A. Purpose

To establish guidance for Frederick County Public Schools (FCPS) staff and students in implementing federal and State privacy laws and regulations applicable to student education records and student Personally Identifiable Information (PII), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, and Section 13A.08.02 of the Code of Maryland Regulations (COMAR).

B. Background

The Board of Education of Frederick County (Board) adopted Board Policy 421, *Student Education Records*, recognizing the responsibility it and FCPS have to securely maintain student records, to protect confidentiality and privacy of all records related to students, and to prohibit those records from disclosure except as provided for by law. This Regulation implements that policy and establishes the parameters by which the system will determine what constitutes a record and when, how, and to whom those records may be disclosed.

C. Definitions

1. "Copy" is defined to mean any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

2. "De-identification" is defined to mean the process of removing or obscuring any PII from student records in a way that minimizes the risk of unintended disclosure of the identity of individuals and information about them.

3. "Directory Information" is defined as information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.

4. "Disclosure" is defined as permitting access to, or the release, transfer, or other communication of, PII contained in student records to any party, by any means, including oral, written, or electronic means.

5. "Eligible Student" is defined as a student who has reached 18 years of age or is attending an institution of postsecondary education.

6. "Legitimate Educational Interest" is defined to mean when a school official needs to review a student's education record in order to fulfill their professional responsibilities.

7. "Parent" is defined to mean a biological or adoptive parent, a court-appointed custodian or guardian, a foster parent, or a caregiver (as defined by the Education Article of the

Maryland Annotated Code or as designated by the United States Department of Health and Human Services).

8. "Parental Consent" is defined as the written permission given by a parent or guardian for the purpose of permitting disclosure of student records.

9. "Personally Identifiable Information" (PII) is defined to mean information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, and includes student education records protected under the Family Educational Rights and Privacy Act (FERPA).

10. "Record" is defined as any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

11. "School Official" is defined to mean any employee of the school system with direct responsibility for providing services to students and other school officials designated by the Superintendent through an inter-agency agreement.

12. "School-related information provided to a custodial parent" is defined to mean documents which are regularly provided to the custodial parent at school meetings, by mail, or by sending home with the student, such as statements on student and parent rights and responsibilities, school newsletters, school calendars, and notices of parent conferences, open houses, and plays, as well as student records such as report cards, disciplinary notices, and special education notices.

13. "School system" or "FCPS" is defined to mean the Frederick County Public Schools and Board of Education of Frederick County.

14. "Student" is defined to mean an individual who is attending or has attended FCPS and for whom FCPS maintains the student's records or personally identifiable information. "Student" does not mean an individual who has not been enrolled in an FCPS school or program.

15. "Student Data" is defined to mean any personally identifiable information relating to an identified or identifiable student in the State.

16. "Student Personally Identifiable Information" (Student PII) is defined to mean information that alone, or in combination, makes it possible to identify an individual student with reasonable certainty. The term includes, but is not limited to:
    a. The student's name;
    b. The name of the student's parent or other family members;
    c. The address of the student or student's family;
    d. A personal identifier, such as the student's social security number, student number, or biometric record;

e. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
f. Other information that alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty;
g. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

D. Procedures

1. **Applicability.** This Regulation applies to records that are directly related to a student and maintained by FCPS or by an individual acting for FCPS, including student PII.
   a. **Directly Related to a Student.** FERPA does not distinguish between an "official student record" and a "cumulative file." With limited statutory exceptions, any information directly related to a student and maintained by FCPS or by a party acting for FCPS is considered part of the student's education records. Such information includes, but is not limited to:
      i. Photos or videos, as further detailed in section D(3) below.
      ii. Copies of law enforcement records that are provided to school administrators for the purpose of school discipline and maintained by FCPS.
      iii. Records that are provided to FCPS by a parent or outside provider, reviewed by IEP and Section 504 Teams for the purpose of decision-making, and maintained by FCPS.
   b. **Records Not Considered Education Records.** FCPS does not consider the following to be student education records:
      i. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record (*i.e.*, personal notes or records created by instructional, supervisory, or administrative personnel, or educational personnel ancillary thereto, that remain in the sole possession of the maker and are not accessible or revealed to any other individual).
      ii. Records relating to an individual who is employed by FCPS, that:
         1. Are made and maintained in the normal course of business;
         2. Relate exclusively to the individual in that individual's capacity as an employee; and
         3. Are not available for use for any other purpose.
      iii. Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are not created by FCPS, that are:
         1. Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's professional capacity or assisting in a paraprofessional capacity;
         2. Made, maintained, or used only in connection with treatment of the student; and

