarding privacy, security and use of student data. In addition to the federal Family Educational Rights and Privacy Act (FERPA), Education Law §2-d provides important new protections for student data, and new remedies for breaches of the responsibility to maintain the security and confidentiality of such data.

The rights and protections established by FERPA and the NYS Education Law for parents are extended to "eligible students," defined as students 18 years of age or older.

NOTICES OF PARENTS' BILL OF RIGHTS UNDER FERPA AND THE EDUCATION LAW ARE ATTACHED HERETO AS EXHIBITS 1 AND 2.

A. What are the essential parental rights under the Family Educational Rights and Privacy Act (FERPA) relating to personally identifiable information in their child's student records?

The rights of parents under FERPA are summarized in the Model Notification of Rights prepared by the United States Department of Education for use by schools in providing annual notification of rights to parents. It can be accessed at

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html> , More information about FERPA and its protections, in both Spanish and in English, may be found on the web at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>.

(Clear View also maintains medical and treatment records for its students. Rights with respect to health and treatment information in these records are summarized in a separate Notice of Privacy Practices with respect to "protected health information." The Notice of Privacy Practices is document no. 5 in Attachment C to the Corporate Compliance Program and should be reviewed together with the current policy with respect to student records for a complete understanding of rights regarding student records maintained by The Clear View School.)

Parental rights under FERPA include:

1. **The right to inspect and review a student's education record**

Parents have the right to inspect and review their student's education records within 45 days after the day the School receives a written request for access. The School shall give notice of the time and place for the inspection of the records. Records to be reviewed at a scheduled meeting of the Committee on Special Education shall be made available at a reasonably sufficient time before the date of the meeting. If a student has two parents (or guardians), both have the right to review the education record unless there is a court order or legally enforceable agreement that limits the right of record access to one parent. The School shall notify the Custodial Parent if a request for record review is made by a noncustodial parent or guardian and shall provide the Custodial Parent with an opportunity to present any legal documents that are relevant to record access.

2. **The right to request an amendment of an education record that is believed to be inaccurate, misleading, or otherwise in violation of the student's privacy rights.**

Parents who wish to have a Clear View record amended should identify the record for amendment and specify why it should be amended. If the School decides not to amend the record as requested, the School

shall notify the parent of the School's decision and of the parent's right to a hearing. Additional information regarding review procedures will be provided with notice of the School's decision. The parent shall have the opportunity to provide information which the parent believes explains or corrects the document sought to be amended. Any written information submitted shall be maintained in the student's education record.

3. The right to expect that the confidentiality of your child's education record will be protected and that personally identifiable information from the record will not be disclosed without your prior written consent.

The right to provide written consent before the School discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent (including but not limited to disclosure under specified conditions to: (i) school officials within the School with legitimate educational interests (School officials include persons employed by the School and may also include a contractor or consultant who performs a service for the School and who is under the direct control of the School with respect to the use and maintenance of the information, such as an attorney, auditor, medical consultant or therapist, or, under certain circumstances, a volunteer who is assisting a school official in performing his or her tasks. A school official will be considered to have a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility); (ii) officials of another school or school district for purposes of enrollment or transfer; (iii) to the school district placing the student at The Clear View School, especially the Committee on Special Education of the student's school district or to Federal or State education officials in connection with an audit or evaluation of education programs or compliance with legal requirements that relate to these programs; (iv) to comply with a judicial order or lawfully issued subpoena (unless the subpoena prohibits such disclosure, the School will notify the parent before release of the records to give the parent the opportunity to review them before release; (v) under certain circumstances, to appropriate officials, including law enforcement and child protective officials, in connection with a health or safety emergency; (vi) to accrediting organizations to carry out their accrediting functions; (vii) third party contractors providing services to, or performing functions for an educational agency; (viii) authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as NYSED; (ix) organizations conducting studies for or on behalf of educational agencies) and (x) the public where the school or school district has designated certain student data as "directory information" (described below). The attached Notice of Parents' Bill of Rights for Data Privacy and Security under FERPA (see Ex1) more fully describes the exceptions to the consent requirement under FERPA.

4. The right to know who has seen your child's education records, other than School officials.

A record of individuals who have reviewed a student's file (other than School officials) shall be maintained with the file and shall be available for the parent's review.

