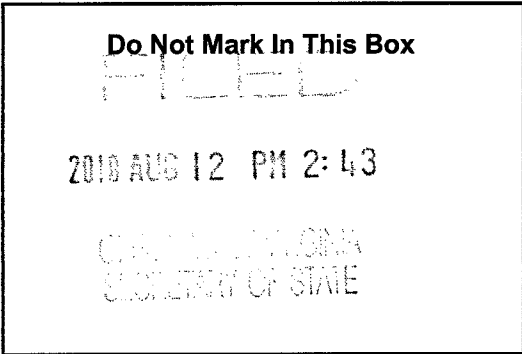


**WEST VIRGINIA
SECRETARY OF STATE**

Natalie E. Tennant

ADMINISTRATIVE LAW DIVISION

Form #5



**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Education TITLE NUMBER: 126

CITE AUTHORITY: W. Va. Const., Article XII, § 2, W. Va. Code §18-2-5, 20 U.S.C. §1232g; 34 CFR Part 99, the Family Educational Rights and Privacy Act (as amended), Public Law 108-446, the Individuals with Disabilities Education Act of 2004, Public Law 107-110, the No Child Left Behind Act of 2001, Public Law 107-107, the National Defense Authorization Act for the Fiscal Year 2002, and their respective regulations.

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§ 29A-3B-1, et seq.; W. Va. Board of Education v. Hechler, 180 W.Va. 451; 376 S.E.2d 839 (1988).

AMENDMENT TO AN EXISTING RULE: YES X NO _____

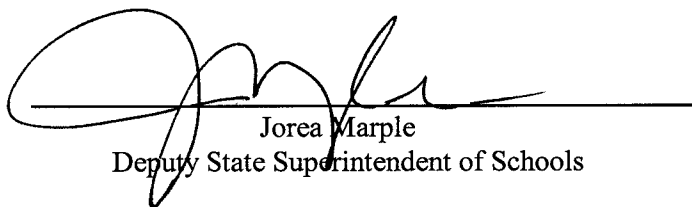
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 94

TITLE OF RULE BEING AMENDED: Procedures for the Collection, Maintenance and Disclosure of Student Data (4350)

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS September 13, 2010.



Jorea Marple
Deputy State Superintendent of Schools

EXECUTIVE SUMMARY

WEST VIRGINIA DEPARTMENT OF EDUCATION

Policy 4350 – Procedures for the Collection, Maintenance and Disclosure of Student Data

Background: This policy revision was requested by State Board of Education Member Mike Green, in order to facilitate the release of student directory information to organizations such as AmberVision, which seek to ensure the safety and well being of school-age students. A working group consisting of the following members was consulted regarding the revisions:

- Mike Green, Member, West Virginia Board of Education
- First Lady Gayle Manchin, Member, West Virginia Board of Education
- Pam Cain, Assistant State Superintendent
- Heather Deskins, General Counsel, West Virginia Department of Education
- Nancy Walker, Executive Director, WVEIS
- Liza Cordeiro, Executive Director, Office of Communications
- Shelly Stalnaker, Coordinator, Office of Healthy Schools
- Chuck Nichols, Executive Director, RESA 3

Proposals: Revisions to Policy 4350, in section 3.1.4, will align the definition of permissible directory information to that contained in the model notice developed by the United States Department of Education. These will include a student's name, address, telephone listing, email address, photograph, date and place of birth, major field of study, dates of attendance, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. In section 23.4 the proposed revisions will require counties, at a minimum, to establish that a student's name, address, grade level, date of birth, and photograph be designated and maintained as directory information for each student.

Impact: The proposed revisions will take away local discretion regarding the designation of certain categories of information as directory information. Counties will retain discretion over the designation of those categories of information not required by this policy. Most significantly, the revisions will require counties to maintain photographs of children and designate those photographs as directory information. At this time, it appears that not all schools maintain photographs of students.

Response to Comments: Only one individual submitted comments during the comment period. The comments dealt with disclosure of directory information during public health emergencies. The comments were not accepted because, as written, directory information can be disclosed to public health officials even in the absence of a health emergency.

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FILED

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**TITLE 126
PROCEDURAL RULE
BOARD OF EDUCATION**

OFFICE OF THE CLERK
SECRETARY OF STATE

**SERIES 94
Procedures for the Collection, Maintenance and
Disclosure of Student Data (4350)**

§126-94-1. General.