3. Disclosed only to individuals providing the treatment, which does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.

iv. Records created or received by FCPS after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.

v. Grades on peer-graded papers before they are collected and recorded by a teacher.

2. **Notification of Rights.** FCPS will annually notify parents and eligible students of their rights under FERPA in a manner that effectively informs all parents and eligible students, including parents with disabilities and parents whose primary or home language is not English. The notification may take the form of the Calendar Handbook or the FCPS Student Code of Conduct and Parent Handbook. These rights are:

i. The right to inspect and review the student's education records within 45 days after the day the FCPS receives a request for access and the procedure for doing so.

ii. The right to 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 under FERPA or COMAR 13A.08.02, *Student Records*, and the procedure for doing so.

iii. The right to provide written consent before FCPS discloses PII from the student's education records, except to the extent that FERPA authorizes disclosure without consent, the criteria used to determine who qualifies as a school official, and what constitutes a Legitimate Educational Interest.

iv. The right to file a complaint with the U.S. Department of Education's Student Privacy Policy Office (SPPO) concerning alleged failures by FCPS to comply with the requirements of FERPA.

h. **Directory Information**

i. FCPS will annually notify parents and eligible students of:

1. The categories of PII that FCPS has designated as directory information.
2. The right to opt out of the disclosure of any or all such directory information.
3. The period of time, or the "Opt-Out" window, within which the student's parent or the eligible student must inform FCPS in writing that any or all of such directory information may not be disclosed. Failure to opt out within this designated window will be treated as consent to disclose directory information.
4. The right to opt-out of the disclosure of the names, addresses, and phone numbers of high school students to military recruiters and institutions of higher education.

ii. FCPS designates the following as directory information:

1. A student's name, including nickname(s);
2. Participation in officially recognized activities and sports;
3. Major field of study;
4. Weight and height, if the student is a member of an athletic team;
5. Honors and awards received;
6. The current school attended by the student;
7. Grade level;
8. Dates of attendance;

9. Teacher/class assignment; and
10. Photographic, video, or electronic images.

iii. FCPS may disclose directory information without the prior written consent of parents or eligible students, such as for the publication of graduation and honor roll recipients, yearbooks, drama, art, or music production programs, or athletic rosters.

iv. Notwithstanding the requirements of FERPA, federal law requires the disclosure of directory information (*i.e.*, names, addresses, and phone numbers) of high school students to military recruiters unless the parent or eligible student provides written notice to FCPS to not release such information.

v. Directory information may not be disclosed or confirmed if a Social Security Number or other non-directory information is used to identify the student.

vi. FCPS may disclose directory information about former students unless the student previously opted out and has not rescinded the request.

vii. Parents and eligible students may not use the right to opt out of directory information disclosures to prevent:
1. Use of names or identifiers in class; or
2. Display of student ID cards or badges.

