

APPENDIX C
RELATED STATUTES AND REGULATIONS

Provided below are brief descriptions of federal and state statutes and regulations that relate to the operations of I&RS teams. The descriptions summarize the basic intent of each statute and regulation, as well as applications to the I&RS team. Additional information on school and student rights, responsibilities and legal frameworks can be found in Student Codes of Conduct: A Guide to Policy Review and Code Development, by the New Jersey Department of Education.

FEDERAL STATUTES AND REGULATIONS

Family Educational Rights and Privacy Act (FERPA)
(20 USC 1232(g) and 34 CFR Part 99)

FERPA, also known as the Buckley Amendment, has a dual purpose: it ensures parents and adult students *access* to student records related to education and *protects the privacy* of these records from general disclosure. The statute conditions receipt of federal education funding on the school or institution's ability to maintain the privacy of education records.

Education records are records, files, documents or other materials that contain information *directly related to a student* and *are maintained by an education agency or institution* or *by a party acting for an education agency or institution*. Examples of education records are grades, test scores, medical and health records in the possession of a school, special education records, disciplinary records and personal information regarding the student and the student's family.

Education records do not include memory aids. Memory aids are records that are kept in the sole possession of the makers of the records; are only used as personal memory "joggers;" and are not accessible or revealed to any other person, except temporary substitutes for the makers of the records.

FERPA also refers to certain education records as "directory information," which can be released to the public, since the disclosure of directory information would not generally be considered harmful or an invasion of privacy. Directory information, however, is only

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permitted to be made public if the school provides parents prior notice of the types of records that will be released without their consent. Examples of what may be included in directory information are names, addresses, telephone listings, electronic mail addresses, dates and places of birth, major fields of study, dates of attendance, grade levels, enrollment status, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received.

Parents, guardians or an individual acting as a parent in the absence of a parent or guardian have the following rights under FERPA:

- 1) To inspect their children's educational records and to have copies made of the records, for which the school may generally charge a fee;
- 2) To request amendment of a child's education records;
- 3) To request a hearing to challenge the content of a child's education records;
- 4) In general, to provide prior written consent before information from a student's education records may be disclosed to another party; and
- 5) To request that no directory information be released about a student.

Subject to conditions, FERPA permits access to education records without the prior consent of the parent by school officials and teachers, certain federal and state officials, certain organizations conducting educational research and accrediting organizations. Appropriate persons may have access to education records without prior consent in emergencies that threaten the health or safety of the student or of others. Finally, education records may be released without parental consent if required by court order, but the school must notify the parent prior to complying with the order.

Pursuant to N.J.A.C. 6A:16-7.2(a)6, schools are required to "actively involve parents or guardians in the development and implementation of intervention and referral services plans." As indicated above, parents participating in the I&RS process have a right under FERPA to review the information in an I&RS file. Since I&RS teams only collect specific, descriptive and observable and factual information that is school-based and school-focused (i.e., academic, behavior, health), generally there should be no concern with sharing information in I&RS files with parents. The only information in an I&RS file that might not be school-based and school-focused is documentation of a diagnosis and recommendations that have been made by appropriately qualified professionals from outside of the school system, which may also be shared with parents, unless access to the information is restricted by other regulations.

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Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2)

These regulations apply to school programs that provide alcohol or drug abuse referral for treatment. The regulations prohibit disclosure or use of any information obtained in the operations of the treatment referral program that would identify a student as an alcohol or drug abuser. The regulations permit disclosure of applicable information if the student consents in writing, per the conditions set forth in the regulations, and provides specific conditions for other exceptions to the disclosure prohibition.

Elementary and Secondary Education Act (ESEA) (P.L.107-110)

The Elementary and Secondary Education Act of 1965, which was amended in 2001 and renamed the No Child Left Behind Act (NCLB), is intended to provide funding support to help school districts close the achievement gap with accountability, flexibility and choice, so that no child is left behind. The New Jersey Department of Education annually issues a consolidated NCLB program application, which includes:

- Title I – Improving the Academic Achievement of the Disadvantaged
- Title II – Preparing, Training, and Recruiting High Quality Teachers and Principals.
- Title IV-A – Safe and Drug-Free Schools and Communities Act.
- Title V – Promoting Informed Parental Choice and Innovative Programs
- Title VI – Innovative Education Programs and Strategies.

Funds from each of these programs can be used for applicable I&RS activities. The NCLB (Title VI) and the consolidated application provides flexibility in the creative use of these funds for students who are at risk for school failure due to academic, behavior or health concerns.

