

BATH COUNTY SCHOOL BOARD

AGENDA ITEM: INFORMATION { } ACTION { X } CLOSED MEETING { }

**SUBJECT:** SUPERINTENDENT'S REPORT - ACTION

VSBA Policy JO: Student Records – 2<sup>nd</sup> Reading

**BACKGROUND:** At the last board meeting, concern was expressed for two definitions (“Parent” and “Education Records”) specified in the proposed revision to Policy JO (Student Records). Mr. Lancaster spoke with the VSBA attorney regarding the concerns:

Current (unchanged) Definition of “Parent” - either natural parent of a student, a guardian, or an individual acting as a parent or guardian in the absence of the student's parent or guardian.

The concern was that the definition specifies “natural” parents, but omits adoptive parents. Most definitions in VSBA-proposed policies are taken directly from the enabling legislation, although a quick review of state and federal code for “Parent” did not reveal the source of this particular definition. Mr. Lancaster recommended that the VSBA consider a change to the definition of “Parent,” adding “or adoptive” after “natural.”

Proposed revision to “Education Records” definition adds the #6 bullet underlined below:

Education records - any record (in handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or other medium) maintained by the BLANK Public Schools or an agent of the school division which contains information directly related to a student, except:

1. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to another person except a temporary substitute for the maker of the record.
2. Records created and maintained for law enforcement purposes by the BLANK Public Schools law enforcement unit, if any. A law enforcement unit is an individual, department or office of the school division that is authorized to enforce any state or federal law, report enforcement matters to appropriate authorities or maintain the physical security and safety of the school division.
3. An employment record which is used only in relation to a student's employment by the BLANK Public Schools.
4. Records created or received after an individual is no longer in attendance and that are not directly related to the individual's attendance as a student.
5. Grades on peer-graded papers before they are collected and recorded by a teacher.

6. Any electronic information, such as email, even if it contains personally identifiable information regarding a student, unless a printed copy of the electronic information is placed in the student's file or is stored electronically under an individual student's name on a permanent and secure basis for the purpose of being maintained as an educational record. For purposes of this policy, electronic information that exists on a back-up server, a temporary archiving system, or on a temporary basis on a computer is not an education record and is not considered as being maintained.

The concern expressed was that the addition of bullet #6 may leave personally identifiable student information vulnerable/unprotected. The rationale for the addition was to clarify that only information intended to be part of a student record will be identified as such. An email or other document that may mention a student's name does not automatically become part of the student's official scholastic record. The exclusion does not reduce the school division's responsibility to ensure that the student's privacy is not diminished per state and federal law, including FERPA (Family Educational Rights and Privacy Act). Regardless of the medium (handwritten note, electronic document, email, conversation), student information communicated by school staff is protected. The revision was recommended as a clarification of policy brought on by a situation in another Virginia locality.

RECOMMENDATION:            Recommend approval.

## STUDENT RECORDS

### Generally

The Bath County School Board shall maintain accurate and complete records for every student enrolled in the public schools in accordance with all federal and state laws.

The superintendent and/or his designee(s) shall be responsible for the collection of data, record maintenance and security, access to, and use of records, confidentiality of personally identifiable information, dissemination of information from records, and destruction of records, including the destruction of personally identifiable information regarding a student with a disability at the request of the parents. The superintendent shall also provide for notification of all school division personnel of policy and procedures for management of education records and notification of parents and students of their rights regarding student records, including the right to obtain, upon request, a copy of this policy.

### Definitions

For the purposes of this policy, the Bath County Public Schools uses the following definitions of terms:

Student - any person who attends or has attended a school in the Bath County Public Schools.

Eligible student - a student who has reached age 18.

Parent - either natural parent of a student, a guardian, or an individual acting as a parent or guardian in the absence of the student's parent or guardian.

Education records - any record (in handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or other medium) maintained by the Bath County Public Schools or an agent of the school division which contains information directly related to a student, except:

1. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to another person except a temporary substitute for the maker of the record.
2. Records created and maintained for law enforcement purposes by the Bath County Public Schools law enforcement unit, if any. A law enforcement unit is an individual, department or office of the school division that is authorized to enforce any state or federal law, report enforcement matters to appropriate authorities or maintain the physical security and safety of the school division.
3. An employment record which is used only in relation to a student's employment by the Bath County Public Schools.
4. Records created or received after an individual is no longer in attendance and that are not directly related to the individual's attendance as a student.