3. **Photo and Video Records.** Photo or video of a student is an education record, subject to certain exclusions, when the photo or video is directly related to a student and maintained by FCPS or by a party acting for FCPS.

a. FERPA does not define what it means to be "directly related." Accordingly, determining whether a photo or video meets this standard is context-specific. FCPS must evaluate each situation to determine whether a visual representation of a student is "directly related" to a student rather than merely incidental.

b. Photos or videos of a student should not be considered "directly related" to a student if the student's image is incidental or captured only as part of the background, or if a student is shown participating in school activities that are open to the public (*e.g.* an athletic event) and without a specific focus on any individual.

c. Circumstances in which a photo or video would be considered "directly related" to a student include, but are not limited to:

i. Photos or videos utilized for student disciplinary action (*e.g.*, an FCPS security camera video showing two students fighting in a hallway), as well as photos or videos of incidents that reasonably could result in student disciplinary action (even if disciplinary action is pending or has not yet been taken).

ii. Photos or videos that show a student in violation of local, State, or federal law, or the FCPS Student Code of Conduct.

iii. Photos or videos that show a student getting injured, attacked, victimized, ill, or having a health emergency (*e.g.*, a classroom video showing a student having a seizure).

iv. Photos or videos that intentionally focus on a specific student (*e.g.*, ID photos, a recording of a student presentation, or a close-up photo of two or three students playing basketball, even when there is a general view of student spectators in the background).

v. Photos or videos that otherwise contain PII from a student's education record.

d. Photos or videos provided by a parent are not education records unless FCPS receives and maintains a copy. For example, a photo taken by a parent at a school football game is not an education record, even if it depicts a particular student, because it is not maintained by FCPS. However, if the parent's photo depicts two students fighting at the game and the parent provides a copy to the school, and FCPS maintains copies in the students' disciplinary records, then the copies maintained by FCPS are education records.

4. **Access to Student Education Records**
   a. FCPS shall not grant access to or disclose information from any student record except under the conditions set forth in this Regulation and consistent with the provisions of applicable federal and State law. FCPS must use reasonable methods to verify and authenticate the identity of parents, students, school officials, and any other parties before granting access to or disclosing information from student records.
   b. A student's parent or eligible student is entitled to access, inspect, and review the student's education records within forty-five (45) days after FCPS receives a request for access. Requests may be submitted orally or in writing. The request should identify the records the parent or eligible student wishes to inspect.
      i. Requests for records pertaining to a current FCPS student should be directed to an administrator of the student's current school.
         1. The administrator or their designee will make arrangements for access and will notify the parent or eligible student of the time and place where the records may be inspected.
         2. A parent or eligible student may bring an attorney or advocate, if they have an attorney or advocate, to the inspection. If the parent or eligible student is represented by an attorney, FCPS may also have its attorney present.
      ii. Requests for records pertaining to a former FCPS student should be directed to an administrator of the student's last school of attendance.
      iii. Requests for copies of a former student's transcripts should first be directed to an administrator of the student's last school of attendance and, if not available from the last school of attendance, then to the Office of Student Services.
      iv. Requests for copies of diplomas should be directed to the Office of Student Services.
   c. **Eligible Students**
      i. When a student reaches the age of majority (18 years of age), the student becomes eligible to request and receive student records or authorize other individuals to receive student records.
      ii. The student's parents retain the right to access the student's records, provided that the student is not emancipated from the parents.
   d. **Noncustodial Parents.** A noncustodial parent maintains the right to access, inspect, or review their child's education records, except where a court order or other legally binding document has expressly extinguished that right. A parent cannot be denied access to their child's education records solely because the parent does not have physical custody of the child.
      i. If the custodial parent provides FCPS with a copy of a court order or other legally binding instrument which provides that the noncustodial parent may not have

access to the student's student records or other school-related information, FCPS is not permitted to disclose the student records or the school-related information to the noncustodial parent.

ii. Individuals are directed to submit court orders or other legally binding instruments, in their entirety, to the principal or their designee at the school the student currently attends. FCPS staff with questions concerning the applicability of such documents are directed to consult the Legal Services Division.

iii. In accordance with COMAR 13A.08.02.30, *Rights of Noncustodial Parents*, FCPS will include information concerning this provision in FCPS-issued statements on student and parent rights and responsibilities and will make a reasonable effort to disseminate this information to all custodial and identified noncustodial parents at each FCPS school.

e. **Limitations on Right of Parent or Eligible Student to Inspect and Review Student Education Records.** When a student record contains information on more than one student, a student's parent may inspect and review only the specific information related to their own child, and an eligible student may inspect and review only the information pertaining to themselves.