1.1. Scope. - These procedures are applicable to all education agencies and institutions that are under the general supervision of the West Virginia Board of Education.

1.2. Authority. - W. Va. Constitution, Article XII, Section 2, W. Va. Code §18-2-5, 20 U.S.C. §1232g; 34 CFR Part 99, the Family Educational Rights and Privacy Act (as amended), Public Law 108-446, the Individuals with Disabilities Education Act of 2004 (hereinafter IDEA), Public Law 107-110, the No Child Left Behind Act of 2001, Public Law 107-107, the National Defense Authorization Act for the Fiscal Year 2002, and their respective regulations.

1.3. Filing Date. - August 12, 2010

1.4. Effective Date. - September 13, 2010

1.5. Repeal of Former Rule. - This procedural rule amends W. Va. 126CSR94, West Virginia Board of Education Policy 4350, "Procedures for the Collection, Maintenance and Disclosure of Student Data", filed August 19, 2003 and effective September 18, 2003.

§126-94-2. Purpose.

2.1. The purpose of these procedures is to set forth the conditions governing the protection of privacy and access of parents and students as it relates to the collection, maintenance, disclosure and destruction of education records by agencies and institutions under the general supervision of the West Virginia Board of Education.

§126-94-3. Definitions.

3.1. As used in these procedures:

3.1.1. "Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and having homebound instruction, and (b) the period during which a person is working under a work-study program.

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3.1.2. "Consent" means that (a) the parent has been fully informed of the information set out in this document in his or her native language or other mode of communication, unless it clearly is not feasible to do so; (b) the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent sets forth that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent.

3.1.3. "Destruction" means physical destruction or removal of personal identifiers so that the information is no longer personally identifiable.

3.1.4. "Directory information" includes a student's name, address, telephone listing, email address, photograph, date, and place of birth, major field of study, dates of attendance, grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

3.1.5. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

3.1.6. "Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

3.1.7. "Educational institution" or "educational agency or institution" means any public or private agency or institution under the general supervision of the West Virginia Board of Education.

3.1.8. "Education records" means those records that are directly related to a student and are collected, maintained or disclosed by an educational agency or institution or by a party acting for the agency or institution. The term does not include:

a. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other individual except a temporary substitute.

b. Records of the law enforcement unit of an educational agency or institution, subject to the provisions of Section 126-94-7.

c. Records relating to an individual who is employed by an educational agency or

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institution that are made and maintained in the normal course of business; relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. However, records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and are not excepted.

d. Records relating to an eligible student that are:

A. Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or assisting in a paraprofessional capacity;

B. Created, maintained, or used only in connection with the provision of treatment to the student; and

C. Disclosed only to individuals providing the treatment (provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice). For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction at the educational agency or institution.

e. Records of an educational agency or institution that contain only information related to a person after that person is no longer a student at the educational agency or institution. (An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni).

3.1.9. "Eligible student" means a student who has attained eighteen years of age, or is attending an institution of post-secondary education.

3.1.10. "Exceptional student" means a student having been determined to have an exceptionality in accordance with eligibility criteria under W. Va. 126CSR16, West Virginia Board of Education Policy 2419, "*Regulations for the Education of ~~Exceptional~~ Students with Exceptionalities*," (hereinafter, Policy 2419) who receives services under an Individualized Education Program (IEP).

3.1.11. "Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

3.1.12. "Institution of post-secondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined

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under state law.

3.1.13. "Parent" includes a parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian.

3.1.14. "Party" means an individual, agency, institution or organization.

3.1.15. "Personally identifiable" means that the data or information includes, but is not limited to, (a) the name of a student, the student's parent, or other family member, (b) the address of the student or student's family, (c) a personal identifier such as the student's social security number, or student number, (d) a list of personal characteristics that would make the student's identity easily traceable, or (e) other information that would make the student's identity easily traceable.

3.1.16. "Record" means any information or data recorded in any medium including, but not limited to: handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

3.1.17. "Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the U.S. Department of Education acting for the Secretary under a delegation of authority.

3.1.18. "Student" includes any individual who is or has been in attendance at an educational agency or institution, and regarding whom the educational agency or institution collects, maintains, or discloses educational records.

§126-94-4. Parent Rights.

4.1. An educational agency or institution shall give full rights to either parent unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation or custody, that specifically revokes those rights.