5. Grades on peer-graded papers before they are collected and recorded by a teacher.
6. Any electronic information, such as email, even if it contains personally identifiable information regarding a student, unless a printed copy of the electronic information is placed in the student's file or is stored electronically under an individual student's name on a permanent and secure basis for the purpose of being maintained as an educational record. For purposes of this policy, electronic information that exists on a back-up server, a temporary archiving system, or on a temporary basis on a computer is not an education record and is not considered as being maintained.

## **Dissemination and Maintenance of Records About Court Proceedings**

### **Adjudications**

The superintendent shall disseminate the notice or information regarding an adjudication of delinquency or conviction for an offense listed in Va. Code § 16.1-260.G. contained in a notice received pursuant to § 16.1-305.1 of the Code of Virginia, 1950, as amended, to school personnel responsible for the management of student records and to other relevant school personnel, including, but not limited to, the principal of the school in which the student is enrolled. The principal shall further disseminate such information to licensed instructional personnel and other school personnel who (1) provide direct educational and support services to the student and (2) have a legitimate educational interest in such information.

A parent, and, with consent of a parent or in compliance with a court order, the court in which the disposition was rendered, shall be notified in writing of any disciplinary action taken with regard to any incident upon which the adjudication of delinquency or conviction for an offense listed in subsection G of Va. Code § 16.1-260 was based and the reasons therefor. The parent shall also be notified of his or her right to review, and to request an amendment of, the student's scholastic record.

Every notice of adjudication of delinquency or conviction for an offense listed in subsection G of Va. Code § 16.1-260 received by a superintendent, and information contained in the notice, which is not a disciplinary record as defined in Board of Education regulations, shall be maintained by him and by any others to whom he disseminates it, separately from all other records concerning the student. However, if the school administrators or the school board takes disciplinary action against a student based upon an incident which formed the basis for the adjudication of delinquency or conviction for an offense listed in subsection G of Va. Code § 16.1-260, the notice shall become a part of the student's disciplinary record.

### **Petitions**

The superintendent shall not disclose information contained in or derived from a notice of petition received pursuant to Va. Code § 16.1-260 except as follows:

- if the juvenile is not enrolled as a student in a public school in the division to which the notice was given, the superintendent shall promptly so notify the intake officer of the juvenile court in which the petition was filed and may forward the notice of petition to the superintendent of the division in which the juvenile is enrolled, if known;

- prior to receipt of the notice of disposition, the superintendent may disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the student is enrolled if the division superintendent believes that disclosure to school personnel is necessary to ensure the physical safety of the student, other students or school personnel within the division; and
- after the student has been taken into custody, whether or not the student has been released, the principal may further disseminate the information only to those students and school personnel having direct contact with the student and need of the information to ensure physical safety, appropriate educational placement or other educational services.

### **Annual Notification**

The school division shall annually notify parents and eligible students of their rights under the Family Educational Rights and Privacy Act (FERPA) including

- the right to inspect and review the student's educational records and the procedure for exercising this right;
- the right to request amendment of the student's educational records that the parent believes to be inaccurate, misleading or in violation of the student's privacy rights and the procedure for exercising this right;
- the right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent;
- the type of information designated as directory information and the right to opt out of release of directory information;
- that the school division releases records to other institutions that have requested the information and in which the students seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;
- the right to opt out of releasing the student's name, address, and phone number to military recruiters or institutions of higher education that request such information;
- a specification of the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest; and
- the right to file complaints with the Family Policy Compliance Office in the United States Department of Education concerning the school division's alleged failure to comply with FERPA.

### **Procedure to Inspect Education Records**

Parents of students or eligible students may inspect and review the student's education records within a reasonable period of time, which shall not exceed 45 days, and before any meeting regarding an IEP or hearing involving a student with a disability. Further, parents shall have the right to a response from the school division to reasonable requests for explanations and interpretations of the education record.

Parents or eligible students should submit to the student's school principal a written request which identifies as precisely as possible the record or records he or she wishes to inspect.

The principal (or appropriate school official) will make the needed arrangements for access as promptly as possible and notify the parent or eligible student of the time and place where the records may be inspected.

When a record contains information about students other than a parent's child or the eligible student, the parent or eligible student may not inspect and review the portion of the record which pertains to other students.

### **Copies of Education Records**

The Bath County Public Schools will not provide a parent or eligible student a copy of the student's education record unless failure to do so would effectively prevent the parent or eligible student from exercising the right to inspect and review the records.