f. **Fees and Requests for Copies of Student Education Records.** Under 34 CFR § 99.11 and COMAR 13A.08.02.11, *Fees for Copies of Student Records*, FCPS is permitted to charge a reasonable fee to process a student's parent's or eligible student's request for copies of the student's education records.

i. Any fees charged for copies of student records under this section do not and cannot in any way prohibit the student's parent or eligible student from exercising their right to access, inspect, and review the student's education records.

ii. FCPS will not charge fees to search for or to retrieve the student records.

iii. **Copy Fees**

1. FCPS will make every reasonable effort to send records in an encrypted electronic format to reduce copy-related fees.
2. The fee for each copy made by a standard printer or photocopying or scanning machine within the school system is twenty-five cents ($0.25) per page, as outlined in FCPS Regulation 200-42, *Maryland Public Information Act Requests*.
3. Before copying the student records, FCPS will estimate the cost of reproduction and require prepayment of the costs. In preparing this estimate, FCPS will consider, among other relevant factors, the number of pages to be copied, the staff time needed to complete the copying, the method requested to provide the records, and any other relevant factors.
4. FCPS staff should contact the Legal Services Division for guidance prior to assessing or collecting copy-related fees.
5. If the student's parent or eligible student asks that copies of the student records be mailed or delivered to the student's parent or eligible student, or to an authorized third party, such as an attorney, FCPS may charge the requester for the cost of postage or delivery.
6. If the student's parent or eligible student asks that copies of the student records be provided in an electronic format on a flash drive to the student's parent or

eligible student, or to an authorized third party, such as an attorney, FCPS may charge the requester for the cost of the flash drive.

iv. **Waiver of Fee.** If a noncustodial parent submits a notarized statement that the parent is unable to pay any fees set under this section, FCPS will waive the fees.

g. FCPS may grant access to or disclose information from student records to school officials provided a Legitimate Educational Interest is shown, without parental or eligible student consent or notification.

h. FCPS may grant access to, or release information from, student records to any person possessing a written, dated consent, signed by the parent or eligible student that specifies to whom the records may be released, the information or record to be released, and the reason for the release.

i. Whenever FCPS requests the consent to release certain records, the records custodian shall inform the parent or eligible student of the right to limit such consent to specific portions of information in the records.

ii. When written consent is provided, FCPS may presume the individual giving consent has the authority to do so, unless FCPS has been provided with evidence that there is a legally binding instrument or a State law or court order governing such matters as divorce, separation, or custody, which provides to the contrary.

iii. In rare or unique circumstances when a parent or eligible student verbally requests access to or release of records, the administrator will prepare written documentation accompanying the requested records stating that the request was made orally and specifying the date, time, and manner in which the request was made. A copy of this written documentation will be maintained in the student file consistent with the retention period for records of students who have exited an FCPS school. If the verbal request or the resulting disclosure meets the criteria for entry in the disclosure log described in section D(4)(v) below, the administrator will also record the required information in that log.

i. FCPS may grant access to or disclose information from student records without parental or eligible student consent or notification to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of FERPA.

i. When records are sent to another school where the student seeks or intends to enroll, FCPS must make a reasonable attempt to notify the parent or eligible student unless:
   1. The parent or student initiated the disclosure; or
   2. The Annual Notice already explains that records are forwarded for enrollment or transfer purposes.

ii. Upon request, FCPS must provide the parent or eligible student with:
   1. A copy of the records disclosed; and
   2. An opportunity for a hearing.

iii. FCPS may disclose records to another school only if the student is enrolled there or receiving services and the requirements above are met.

j. FCPS may outsource institutional services or functions that involve the disclosure of information from student records to contractors, consultants, volunteers, or other third parties. FCPS may grant access to or disclose such information without parental or eligible student consent provided that the outside party:

i. Performs an institutional service or function for which FCPS would otherwise use employees;
ii. Is under the direct control of FCPS with respect to the use and maintenance of education records;
iii. Is subject to the requirements in FERPA that the PII from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
iv. Meets the criteria specified in FCPS's annual notification of FERPA rights for being a school official with a Legitimate Educational Interest in the education records.