§126-94-5. Student Rights.

5.1. For the purpose of this part, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education, the rights accorded to and the consent required of the parents transfer to the student.

5.2. This policy does not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

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5.3. If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

§126-94-6. Annual Notification of Rights.

6.1. Each educational agency or institution shall annually notify parents of students currently in attendance, or eligible students currently in attendance, of their rights under this policy.

6.2. The notice must inform parents or eligible students that they have the right to:

6.2.1. Inspect and review the student's education records;

6.2.2. Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

6.2.3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that Section 126-94-16 authorizes disclosure without consent; and

6.2.4. File with the U.S. Department of Education a complaint as described in Section 126-94-27 concerning alleged failures by the educational agency or institution to comply with the requirements of this policy.

6.3. The notice must include all of the following:

6.3.1. The procedure for exercising the right to inspect and review education records;

6.3.2. The procedure for requesting amendment of records under Section 126-94-12;

6.3.3. A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest;

6.3.4. Types of information designated as directory information and procedures in Section 126-94-23 for refusing to allow information to be so designated; and

6.3.5. The procedure for disclosure of education records without consent to officials of another school district in which the student seeks to enroll.

6.4. An educational agency or institution may provide this notice by any means that are

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reasonably likely to inform the parents or eligible students of their rights.

6.4.1. An educational agency or institution shall effectively notify parents or eligible students who are disabled.

6.4.2. An agency or institution of elementary or secondary education shall effectively notify parents who have a primary or home language other than English.

6.5. Parents of exceptional students, and eligible students who are exceptional, shall receive notice of rights under IDEA, included in the procedural safeguards notice.

§126-94-7. Law Enforcement Units.

7.1. Law enforcement unit means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:

7.1.1. Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

7.1.2. Maintain the physical security and safety of the agency or institution.

7.2. A component of an education agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

7.3. Records of a law enforcement unit means those records, files, documents, and other materials that are:

7.3.1. Created by a law enforcement unit;

7.3.2. Created for a law enforcement purpose; and

7.3.3. Maintained by the law enforcement unit.

7.4. Records of a law enforcement unit does not mean:

7.4.1. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law

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enforcement unit; or

7.4.2. Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

7.5. Nothing in this policy prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, state, or federal law.

7.5.1. Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to this policy including the disclosure provisions of Section 126-94-15 while in the possession of the law enforcement unit.

7.5.2. Disclosure by an educational agency or institution of its law enforcement unit records is neither required nor prohibited by this policy.

§126-94-8. Right to Inspect and Review Education Records.

8.1. Each educational agency or institution or state educational agency (hereinafter SEA) and its components shall permit the parent or an eligible student to inspect and review the education records of the student.

8.2. The educational agency or institution, or SEA or its component, shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request.

8.3. The educational agency or institution, or SEA or its component, shall respond to reasonable requests for explanations and interpretations of the records.

8.4. When a request is being made regarding records of an exceptional student:

8.4.1. The agency shall comply with Section 126-94-8.2 and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the student, or the provision of free appropriate public education to the student;

8.4.2. The right to inspect and review education records of an exceptional student includes the right to have a representative of the parent inspect and review the records; and

8.4.3. The participating agency shall provide parents, upon request, a list of the types and locations of education records collected, maintained, or used by the agency.

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8.5. If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall:

8.5.1. Provide the parent or eligible student with a copy of the records requested; or

8.5.2. Make other arrangements for the parent or eligible student to inspect and review the requested records.

8.6. The educational agency or institution, or SEA or its component, shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

8.7. While an educational agency or institution is not required to give an eligible student access to treatment records as defined in Section 126-94-3.1.8.d., the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

§126-94-9. Fees.

9.1. An educational agency or institution may charge a fee for copies of educational records, which are made for the parent or eligible student, provided that the fee does not effectively prevent the parent and/or eligible student from exercising the right to inspect and review those records.

9.2. An educational agency or institution may not charge a fee to search for or retrieve the education records of a student.

§126-94-10. Limitations on Right to Inspect and Review Education Records.

10.1. If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information about that student.

10.2. A post-secondary institution does not have to permit a student to inspect and review education records that are:

10.2.1. Financial records, including any information those records contain, of his or her parents;

10.2.2. Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used

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only for the purposes for which they were specifically intended; and

10.2.3. Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if the student has waived his or her right to inspect and review these letters and statements and the letters and statements are related to the student's admission to an educational institution, application for employment or receipt of an honor or honorary recognition. Provided that a waiver is valid only if:

a. The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

b. The waiver is made in writing and signed by the student, regardless of age.

