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## Annual Notices<sup>1</sup> July 2016

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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 easily be tailored to meet individual district needs. The following article describes some of the notices required by federal law, including the methods 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 or state law.

### Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA), most recently reauthorized under the Every Student Succeeds Act of 2015 (ESSA), requires state education agencies, school districts, and individual schools to provide numerous notices to parents, the public, and others. Because ESSA is so new, and several regulatory actions to implement ESSA have yet to be written or are in the proposed rule process, documents issued under NCLB remain in effect as current guidance until the Department puts out new agency information. So, at this time, NSBA will continue to reference the existing documents until new guidance is published.

For example, 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 (as amended by NCLB), 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 (now referred to under ESSA as teachers that do not meet the state’s certification qualifications); 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.

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<sup>1</sup> See also National School Boards Association, *Policies Required by Federal Law* (July 2016).

- 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/parentinguid.doc>.

**Notice that a school has been identified for “improvement, corrective action, or restructuring” [NCLB language]:** ESSA has restructured this area of the law, and it is not clear on the face of the statutory language what the Department intends to require schools to do regarding parental notification for those schools that are identified as needing “comprehensive support and improvement activities or targeted support and improvement activities” (new ESSA language). In the meantime, until the Department amends the relevant regulations, the following regulatory requirements are still in effect.

Any notice that must be provided to parents regarding schools so identified 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. [34 C.F.R. § 200.36\(b\)](#) (existing regulations under NCLB still in effect). 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\(c\)](#) (existing regulations under NCLB still in effect).

Under NCLB, 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* (2009) at: <http://www2.ed.gov/policy/elsec/guid/schoolchoiceguid.doc> (No update yet since the passage of ESSA).
- **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 III.G in the U.S. Department of Education’s *Supplemental Educational Services, Non-Regulatory Guidance* (2009) at: <http://www2.ed.gov/policy/elsec/guid/suppsvcsguid.doc> (No update since passage of ESSA).

## 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\(a\)\(2\)](#). 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. when it comes to accessing a student's educational records. [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 of Rights under FERPA for Elementary and Secondary Schools* at: <http://familypolicy.ed.gov/content/model-notification-rights-under-ferpa-elementary-and-secondary-schools>.

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 *FERPA Model Notice for Directory Information* at: [familypolicy.ed.gov/content/ferpa-model-notice-directory-information](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://familypolicy.ed.gov/sites/fpco.ed.gov/files/ppra-gen-not-cons%20%281%29.doc>.

## **Child Nutrition Programs**

If school districts participate in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, they must provide both parents and the public with information about free and reduced price meals and/or free milk near the beginning of each school year. [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 information about what the application for these programs is to contain, including a link to an online application. The document also contains information describing to whom (pp. 82-83), and under what conditions, information regarding free and reduced eligibility status may be disclosed (pp. 80-89).

- Download the *Eligibility Manual for School Meals*, which contains relevant notices in the appendices, at: [http://www.fns.usda.gov/sites/default/files/cn/SP40\\_CACFP18\\_SFSP20-2015a.pdf](http://www.fns.usda.gov/sites/default/files/cn/SP40_CACFP18_SFSP20-2015a.pdf).

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



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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\(b\)\(5\)\(A\)](#). On July 29, 2016, the USDA published in the *Federal Register* its final rules for local school wellness policies: <https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17230.pdf>. The rules become effective, and compliance must begin, on August 29, 2016. School districts would be wise to check with the USDA's website, <http://www.fns.usda.gov/school-meals/child-nutrition-programs>, for any new guidance documents, FAQs, and other child nutrition-related information that may be issued in the coming weeks.

Until the USDA updates its supplementary guidance documents related to local school wellness policies, the existing USDA memorandum appears to still be in effect: [http://www.fns.usda.gov/sites/default/files/SP42-2011\\_os.pdf](http://www.fns.usda.gov/sites/default/files/SP42-2011_os.pdf). This memorandum discusses how 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.

- Download *School District Wellness Policies: Where do they Stand and What do you Need to Know?*, a presentation by the CDC at: [http://www.cdc.gov/healthyouth/npao/pdf/PowerPoint for CDC BTG Local School Wellness Policy Briefs School Year 12 13.pdf](http://www.cdc.gov/healthyouth/npao/pdf/PowerPoint%20for%20CDC%20BTG%20Local%20School%20Wellness%20Policy%20Briefs%20School%20Year%2012%2013.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, reinspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. [40 C.F.R. §§ 763.84\(c\), \(f\), 763.93\(g\)\(2\)](#).

### **McKinney-Vento Homeless Assistance Act**

The McKinney-Vento Homeless Assistance Act requires school districts, through their homeless student liaisons, to provide public notice of the education rights of the homeless students enrolled in their districts. [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 U.S. Department of Education has issued guidelines for States, which address ways a State may (1) assist LEAs to implement McKinney-Vento, as amended by ESSA, and (2) review and



revise policies and procedures, along with LEAs, that may present barriers to the identification, enrollment, attendance, and success of homeless children and youths in school. Download the guidelines at: [81 Fed. Reg. 14,433 \(Mar. 17, 2016\)](#).

- 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](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 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, or 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\(d\)\(1\)\(a\)](#); [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](#).

- 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](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://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>.



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