k. FCPS may grant access to or disclose information from student records without parental or eligible student consent for purposes of an audit or evaluation by a federal or State-supported education program, and to comply with federal requirements related to such a program. The receiving entity must be a State or educational authority or another entity allowed by FERPA, or must be an authorized representative of such an entity.

l. FCPS may grant access to or disclose information from student records without parental or eligible student consent when in connection with financial aid for which a student has applied or which a student has received, if the PII from the student records is necessary for such purposes as to determine eligibility of the student for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid.

m. FCPS may grant access to or disclose information from student records without parental or eligible student consent to State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to the requirements of FERPA and COMAR 13A.08.02.26, *Conditions for Disclosure of Information Concerning Juvenile Services System*.

n. FCPS may grant access to or disclose information from student records without parental or eligible student consent to organizations conducting studies for, or on behalf of FCPS for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction.
   i. Such access or disclosure is permissible only if the:
      1. Studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization;
      2. Information will be destroyed when no longer needed for the purposes for which the study was conducted; and
      3. FCPS has entered into a written agreement with the organization regarding the purpose, scope, and duration of the study and parameters regarding the use and destruction of PII.
   ii. If an organization/third party fails to destroy information, in violation of section D(4)(n)(i)(2) above, FCPS will not allow that organization/third party access to PII from student records for at least 5 years.

iii. This subsection should not be interpreted as governing requests for FCPS data made for independent research purposes. Such requests are subject to a separate research request process outlined in FCPS Regulation 200-41, *Research Requests*.

o. FCPS may grant access to or disclose information from student records without parental or eligible student consent to accrediting organizations to carry out their accrediting functions.

p. FCPS may grant access to or disclose information from student records without parental or eligible student consent to comply with a judicial order or lawfully issued subpoena if FCPS makes a reasonable effort (for example, telephone call and have it witnessed, telegram, registered letter, etc.) to notify the student's parent 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:
   i. 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
   ii. Any other lawfully issued subpoena has ordered that the existence of the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

q. FCPS may grant access to or disclose information from student records without parental or eligible student consent to the court when FCPS initiates legal action against a parent or student, if FCPS makes a reasonable effort to notify the parent or eligible student so that the parent or eligible student may seek protective action.

r. FCPS may grant access to or disclose information from student records without parental or eligible student consent to appropriate officials in connection with a health or safety emergency, subject to the requirements of FERPA and COMAR 13A.08.02.24, *Conditions for Disclosure in Health and Safety Emergencies*.
   i. FCPS may disclose PII from a student's education records to appropriate parties, including the parent of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of a student or other individuals.
   ii. When determining whether disclosure of such information is warranted, FCPS will consider the following factors:
      1. The seriousness of the threat to the health or safety of the student or other individuals;
      2. The need for the information to meet the emergency;
      3. Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and
      4. The extent to which time is of the essence in dealing with the emergency.
   iii. If a disclosure is made under this subsection, FCPS staff will record in the disclosure log the information specified in D(4)(v)(iii) below, as required by FERPA.
   iv. FCPS will strictly construe this section.

s. FCPS may grant access to or disclose information from student records without parental or eligible student consent to an agency caseworker or other representative of a State or local child welfare agency or tribal organization who is authorized to access a

student's case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student in foster care placement.

t. FCPS may grant access to or disclose information from student records without parental or eligible student consent to the Secretary of Agriculture or authorized representatives of the Food and Nutrition Service for purposes of conducting program monitoring, evaluations, and performance measurements of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, under certain conditions.

u. If FCPS makes a reasonable determination that the student cannot be identified, whether through a single release or through multiple releases, and considering any other information that is reasonably available, FCPS may disclose student records or information without consent once all PII has been removed.