Federal Statutes and Regulations, continued**Protection of Pupil Rights Amendment (PPRA)**

(20 U.S.C. 1232h; 34 CFR Part 98)

PPRA, also known as the Hatch Amendment, applies to most programs that receive funding from the United States Department of Education (USDOE). The law and regulations are intended to protect the rights of parents and students in two ways:

- 1) Ensuring that schools and contractors make instructional materials available for inspection by parents if those materials will be used in *USDOE-funded* research or experimentation. Parents have the right to review any materials used in connection with any survey, evaluation or analysis funded by USDOE.
- 2) Ensuring that schools and contractors obtain written parental consent before minor students are required to participate in any *USDOE-funded* psychological or psychiatric testing or treatment, if the primary purpose is to reveal any of seven listed categories of “personal” information. No student shall be *required* to submit a survey, evaluation or analysis that reveals information concerning any of the following seven “protected topics” without *prior written consent* of his parents or legal guardians:
 - 1) Political affiliation;
 - 2) Mental and psychological problems potentially embarrassing to the student or his family;
 - 3) Sex behavior and attitudes;
 - 4) Illegal, anti-social, self-incriminating and demeaning behavior (alcohol use by juveniles and use of illegal drugs fall within this item);
 - 5) Critical appraisals of other individuals with whom respondents have close family relationships;
 - 6) Legally recognized privileged or analogous relationships, such as those of lawyers, physicians and ministers; and
 - 7) Income (other than that required by law to determine eligibility for participation in a program for receiving financial assistance under such program).

The key words in the text above are “shall not be required to.” The United States Secretary of Education has not interpreted the term “required,” which means the Secretary has not imposed a single rule to address a myriad of situations. Recipients of UDOE funds will make initial judgments in individual cases on whether a survey is or

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has been “required” in the administration of their activities. In the event a complaint is filed with USDOE, it will determine on a case-by-case basis, in light of all the circumstances, whether a student has been *required* to submit to a survey.

Section 504 Committees
(34 CFR 104 Subparts A, C and D)

Section 504 sets forth the requirement that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. Requires all recipients of federal assistance that operate a public elementary or secondary education program to provide a free appropriate education to each qualified student with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the student’s disability.

Each school is required to develop its own procedures for the establishment of committees to conduct evaluations or make placement decisions. To determine eligibility, schools are required to conduct an evaluation of any student who, because of disability, needs or is believed to need regular education or special education and related aids and services. In interpreting evaluation data and in making placement decisions, schools are required to:

1. Draw upon information from a *variety of sources*;
2. Establish procedures to *document* and *fully consider* the information;
3. Ensure that the placement decision is made by a *group of persons*, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options; and
4. Ensure that the placement decision is made in conformance with the regulations; and
5. Establish procedures for periodic reevaluation of students who have been provided special education or related services.

Schools are also required to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford students with a disability an equal opportunity to participate in them.

NEW JERSEY STATUTES AND REGULATIONS

Student Records

(N.J.A.C. 6A:32-7 and 6A:16-7.10 and 8.2)

These regulations set forth rules for school districts to follow in compiling, maintaining, regulating access and disclosing or communicating information regarding students' educational records.

Suspensions and Expulsions from School

(N.J.S.A. 18A:37-1 et seq., and
N.J.A.C. 6A:16-5.5, 5.6, 5.7, 7.2, 7.3, and 7.5)

These statutes and regulations set forth the causes, conditions and due process procedures for removing students from the general education or special education programs for violations of the code of student conduct. It includes the requirements for students who commit firearms offenses, assaults with weapons offenses and assaults on board of education members or employees.

Substance Abuse

(N.J.S.A. 18A:40A-1 et seq., and
N.J.A.C. 6A:16-3, 4 and 6)

These statutes and rules provide standards for district boards of education in their development of substance abuse policies, procedures, instructional programs, in-service training, and providing civil immunity, parent outreach and substance awareness coordinator functions. They include procedures for the reporting of students who appear to be under the influence of alcohol or other drugs, the examination, assessment and referral for treatment of these students, voluntary random drug testing programs and cooperation with law enforcement authorities.

Reporting Potentially Missing or Abused Children

(N.J.A.C. 6A:16-11)

These regulations establish uniform statewide policies and procedures for public school staff to report allegations of child abuse and to cooperate with the investigation of these allegations.