5. The Right to refuse consent for release of Directory Information, within the School Community, and to Colleges and Military Recruiters.

a. The School may publish certain Directory Information about a student without the parent's prior written consent. This Directory Information may be included in such publications as school directories, class lists, year books, program brochures, or programs of events and may be specifically requested by post-secondary institutions that are interested in contacting the student. Directory Information may include the student's name, name of parents, address, age, and grade level. If the parent objects to such disclosure, the parent must advise the School in writing prior to September 15 of each school year. Communication may be made to the Information/Records Coordinator by email at records@clearviewschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10562) and should be headed "Objection to Release of Directory Information."

b. For Parents of High School Students: The School may also be asked for information about the student's name, address and telephone number by Military recruiters. The School will be obliged to provide this information upon request unless the parent advises the School in writing prior to September 15 of each school year that the parent objects to such request. Communication may be made to the Information/Records Coordinator by email at records@clearviewsschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10562) and should be headed "Objection to Release of Directory Information to Military Recruiters."

6. The right to complain about the School's record policies.

A parent has the right to bring to the attention of the Executive Director any complaints the parent may have about the School's Education Record policies and to file a complaint with the Board of Director of the School if dissatisfied with response of the Executive Director. A parent may also file a complaint with the U.S. Department of Education concerning any actions by the School or the Department of Education which are believed to violate FERPA. The name and address of the Office that administers FERPA are

Family Policy Compliance Office
US Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

B. Parents' Rights under Education Law §2-d relating to Unauthorized Release of Personally Identifiable Information

1. The Clear View School is governed by the requirements of Education Law §2-d.

As an approved, private "853 School" (see Chapter 853 of the Laws of 1976) subject to the provisions of Article 89 of the NYS Education Law, The Clear View School is governed by the requirements of Education Law section §2-d.

2. What kind of student data is subject to the confidentiality and security requirements of Education Law §2-d?

The law applies to personally identifiable information contained in student records of a governed agency. The term "student" refers to any person attending or seeking to enroll in an educational agency, and the term "personally identifiable information" ("PII") uses the definition provided in FERPA. Under FERPA, personally identifiable information or PII includes, but is not limited to:

- a. The student's name;
- b. The name of the student's parent or other family members;
- c. The address of the student or student's family;
- d. A personal identifier, such as the student's social security number, student number, or biometric record;
- e. Other indirect identifiers, such as the student's date of birth, place of birth, and Mother's Maiden Name;
- f. 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
- g. Information requested by a person whom the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

3. What kind of student data is not subject to the confidentiality and security requirements of Education Law §2-d?

The confidentiality and privacy provisions of Education Law §2-d and FERPA extend only to PII, and not to student data that is not personally identifiable. Therefore, personally non-identifiable data (e.g., data regarding students that use random identifiers), aggregated data (e.g., data reported at the school district level) or anonymized data that could not be used to identify a particular student is not considered to be PII and is not within the purview of Education Law §2-d or within the scope of this Parents' Bill of Rights.

4. What are a parent's rights under Education Law § 2-d regarding his/her student's PII?

Education Law §2-d ensures that, in addition to all of the protections and rights of parents under the federal FERPA law, certain rights will also be provided under the Education Law. These rights include, but are not limited to, the following elements:

- a. A student's PII cannot be sold or released by the educational agency for any commercial or marketing purposes.
 - o PII may be used for purposes of a contract that provides payment to a vendor for providing services to an educational agency as permitted by law.
 - o However, sale of PII to a third party solely for commercial purposes or receipt of payment by an educational agency, or disclosure of PII that is not related to a service being provided to the educational agency, is strictly prohibited.
- b. Parents have the right to inspect and review the complete contents of their child's education record including any student data stored or maintained by an educational agency.
 - o This right of inspection is consistent with the requirements of FERPA. In addition to the right of inspection of the educational record, Education Law §2-d provides a specific right for parents to inspect or receive copies of any data in the student's educational record, subject to verifiable proof of the identity and authority of the parent to access student information.
 - o Parents have the right to annual notification by educational agencies regarding the right to request student data.
- c. State and federal laws protect the confidentiality of PII, and safeguards associated with industry standards and best practices, including, but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.

5. Limitations on the collection of data by educational agencies

Education Law §2-d also specifically provides certain limitations on the collection of data by educational agencies, including, but not limited to:

- a. A mandate that, except as otherwise specifically authorized by law, NYSED shall only collect PII relating to an educational purpose;
- b. NYSED may only require districts to submit PII, including data on disability status and student suspensions, where such release is required by law or otherwise authorized under FERPA and/or the New York State Personal Privacy Law; and
- c. Except as required by law or in the case of educational enrollment data, schools shall not report to NYSED student data regarding juvenile delinquency records, criminal records, medical and health records or student biometric information.
- d. Parents may access the NYSED Student Data Elements List, a complete list of all student data elements collected by NYSED, at <http://www.p12.nysed.gov/irs/sirs/documentation/NYSEDstudentData.xlsx>, or may obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State

Education Department, Room 863 EBA, 89 Washington Avenue, Albany, NY 12234; and

e. Parents have the right to file complaints with an educational agency about possible breaches of student data by that educational agency's third party contractors or their employees, officers, or assignees, or with NYSED. Complaints to NYSED should be directed in writing to the:

Chief Privacy Officer,
New York State Education Department
89 Washington Avenue, Albany NY 12234
Email to CPO@mail.nysed.gov.