10.2.4. If a student has waived his or her rights under this section, the educational institution shall:

a. Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

b. Use the letters and statements of recommendation only for the purpose for which they were intended.

10.2.5. A waiver under this section may be revoked in writing with respect to any actions occurring after the revocation.

§126-94-11. Maintenance and Destruction of Education Records.

11.1. An educational agency or institution is not precluded from destroying education records, subject to the following exceptions:

11.1.1. The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under Section 126-94-8;

11.1.2. Explanations placed in the education record under Section 126-94-13, shall be maintained as long as the record or the contested portion is maintained;

11.1.3. The record of access required under Section 126-94-18 shall be maintained for as long as the education record to which it pertains is maintained; and

11.1.4. For records collected for exceptional students under Policy 2419, a. the public agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child; b. the information must be

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destroyed at the request of the parents; c. however, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

11.2. The following shall apply to the length of time and special consideration for maintaining student records:

11.2.1. Directory information may be maintained in perpetuity;

11.2.2. Academic grades and attendance records may be maintained in perpetuity;

11.2.3. Records to verify implementation of federally funded programs and services and to demonstrate compliance with program requirements must be maintained for five years after the activity is completed;

11.2.4. Other personally identifiable data which is no longer needed to provide education services may be destroyed;

11.2.5. Parents and eligible students must be informed through public notice of any timelines established by the educational agency or institution for maintenance and destruction of student records; and

11.2.6. Files must be maintained in a secured location. Electronic files must be protected through the use of individual user identification and/or passwords. When user identification and/or passwords have been established, an individual is permitted to use only his or her designated identification and password to gain access to education records.

§126-94-12. Request to Amend Education Records.

12.1. The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate, misleading or violates the privacy rights of the student may request the educational agency or institution to amend the record.

12.2. The educational agency or institution shall decide whether to amend the educational records of the student in accordance with the request within a reasonable period of time after it receives the request.

12.3. If the educational agency or institution decides not to amend the record as requested, it shall inform the parent of the student or the eligible student of the refusal and of the right to a hearing under Section 126-94-13.

§126-94-13. Right to a Hearing.

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13.1. An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of a student's education records on the grounds that information contained in the education records of the student is inaccurate, misleading or otherwise in violation of the privacy rights of the student.

13.2. If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy rights of the student, it shall amend the education records of the student accordingly and so inform the parents of the student or the eligible student in writing.

13.3. If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting on the contested information in the record and/or stating why he or she disagrees with the decision of the agency or institution.

13.4. Any explanation placed in the education records of the student under Section 126-94-13.3 shall:

13.4.1. Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution; and

13.4.2. Be disclosed if the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party.

§126-94-14. Conduct of the Hearing.

14.1. The hearing required to be held by Section 126-94-13.1 shall be conducted according to procedures that shall include at least the following elements:

14.1.1. The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request;

14.1.2. The parent of the student or the eligible student shall be given notice of the date, place, and time reasonably in advance of the hearing;

14.1.3. The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

14.1.4. The parent of the student or the eligible student shall be afforded a full and

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fair opportunity to present evidence relevant to the issues raised under Section 126-94-12, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

14.1.5. The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

14.1.6. The decision of the educational agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

§126-94-15. Prior Consent for Disclosure Required.

15.1. An educational agency or institution shall obtain written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in Section 126-94-16.

15.2. Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument or a court order governing such matters as divorce, separation or custody, which provides to the contrary.

15.3. The written consent required by Section 126-94-15.1 must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

15.3.1. A specification of the records to be disclosed;

15.3.2. The purpose of the disclosure; and

15.3.3. The party or class of parties to whom the disclosure may be made.

15.4. If a parent or eligible student so requests, the educational agency or institution shall provide a copy of the records disclosed.

15.5. If the parent of a student who is not an eligible student so requests, the educational agency or institution shall provide the student with a copy of the records disclosed.

§126-94-16. Prior Consent for Disclosure Not Required.

16.1. An educational agency or institution may disclose personally identifiable

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information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is:

16.1.1. To other school officials, including teachers, within the educational agency or institution who have been determined by the agency or institution to have legitimate educational interest; and

16.1.2. To officials of another school or school system, or institution of post-secondary education, in which the student seeks or intends to enroll, subject to the requirements of Section 126-94-20.