v. **Log of Disclosures.** FCPS will maintain a log of all requests for access to and disclosures of PII from a student's education records, whether or not requests for access were granted, or records were copied. Such log will be kept with the student's education records for as long as those records are maintained.
   i. All entries shall specify the parties who have requested or received student PII and the Legitimate Educational Interests of the individual(s) requesting or obtaining such information.
   ii. Upon request, FCPS must make the disclosure log available to the parent or eligible student.
   iii. When FCPS discloses PII due to a health or safety emergency, FCPS must document:
      1. The articulable and significant threat forming the basis for the disclosure; and
      2. The parties to whom the information was disclosed.
   iv. When PII is disclosed with the understanding that the receiving party may make further disclosures, the disclosure log must also identify:
      1. The additional parties who may receive the information; and
      2. The legitimate interests of those additional parties.
   v. State or local educational authorities and Federal officials or agencies who make further disclosures must keep their own disclosure logs and provide FCPS a copy within 30 days upon request.
   vi. The disclosure log may be inspected by:
      1. A student's parent or an eligible student.
      2. The school official responsible for the records.
      3. Authorized auditors reviewing recordkeeping procedures.
   vii. **Exceptions.** This requirement does not apply to requests for access to and disclosures of student PII made to:
      1. A student's parent or an eligible student.
      2. A school official with a Legitimate Educational Interest.
      3. A party with written consent from a student's parent or an eligible student.
      4. A party seeking directory information.
      5. A party receiving records under a judicial order or subpoena.

w. **Limitations on Redisclosure of PII**
   i. A party receiving PII from student education records may not share it with anyone else unless the parent or eligible student gives prior consent.

ii. Employees or agents of the receiving party may use the information only for the purpose for which it was originally disclosed.
iii. Further disclosure is allowed only when:
    1. The disclosure meets a FERPA exception; and
    2. The original agency or an authorized State or Federal authority has met FERPA's recordkeeping requirements.
iv. If a party rediscloses information in response to a court order or subpoena, it must provide the required notice to the parent or eligible student.
v. The redisclosure limitation does not apply to certain FERPA authorized disclosures, including, but not limited to: law enforcement subpoenas, juvenile justice disclosures, and directory information.
vi. FCPS must tell receiving parties that they are prohibited from redisclosing PII unless an exception applies.

6. **Requests to Amend Student Education Records.** This section addresses the process for amending student education records other than grade or transcript changes. Requests to amend grades or for grade changes are governed by FCPS Regulation 416-02, *Grading and Reporting, Elementary* and FCPS Regulation 416-03, *Grading and Reporting, Secondary*.
    a. A student's parent or an eligible student who believes that information in the student's education records is inaccurate, misleading, or violates the student's privacy rights may request that FCPS amend the records. The initial request for review shall be directed to the school administrator. The administrator's decision may be appealed to the Superintendent. The Superintendent's or their designee's decision may be appealed to the Board.
    b. **Process to Appeal to the Administrator**
        i. Requests must be submitted in writing to an administrator of the student's current school. The request should clearly identify the part of the record the student's parent or eligible student seeks to change, explain why the change is requested, and, if applicable, include documentation supporting the request.
        ii. FCPS will grant or deny a request within a reasonable time period, not to exceed thirty (30) days after the date FCPS receives the request, and will provide written notice of its decision to the parent or eligible student.
        iii. If FCPS decides to amend the record as requested by the parent or eligible student, FCPS will amend the record and will notify the parent or eligible student in writing that the amendment has been made.
        iv. If FCPS decides not to amend the record as requested by the parent or eligible student, FCPS will notify the parent or eligible student in writing of the decision and of the parent's or eligible student's right to a hearing regarding the request for amendment. Information about the hearing procedures not included in this Regulation will be provided when the parent or eligible student is notified of the right to a hearing.
    c. **Process to Appeal to the Superintendent**
        i. **Right to Hearing.** If the student's parent or the eligible student disagrees with the administrator's decision, upon request, FCPS will provide the student's parent or eligible student with the opportunity for a hearing to challenge the content of a student's education records to determine whether the information is inaccurate,

misleading, or in violation of the student's privacy rights. The request shall be submitted in writing using the Superintendent Level – Appeal Form. The submission must include copies of the initial request and the administrator's written response.