6. Must additional elements be included in the Parents' Bill of Rights?

Yes. For purposes of further ensuring confidentiality and security of student data, as an appendix to the Parents' Bill of Rights each contract an educational agency enters into with a third party contractor shall include the following supplemental information:

- a. the exclusive purposes for which the student data, or teacher or principal data, will be used;
- b. how the third party contractor will ensure that the subcontractors, persons or entities that the third party contractor will share the student data or teacher or principal data with, if any, will abide by data protection and security requirements;
- c. when the agreement with the third party contractor expires and what happens to the student data or teacher or principal data upon expiration of the agreement;
- d. the student data or teacher or principal data that is collected; and
- e. where the student data or teacher or principal data will be stored (described in such a manner as to protect data security), and the security protections taken to ensure such data will be protected, including whether such data will be encrypted.

7. What protections are required to be in place if an educational agency contracts with a third party contractor to provide services, and the contract requires the disclosure of PII to the third party contractor?

Education Law §2-d provides very specific protections for contracts with "third party contractors", defined as any person or entity, other than an educational agency, that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency. The term "third party contractor" also includes an educational partnership organization that receives student and/or teacher or principal APPR data from a school district to carry out its responsibilities pursuant to Education Law §211-e, and a not-for-profit corporation or other non-profit organization, which are not themselves covered by the definition of an "educational agency."

Services of a third party contractor covered under Education Law §2-d include, but not limited to, data management or storage services, conducting studies for or on behalf of the educational agency, or audit or evaluation of publicly funded programs. When an educational agency enters into a contract with a third party contractor, under which the third party contractor will receive student data, the contract or agreement must include a data security and privacy plan that outlines how all state, federal, and local data security and privacy contract requirements will be implemented over the life of the contract, consistent with the educational agency's policy on data security and privacy. A signed copy of the Parents' Bill of Rights must be included, as well as a requirement that any officers or employees of the third party contractor and its assignees who have access to student data or teacher or principal data have received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

Each third party contractor that enters into a contract or other written agreement with an educational agency under which the third party contractor will receive student data or teacher or principal data shall:

- limit internal access to education records to those individuals that are determined to have legitimate educational interests
- not use the education records for any other purposes than those explicitly authorized in its contract
- except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any PII to any other party (i) without the prior written consent of the parent or eligible student; or (ii) unless required by statute or court order and the party provides a notice of the disclosure to the School no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order
- maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of PII in its custody;
- use encryption technology to protect data while in motion or in its custody from unauthorized disclosure.

8. What steps can and must be taken in the event of a breach of confidentiality or security?

Upon receipt of a complaint or other information indicating that a third party contractor may have improperly disclosed student data, or teacher or principal APPR data, NYSED's Chief Privacy Officer is authorized to investigate, visit, examine and inspect the third party contractor's facilities and records and obtain documentation from, or require the testimony of, any party relating to the alleged improper disclosure of student data or teacher or principal APPR data.

Where there is a breach and unauthorized release of PII by a third party contractor or its assignees (e.g., a subcontractor): (i) the third party contractor must notify the educational agency of the breach in the most expedient way possible and without unreasonable delay; (ii) the educational agency must notify the parent in the most expedient way possible and without unreasonable delay; and (iii) the third party contractor may be subject to certain penalties including, but not limited to, a monetary fine; mandatory training regarding federal and state law governing the confidentiality of student data, or teacher or principal APPR data; and preclusion from accessing any student data, or teacher or principal APPR data, from an educational agency for a fixed period up to five years.

9. No Private Right of Action

Please note that Education Law §2-d explicitly states that it does not create a private right of action against NYSED or any other educational agency, such as a school, school district or BOCES.