16.1.3. Subject to the conditions set forth in Section 126-94-21, to authorized representatives of:

- a. The Comptroller General of the United States;
- b. The Secretary of the U.S. Department of Education (hereinafter, Secretary); or
- c. State and local educational authorities.

16.1.4. In connection with financial aid for which a student has applied or which a student has received; provided, that personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

- a. to determine the eligibility of the student for financial aid;
- b. to determine the amount of the financial aid;
- c. to determine the conditions which will be imposed regarding the financial aid; and
- d. to enforce the terms or conditions of the financial aid.

16.1.5. To state and local officials or authorities to whom this information is specifically:

- a. Allowed to be reported or disclosed pursuant to state statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or
- b. Allowed to be reported or disclosed pursuant to state statute adopted

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after November 19, 1974, subject to the requirements of Section 126-94-24.

16.1.6. To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of (a) developing, validating, or administering predictive tests; (b) administering student aid programs, or improving instruction; provided, that the studies are conducted in a manner that will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to federal, state, and local agencies, and independent organizations.

16.1.7. To accrediting organizations in order to carry out their accrediting functions.

16.1.8. To parents of a dependent student.

16.1.9. To comply with a judicial order or lawfully issued subpoena; provided, that the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action; unless the disclosure is in compliance with:

a. A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

b. Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

c. If the educational agency or institution initiates legal action against a parent or student and has complied with Section 126-94-16.1.9, it may disclose education records that are relevant to the action to the court without a court order or subpoena.

16.1.10. To appropriate parties in health or safety emergency subject to the conditions set forth in Section 126-94-22.

16.1.11. The disclosure is information the educational agency or institution has designated as "directory information".

16.1.12. The disclosure is to the parent of a student who is not an eligible student or to the student.

16.1.13. The disclosure is to an alleged victim of any crime of violence, as that

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term is defined in 18 U.S.C. § 16, of the results of any disciplinary proceeding conducted by an institution of post-secondary education against the alleged perpetrator of that crime with respect to that crime.

16.2. This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under this section, with the exception that parents of a student who is not an eligible student and the student must have access.

16.3. For records of special education students, each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may access personally identifiable information.

§126-94-17. Disciplinary Information.

17.1. If a student transfers to another school in the state, the principal of the school from which the student transfers shall provide a written record of any disciplinary action taken against the student to the principal of the school to which the student transfers, (W. Va. Code §18A-5-1a) subject to requirements of Section 126-94-20.

17.2. The educational agency includes in the records of a student with a disability under Policy 2419 a statement of any current or previous disciplinary action that has been taken against the student and transmits the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled students.

17.2.1. The statement may include a description of any behavior engaged in by the student that required disciplinary action, a description of the disciplinary action taken, and any other information related to the safety of the student and other individuals involved with the student.

17.2.2. If the student transfers from one school to another, the transmission of any of the student's records must include both the student's current Individualized Education Program (IEP) and any statement of current or previous disciplinary action that has been taken against the student.

17.3. A public agency reporting a crime committed by a student with a disability under Policy 2419 shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime, but only to the extent permitted by this policy's provisions regarding disclosure of education records.

§126-94-18. Record of Disclosure Required to be Maintained.

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18.1. An educational agency or institution shall for each request for access to and each disclosure of personally identifiable information from the education records of a student maintain a record kept with the education records of the student that indicates:

18.1.1. The parties who have requested or obtained personally identifiable information from the education records of the student;

18.1.2. The date access was given; and

18.1.3. The legitimate interest these parties had in requesting or obtaining the information.

18.2. If an educational agency or institution discloses information with the understanding that the party receiving the information may make further disclosures, the record of disclosure must include the names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution and the legitimate educational interests each of the additional parties has in requesting the information.

18.3. Section 126-94-18.1 does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials, or to disclosures of directory information, or to a party seeking or receiving the records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

18.4. The record of disclosures may be inspected:

18.4.1. By the parent of the student or the eligible student;

18.4.2. By the school official and his or her assistants who are responsible for the custody of the records; and

18.4.3. For the purpose of auditing the record keeping procedures of the educational agency or institution by the parties authorized in and under the conditions set forth in Section 126-94-16.1.1 and Section 126-94-16.1.3.