### **Fees for Copies of Records**

The fee for copies will be .25¢ per page. The actual cost of copying time and postage will be charged. The Bath County Public Schools shall not charge for search and retrieval of the records. The Bath County Public Schools shall not charge a fee for copying an Individualized Education Plan (IEP) or for a copy of the verbatim record of a hearing conducted in accordance with the State Board of Education's Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

### **Types, Locations, and Custodians of Education Records**

The Bath County Public School shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the school division.

The following is a list of the types of records that the Bath County Public Schools maintain, their locations, and their custodians.

<b>Types</b>	<b>Location</b>	<b>Custodian</b>	<b>Information</b>
<b>Permanent and Cumulative Records</b>	<b>School Office</b>	<b>Principal</b>	<b>Health, Academic, Discipline, etc.</b>

### **Disclosure of Education Records**

The Bath County Public Schools shall disclose education records or personally identifiable information contained therein only with the written consent of the parent or eligible student subject to the following exceptions. The school division may disclose education record information without consent:

1. To school officials who have a legitimate educational interest in the records.

A school official is:

- A person employed by the Division as an administrator, supervisor, instructor, or support staff member.

- A person appointed or elected to the School Board.
- A person employed by or under contract to the school division to perform a special task, such as an attorney, auditor, medical consultant, or therapist.
- A contractor, consultant, volunteer, or other party to whom the school division has outsourced services or functions for which the school division would otherwise use employees and who is under the direct control of the school division with respect to the use and maintenance of education records.

A school official has a legitimate educational interest if the official is:

- Performing a task that is specified in his or her position description or by a contract agreement.
  - Performing a task related to a student's education.
  - Performing a task related to the discipline of a student.
  - Providing a service or benefit relating to the student or student's family, such as health care, counseling, job placement, or financial aid.
2. To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer. If records or information are released under this provision, the student's parents will be notified of the release, receive a copy of the record(s), if they so desire, and have an opportunity for a hearing to challenge the content of the record.
  3. To certain officials of the U.S. Department of Education, the United States Attorney General, the Comptroller General, and state educational authorities, in connection with certain state or federally supported education programs and in accordance with applicable federal regulations.
  4. In connection with a student's request for or receipt of financial aid as necessary to determine the eligibility, amount, or conditions of the financial aid, or to enforce the terms and conditions of the aid.
  5. For the purpose of furthering the ability of the juvenile justice system to effectively serve the pupil prior to adjudication. The principal or his designee may disclose identifying information from a pupil's scholastic record to state or local law-enforcement or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his duties; an officer or employee of a county or city agency responsible for protective services to children, as to a pupil referred to that agency as a minor requiring investigation or supervision by that agency; attorneys for the Commonwealth, court services units, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice and to the staff of such agencies. Prior to disclosure of any such scholastic records, the persons to whom the records are to be disclosed shall certify in writing to the principal or his designee that the information will not be disclosed to any other party, except as provided under state law, without the prior written consent of the parent of the pupil or by such pupil if the pupil is eighteen years of age or older.

6. To organizations conducting certain studies for or on behalf of the school division.
7. To accrediting organizations to carry out their functions.
8. To parents of an eligible student who claim the student as a dependent for income tax purposes.
9. To the entities or persons designated in judicial orders or subpoenas as specified in FERPA.
10. To appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. If the school division releases information in connection with an emergency, it will record the following information:
  - 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 division disclosed the information.
11. Directory information so designated by the school division.
12. When the disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071, and the information was provided to the division under 42 U.S.C. § 14071 and applicable federal guidelines.

The school division will use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom it discloses personally identifiable information from education records.

### **Military Recruiters and Institutions of Higher Learning**

The Bath County Public Schools will provide, on request made by military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings.

A secondary school student or the parent of the student may request that the student's name, address, and telephone listing not be released without prior written parental consent. The school division will notify parents of the option to make a request and will comply with any request.

The school division will provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students.

### **Record of Disclosure**

The Bath County Public Schools shall maintain a record, kept with the education records of each student, indicating all individuals (except school officials who have a legitimate educational interest in the records), agencies, or organizations which request or obtain access to a student's education records. The record will indicate specifically the legitimate interest the party

had in obtaining the information. The record of access will be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations which audit the operation of the system.