Exhibit 1

NOTICE OF PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY UNDER FERPA

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day The Clear View School receives a written request for access: Parents or eligible students should submit to the **Information/Records Coordinator** by email at records@clearviewschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10562) a written request that identifies the records they wish to inspect. Arrangements for access will be made and notice given to the parent or eligible student of the time and place where the records may be inspected.
2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA: Parents or eligible students who wish to ask The Clear View School to amend a record should send a written request to the **Information/Records Coordinator** by email at records@clearviewschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10562) and clearly identify the part of the record they want changed, and specify why it should be changed. If the School decides not to amend the record as requested by the parent or eligible student, the School will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.
3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure **without consent**.

ONE EXCEPTION, which permits disclosure **without consent**, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff) or a person serving on the Board of Directors. A school official also may include a volunteer or contractor outside of the School who performs an institutional service or function for which the School would otherwise use its own employees and who is under the direct control of the School with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

OTHER EXCEPTIONS, which permit disclosure of PII from a student's education record **without consent** of the parent or eligible student (see FERPA §99.31):

- To officials of another school, school system, or institution of post-secondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))

- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency in the parent or eligible student’s State (SEA). Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§99.31(a)(3) and 99.35)
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system’s ability to effectively serve, prior to adjudication, the student whose records were released, subject to §99.38. (§99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction; (§99.31(a)(6)) to accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to §99.36. (§99.31(a)(10))
- Information the school has designated as “directory information” under §99.37. (§99.31(a)(11))

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by The Clear View School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, DC 20202

5. The right to refuse consent for release of Directory Information, within the School Community, and to Colleges and Military Recruiters.

- a. The School may publish certain Directory Information about a student without prior written consent. This Directory Information may be included in such publications as school directories, class lists, yearbooks, program brochures, or programs of events and may be specifically requested by post-secondary institutions that are interested in contacting the student. Directory Information may include the student’s name, name of parents, address, age, and grade level. If a parent eligible objects to such disclosure, you must advise the School in writing prior to September 15 of each school year. Communication may be made to the **Information/Records Coordinator** by email at records@clearviewschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10510) and should be headed “Objection to Release of Directory Information.”

- b. For High School Students: The School may also be asked for information about the student's name, address and telephone number by Military Recruiters. The School will be obliged to provide this information upon request unless the parent or eligible student advises the School in writing prior to September 15 of each school year that the parent objects to such request. Communication may be made to the **Information/Records Coordinator** by email at records@clearviewschool.org (or by mail at 480 Albany Post Road, Briarcliff Manor, NY 10510) and should be headed "Objection to Release of Directory Information to Military Recruiters."

7. The right to inspect and review the School's record keeping of all disclosures of student education records, which FERPA §99.32 (a) requires the School to maintain. (FERPA §99.32 (d) establishes the following exceptions to the recordkeeping requirement for disclosures to:

- (1) The parent or eligible student;
- (2) A school official under §99.31(a)(1)
- (3) A party with written consent from the parent or eligible student
- (4) A party seeking directory information
- (5) A party seeking or receiving records in accordance with some judicial or other lawfully issued subpoenas, as defined by §99.31(a)(9)(ii)(A) through (C)

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EXHIBIT 2

NOTICE OF PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY UNDER NYS EDUCATION LAW §2-D

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In accordance with New York State Education Law §2-d, The Clear View School hereby sets forth the following Parents' Bill of Rights for Data Privacy and Security, which is applicable to all parents and legal guardians and eligible students (18 years of age or older).

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) The School has the following safeguards in place to protect student data, including personally identifiable information stored or transferred by the School
 - a. All databases that have student information are protected by a secure password and login. These logins are monitored and kept up to date.
 - b. Student information is only accessible by those who are deemed warranted of having the information.
- (4) New York State, through the New York State Education Department, collects a number of student data elements for authorized uses. A complete list of all student data elements collected by the State is available for public review at: http://www.p12.nysed.gov/irs/sirs/2011-12/2011-12SIRSGuidance/NEWER/2013-14SIRSMannual9-1_20131107.pdf . Parents may also obtain a copy of this list by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, N.Y. 12234.
- (5) Parents have the right to submit complaints about possible breaches of student data or teacher or principal APPR data. Any such complaint must be submitted, in writing, to: Charles F. Devlin, Executive Director, The Clear View School, 480 Albany Post Road, Briarcliff Manor, NY 10510. Additionally, parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to: Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; the e-mail address is cpo@mail.nysed.gov .

More information is also available on the following websites:

- [New York State Department of Education guidance document issued on July 29, 2014 \(PDF\)](#)
- [U.S. Department of Education press release:](#)
Guidance for Schools Issued on How to Keep Parents Better Informed on the Data They Collect on Students (PDF)
- [Privacy Technical Assistance Center \(PTAC\):](#)
Newly established one-stop resource for education stakeholders to learn about data privacy

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