§126-94-19. Limitation on Redislosure.

19.1. An educational agency or institution may disclose personally identifiable

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information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that:

19.1.1. The personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

19.1.2. An educational agency or institution may disclose personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if the parties meet the requirements of Section 126-94-16 and required records of disclosure under Section 126-94-18.

19.2. Section 126-94-19.1 does not apply to disclosures made pursuant to court orders or lawfully issued subpoenas, to disclosures of directory information or to disclosures to a parent or student. Except for these disclosures, an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

19.3. If the Family Policy Compliance Office determines that a third party improperly rediscloses personally identifiable information from education records, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.

§126-94-20. Conditions for Disclosure to Officials of Other Schools and School Systems.

20.1. An educational agency or institution transferring the education records of a student to officials of another school, school system or institution of post-secondary education where the student seeks to enroll shall:

20.1.1. Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at last known address of the parent or eligible student, unless:

a. The transfer of records is initiated by the parent or eligible student at the sending agency or institution, or

b. The agency or institution includes in its annual notice that it forwards education records on request to other agencies or institutions in which a student seeks or intends to enroll;

20.1.2. Provide the parent of the student or the eligible student, upon request, a copy of the record that was transferred; and

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20.1.3. Provide the parent of the student or the eligible student, upon request, an opportunity for a hearing under these procedures.

20.2. If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; provided, that the disclosure meets the requirements of Section 126-94-20.1.

§126-94-21. Disclosure to Certain Federal and State Officials for Federal Program Purposes.

21.1. The Comptroller General, Secretary or state and local educational authorities may have access to education records in connection with the audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements which relate to these programs.

21.2. Except when written consent of the parent of a student or an eligible student has been obtained for disclosure, or when the collection of personally identifiable information is specifically authorized by federal or state law, any information collected under Section 126-94-21.1 shall be protected in a manner that does not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audits, evaluation, or enforcement of or compliance with federal and state legal requirements.

§126-94-22. Conditions for Disclosure in Health and Safety Emergencies.

22.1. An educational agency or institution may disclose personally identifiable information from the education records of a student 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.

22.2. The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

22.2.1. The seriousness of the threat to the health or safety of the student or other individuals;

22.2.2. The need for the information to meet the emergency;

22.2.3. Whether the parties to whom the information is disclosed are in a position

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to deal with the emergency; and

22.2.4. The extent to which time is of the essence in dealing with the emergency.

22.3. Nothing in this Act or this part shall prevent an educational agency or institution from:

22.3.1. Including in the educational records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;

22.3.2. Disclosing appropriate information maintained under Section 126-94-22.3.1 to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or

22.3.3. Disclosing appropriate information maintained under Section 126-94-22.3.1 to teachers and school officials in other schools who have been determined to have legitimate educational interests in behavior of the student.

22.4. Sections 126-94-22.1 and 126-94-22.3 shall be strictly construed.

§126-94-23. Conditions for Disclosure of Directory Information.

23.1. An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if it has given notice that information has been designated as directory information.

23.2. An educational agency or institution may disclose directory information from the educational records of an individual who is no longer in attendance at the agency or institution without following the procedures under Section 126-94-23.3.

23.3. In order to designate directory information, an educational agency or institution shall give public notice of the following:

23.3.1. The categories of personally identifiable information the institution has designated as directory information;

23.3.2. The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information, including the right of the parent to refuse to permit the designation of names, addresses, and telephone listings of their children as directory

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information for purposes of providing the information to military recruiters as set forth in Section 126-94-30; and

23.3.3. The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

23.4. All county boards of education shall, at a minimum, establish that the names, addresses, and telephone listings of secondary school students are designated as directory information for the purposes of providing the information to military recruiters as set forth in Section 126-94-30. Further all county boards of education shall, at a minimum, establish that a student's name, address, grade level, date of birth, and photograph be designated and maintained as directory information for each student.

23.5. Once the county board of education establishes directory information, it shall provide access to established directory information to any person or group which makes students aware of educational, occupational, and career opportunities available in the armed services.

23.6. The county board of education may provide access to established directory information to other persons or groups as determined by board action.

§126-94-24. Juvenile Justice System.

24.1. If reporting or disclosure allowed by state statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under Section 126-94-16.1.5.

24.2. The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution 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 student.