The requirements related to records of disclosure stated above do not apply to disclosures made pursuant to an ex parte order issued by a court at the request of the United States Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) seeking to collect education records relevant to an authorized investigation or prosecution of international terrorism as defined in 18 U.S.C. § 2331 or other acts listed in 18 U.S.C. § 2332b(g)(5)(B).

Personal information will only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party permits access to information, or fails to destroy information, the division will not permit access to information from education records to that third party for a period of at least five years.

### **Directory Information**

The Bath County Public Schools shall notify parents and eligible students at the beginning of each school year what information, if any, Bath County school division has designated as directory information, the right to refuse to let the division designate any or all of such information as directory information, and the period of time to notify the division, in writing, that he or she does not want any or all of those types of information designated as directory information. (Note: Directory information is information contained in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include information such as the name, gender, address, telephone listing, date and place of birth of students, the student's major field of study, participation in officially recognized activities and sports, the weight and height of members of athletic teams, dates of attendance, degrees or awards received by students, and photographs. Directory information may not include the student's social security number.)

### **Correction of Education Records**

The procedures for the amendment of records that a parent or eligible student believes to be inaccurate are as follows.

1. Parents or the eligible student must request in writing that the Bath County Public Schools amend a record. In so doing, they should identify the part of the record they want changed and specify why they believe it is inaccurate, misleading or in violation of the student's privacy or other rights.
2. Bath County Public Schools shall decide whether to amend the record in accordance with the request within a reasonable period of time. If it decides not to comply, the school division shall notify the parents or eligible student of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights.

3. Upon request, Bath County Public Schools shall arrange for a hearing, and notify the parents or eligible student, reasonably in advance, of the date, place, and time of the hearing. The hearing shall be held within a reasonable period of time after the request.
4. The parent or eligible student may, at his or her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
5. The hearing shall be conducted by a hearing officer who is a disinterested party; however, the hearing officer may be an official of the school division. The parents or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records in accordance with FERPA.
6. Bath County Public Schools shall prepare a written decision which will include a summary of the evidence presented and the reasons for the decision within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing.
7. If Bath County Public Schools decides that the information is inaccurate, misleading, or in violation of the student's right of privacy, it shall amend (including expungement) the record and notify the parents or eligible student, in writing, that the record has been amended.
8. If Bath County Public Schools decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, it will notify the parents or eligible student that they have a right to place in the record a statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision. The statement will be maintained as part of the student's education records as long as the contested portion is maintained and disclosed whenever the school division discloses the portion of the record to which the statement relates.

### **Confidentiality of HIV and Drug and Alcohol Treatment Records**

The Bath County Public Schools shall comply with the confidentiality requirements of Section 32.1-36.1 of the Code of Virginia, 1950, as amended, providing for the confidentiality of records related to any test for Human Immunodeficiency Virus (HIV). In addition, the school division shall maintain confidentiality of drug and alcohol treatment records as required by federal and state law.

Adopted: March 26, 2002

Revised: August 5, 2003; May 2, 2006; September 5, 2006; June 26, 2007; June 24, 2008;  
April 9, 2009; June 1, 2010; February 7, 2012

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Legal Refs.: 18 U.S.C. §§ 2331, 2332b.  
20 U.S.C. §§1232g, 7908.  
42 U.S.C. § 290dd-2.  
34 C.F.R. 99.3, 99.7, 99.10, 99.20, 99.21, 99.22, 99.31, 99.32, 99.33, 99.34,  
99.35, 99.36, 99.37.  
  
Code of Virginia, 1950, as amended, §§ 2.2-3704, 2.2-3804, 16.1-260, 16.1-  
305.1, 16.1-305.2, 22.1-287, 22.1-287.1, 22.1-288, 22.1-288.1, 22.1-288.2, 22.1-  
289, 23-2.1:3, 32.1-36.1.  
  
8 VAC 20-720-130.

Cross Refs.:	IJ	Guidance and Counseling Program
	JEC	School Admission
	JEC-R	School Admission
	JECA	Admission of Homeless Children
	JFC	Student Conduct
	JGDA	Disciplining Students with Disabilities
	JGD/JGE	Student Suspension/Expulsion
	JHCB	Student Immunizations
	JHCD	Administering Medicines to Students
	KBA-R	Requests for Information
	KBC	Media Relations
	KNB	Reports of Missing Children
	KP	Parental Rights and Responsibilities
	LEB	Advanced/Alternative Courses for Credit