ii. If, after the hearing, FCPS determines that the information is inaccurate, misleading, or violates the student's privacy rights, FCPS will amend the record and will notify the parent or eligible student in writing that the amendment has been made.

iii. If, after the hearing, FCPS determines that the information is accurate and does not violate the student's privacy rights, FCPS will notify the parent or eligible student of the right to place a written statement in the record explaining their disagreement with the decision.
   1. Any statement placed in the record as a result of an adverse hearing decision regarding a request to amend a student's education records will be maintained as part of the student's education record for as long as the record, or the contested portion of the record, is kept.
   2. If the record or the contested portion is disclosed to any individual, the statement will also be disclosed.

iv. **Conduct of Hearing.** A hearing held under this section will follow procedures that include at least the following elements:
   1. The hearing will be held within a reasonable time period, not to exceed thirty (30) calendar days, after FCPS receives the request. FCPS will provide the parent or eligible student with advance written notice of the date, location, and time of the hearing.
   2. The Superintendent delegates to the Chief of Schools the authority to designate the appropriate individual to conduct the hearing and make a recommendation to the Superintendent.
   3. The parent or eligible student will have a full and fair opportunity to present evidence relevant to the issues and may be assisted or represented, at their own expense, by individuals of their choice, including an attorney.
   4. FCPS will issue its decision in writing within a reasonable time period, not to exceed thirty (30) days, after the hearing concludes. The decision will be based solely on the evidence presented at the hearing and will include a summary of the evidence and the reasons for the decision.

v. **Process to Appeal to the Board of Education.** If the student's parent or eligible student does not agree with the decision, the parent or eligible student may appeal the decision in accordance with Board Policy 105, *Appeal and Hearing Procedures*.

7. **General Requirements Related to the Maintenance of Student Records**
   a. FCPS will maintain individual student records in accordance with this Regulation, applicable federal and State laws and regulations, Board Policy, FCPS Regulation, and the Maryland Student Records System Manual.
   b. Unless otherwise specified, FCPS will adhere to the retention and disposition guidelines established in the Maryland Student Records System Manual.
   c. FCPS may not destroy any student record if there is an outstanding request to inspect or review the student's education records.

d. **Review of and Updates to Student Education Records**
   i. To maintain relevant and accurate student records, FCPS will provide for the periodic review and updating of student education records.
   ii. Changes in identifying information, standardized test results, and health data will be updated within a reasonable time period, not to exceed thirty (30) calendar days, after the changes occur during the school year.
   iii. Student records will be reviewed at least under the following conditions:
      1. When a student transfers to the next higher organizational level, such as from elementary to middle school.
      2. When a student graduates from high school.
      3. When a student withdraws for any other reason.
      4. Each principal will certify annually in writing to the Superintendent that the student data maintained at the school is accurate.

8. **Record Subpoenas / Subpoena *Duces Tecum***
   a. All subpoenas to produce student education records, regardless of whether the requested records are school-based or located at Central Office, must be submitted to the Legal Services Division in accordance with FCPS Regulation 106-01, *Service of Process*.
   b. The only individuals authorized to accept record subpoenas on behalf of the System are the Board President, the Superintendent, or an FCPS employee within the Legal Services Division. No other employee is authorized to accept the service of Legal Process, including employees stationed at the Central Office front desk, school-based staff, and school administrators.