§126-94-25. Safeguards for Exceptional Students, Information Collected under Policy 2419.

25.1. Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

25.2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information collected under Policy 2419 and IDEA.

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25.3. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under this policy and Policy 2419.

25.4. Each participating agency shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information of identified special education students.

25.5. A complaint may be filed with the West Virginia Department of Education, Office of Special ~~Education~~ Programs, Extended and Early Learning, if it is alleged that the confidentiality of personally identifiable information regarding an exceptional student in accordance with the requirements of this policy and Policy 2419 has been violated. This is in addition to the right to file a complaint with the U.S. Department of Education, as described in Section 126-94-26.

§126-94-26. Enforcement Authority.

26.1. For the purpose of this part, "Office" means the Family Policy Compliance Office, U.S. Department of Education. The Secretary designates the Office to:

26.1.1. Investigate, process, and review complaints and violations under the Family Educational Rights and Privacy Act, and this part; and

26.1.2. Provide technical assistance to ensure compliance with the Act and this part.

26.2. The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in Section 400 of the General Education Provisions Act.

26.3. If an education agency or institution determines that it cannot comply with the Act or this part due to a conflict with state or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

26.4. The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

§126-94-27. Complaint Procedure.

27.1. A parent or eligible student may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is, Family Policy

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Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-4605 5920.

27.2. A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

27.3. The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

27.4. A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

27.5. The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

27.6. The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint. The notice to the educational agency or institution:

27.6.1. Includes the substance of the alleged violation; and

27.6.2. Asks the agency or institution to submit a written response to the complaint.

27.7. The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of Section 126-94-27.2.

27.8. The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

27.9. Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

27.10. If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under Section 126-94-27.9:

27.10.1. Includes a statement of the specific steps that the agency or institution must take to comply; and

27.10.2. Provides a reasonable period of time, given all of the circumstances of

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the case, during which the educational agency or institution may comply voluntarily.

§126-94-28. Enforcement Procedures.

28.1. If the educational agency or institution does not comply during the period of time set under Section 126-94-27.10.2, the Secretary may, in accordance with part E of the General Education Provisions Act:

28.1.1. Withhold further payments under any applicable program;

28.1.2. Issue a complaint to compel compliance through a cease and desist order;

or

28.1.3. Terminate eligibility to receive funding under any applicable program.

28.2. If, after an investigation, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

§126-94-29. Collection and Use of Student Social Security Numbers.

29.1. A social security number is personally identifiable information and must, therefore, be used in compliance with the other provisions of this policy, the Family Educational Rights and Privacy Act, and the provisions of W. Va. Code §18-2-5e.

29.1.1. No public or private elementary or secondary school shall display any student's social security number for identification purposes on class rosters or other lists provided to teachers, on student identification cards, in student directories or other listings, on public postings or listings of grades, or for any other public identification purpose unless specifically authorized or required by law.

a. Compliance will be required of Exemption A schools for county board of education approval.

29.1.2. The student social security number may be used for internal record keeping purposes or studies.

29.1.3. The student social security number or alternative number is required for enrollment or attendance in public schools.

a. Effective July 1, 2003, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is

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currently enrolled in the county school system.

b. Effective July 1, 2003, prior to admittance to a public school in the state, the county board of education must request from the parent, guardian, or responsible person the social security number of each child who is to be enrolled.

c. The county board of education must inform the parent, guardian, or other responsible person that, if he or she declines to provide the student social security number, the county board of education will assign the student an alternate nine digit number as designated by the West Virginia Board of Education.

29.1.4. For any student who is attending a public school and for whom a social security number has not been provided, the county board shall make a request annually to the parent, guardian, or other responsible person to furnish the social security number.

§126-94-30. Release of List of High School Students to Military Recruiters.

30.1. Pursuant to Section 9528 of the *Elementary and Secondary Education Act* (ESEA) of 1965 (20 U.S.C. 7908), as amended by the *No Child Left Behind Act* of 2001 (P.L. 107-110), and 10 U.S.C. 503, as amended by Section 544, the *National Defense Authorization Act for the Fiscal Year 2002* (P.L. 107-107), all county boards of education are required to provide military recruiters, upon request, with the names addresses and telephone listings of secondary school students unless the parents/guardians have advised the county board of education that they do not want their students' information disclosed without prior written consent as set forth in Section 126-94-23.

30.2. Each county board of education shall 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.

§126-94-31. Severability.

31.1. If any provision of this rule or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this rule.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: §126-94: Procedures for the Collection, Maintenance and Disclosure of Student Data

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Education

Address: 1900 Kanawha Blvd., East
Building 6, Room 362
Charleston, WV, 25305

Phone Number: (304)558-3667 Email: mprice@access.k12.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No costs or revenues of state government will be required by these revisions.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: §126-94: Procedures for the Collection Maintenance and Disclosure of Student Data

Rule Title: §126-94: Procedures for the Collection Maintenance and Disclosure of Student Data

3. **Explanation of above estimates (including long-range effect);**
Please include any increase or decrease in fees in your estimated total revenues.

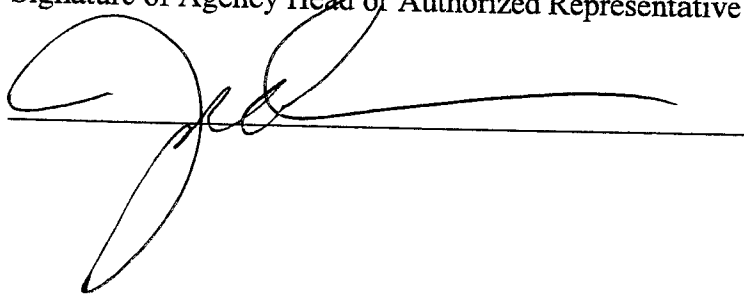
The revisions to this policy will not require state funding.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

It is possible that individual counties or schools may assume some additional costs in collecting and maintaining student photographs, but any such costs will not require state funding.

Signature of Agency Head or Authorized Representative



Date

8-8-10

Policy 4350: Procedures for the Collection, Maintenance and Disclosure of Student Data

Comment Log

June 10, 2010 until July 13, 2010

Action Type
 N: No Response - Negative
 NA: Not Accepted + Positive
 A: Accepted o Neutral

Date	Individual/Organization	Comments	Action/ Type	Rationale
6/17/10	Donna Sue Peros Boone County Schools Director of School Nurses	<p>§126-94-3 .1.4. Definitions.</p> <p>It is possible that there needs to be an additional definition of “who can access directory information in a public health investigation or emergency/pandemic situation.”</p>	NA	Directory information can be released to various health agencies even in the absence of a public health emergency.
		<p>§126-94-23.4. Conditions for Disclosure of Directory Information</p> <p>It is important to note that during pandemic or public health emergencies, there may be reason to release directory information to a representative of the state health department or local health department without parental permission. Certain epidemic or pandemic situations may place other individuals in danger if the individuals exposed, etc., cannot be quickly contacted. Example: release of directory information to Varicella Program this school year for the “control group contact investigations.”</p>	NA	Directory information can be released to various health agencies even in the absence of a public health emergency.

Marlene Price

From: Nobody [nobody@wvde.state.wv.us]
Sent: Thursday, June 17, 2010 3:01 PM
To: fibanez@wvde.state.wv.us; mprice@access.k12.wv.us
Subject: Comment Received for Policy 4350 (2010-06-17 15:00:46)

Please save this email in a "Comments Received Online" folder.
Your folder will be a backup. All comments are saved in our database.
The Complete Comments Report from the database can be found here:
<http://129.71.2.32/r.html?id=ac3f309dec6bd4ae4260f7e864a90925>
This is an encrypted URL. Please Bookmark it.

Comment Received for Policy 4350

#####

Name: Donna Sue Peros
Organization: Boone County Schools
Email: dperos@access.k12.wv.us
Title: Director of School Nurses
Address1: 726 Ridgeview Hollow Rd.
Address2:
City/State/Zip: Ridgeview, WV 25169
Role: Professional Support
Posted: 2010-06-17 15:00:46
Posted from IP: 168.216.36.102

Comments for section 126-94-3 1 4 Definitions

It is possible that there needs to be an additional definition of "who can access directory information in a public health investigation or emergency/ pandemic situation."

Comments for section 126-94-23 4 Conditions for Disclosure of Directory Information

It is important to note that during pandemic or public health emergencies, there may be reason to release directory information to a representative of the state health department or local health department without parental permission. Certain epidemic or pandemic situations may place other individuals in danger if the individuals exposed, etc., cannot be quickly contacted. Example: release of directory information to Varicella Program this school year for the "control group contact investigations."