E. Related Information

1. **Board Policy**
   a. Policy 105, *Appeal and Hearing Procedures*
   (https://apps.fcps.org/legal/documents/105)
   b. Policy 208, *Data Security*
   (https://apps.fcps.org/legal/documents/200)
   c. Policy 404, *Student Rights and Responsibilities*
   (https://apps.fcps.org/legal/documents/404)
   d. Policy 421, *Student Education Records*
   (https://apps.fcps.org/legal/documents/421)

2. **Code of Maryland Regulations (COMAR)**
   a. COMAR 13A.08.02, *Student Records*
   (https://fcps-md.info/COMAR_13A-08-02)

3. **External Resources**
   a. Maryland State Department of Education (MSDE), *Maryland Student Records System Manual*, (Rev 2020)
   (https://fcps-md.info/MSDE_Student_Records_Manual_2020)
   b. U.S. Department of Education (DOE), FERPA Webpage

(https://fcps-md.info/US_DOE_FERPA)

c. U.S. DOE (Rev. July 2021), *A Parent Guide to the Family Educational Rights and Privacy Act (FERPA)*
(https://fcps-md.info/US_DOE_FERPA_Parent_Guide)

d. U.S. DOE (Rev. March 2023), *An Eligible Student Guide to the Family Educational Rights and Privacy Act (FERPA)*
(https://fcps-md.info/ US_DOE_FERPA_Eligible_Student_Guide)

e. U.S. DOE, *FAQs on Photos and Videos under FERPA | Protecting Student Privacy*
(https://fcps-md.info/US_DOE_FERPA_FAQ_Video_Photo)

4. **FCPS Regulations**
   a. Regulation 106-01, *Service of Process*
   (https://apps.fcps.org/legal/documents/106-01)
   b. Regulation 200-41, *Research Requests*
   (https://apps.fcps.org/legal/documents/200-41)
   c. Regulation 200-42, *Maryland Public Information Act Requests*
   (https://apps.fcps.org/legal/documents/200-42)
   d. Regulation 200-49, *Personally Identifiable Information (PII) for FCPS School Officials*
   (https://apps.fcps.org/legal/documents/200-49)
   e. Regulation 208-01, *Data Privacy, Students* (formerly 400-96)
   (https://apps.fcps.org/legal/documents/208-01)
   f. Regulation 209-02, *Retention, Disclosure, and Access of FCPS Video Records*
   (https://apps.fcps.org/legal/documents/209-02)
   g. Regulation 301-03, *Technology Use, Staff* (formerly 300-45)
   (https://apps.fcps.org/legal/documents/301-03)
   h. Regulation 413-01, *Volunteers* (formerly 400-86)
   (https://apps.fcps.org/legal/documents/413-01)
   i. Regulation 416-02, *Grading and Reporting, Elementary*
   (https://apps.fcps.org/legal/documents/416-02)
   j. Regulation 416-03, *Grading and Reporting, Secondary*
   (https://apps.fcps.org/legal/documents/416-03)

5. **FCPS Resources**
   a. FCPS / About / Calendar Information (Calendar Handbook)
   (https://www.fcps.org/about/calendar_information)
   b. FCPS / Families & Students / Student Code of Conduct
   (https://www.fcps.org/families_students/student_code_of_conduct)
   c. FCPS / Staff / Employee Code of Conduct
   (https://www.fcps.org/staff/employee_code_of_conduct)
   d. **Forms**
      i. Superintendent Level – Appeal Form
      (https://apps.fcps.org/forms/public-policy-forms/27)

6. **Federal Law**
   a. Child Nutrition Act of 1966
   b. Every Student Succeeds Act (ESSA), 20 U.S.C. §§ 6301, *et seq.*

(https://fcps-md.info/ESSA_20_USC_6301)

c. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g) (https://fcps-md.info/FERPA_20_USC_1232g)
d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, *et seq.* (https://fcps-md.info/IDEA_20_USC_1400)
e. National School Lunch Act (NSLA), 42 U.S.C. § 1758(b)(6) (https://fcps-md.info/NSLA_42_USC_1758b6)
f. Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232(h) (https://fcps-md.info/PPRA_20_USC_1232h)

7. **Maryland Statutes**
   a. Md. Code Ann., Family § 9-104 (https://fcps-md.info/MD_Family_Code_9-104)
   b. Md. Code Ann., Gen. Prov. § 4-313 (https://fcps-md.info/MD_Gen_Prov_Code_4-313)

F. Regulation History (Maintained by Legal Services)

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