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MEMORANDUM

TO: Rick Spitzer
FROM: Adele Reester
RE: Confidentiality laws affecting School Districts
DATE: June 3, 2004

1. Several state and federal laws govern the confidentiality of the District's records. These records will include information created and maintained while operating a school district, as well as other general employer-employee information.

2. Below is a list of state and federal laws, along with a short description of each, which the District must adhere to when maintaining and disclosing its records and the information contained therein.

2.1 Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA): FERPA prohibits school districts from releasing education records or personally identifiable information contained in records without the prior written consent of eligible student (those who have attained the age of 18 years) or students' parents. Generally, education records are records, files, documents, and other materials maintained by a school which contain information directly relating to a student. Personally identifiable information encompasses any information that would make a student's identity easily traceable. FERPA provides some exceptions to the release of this information.

2.2 Colorado Public Records Act, §22-74-201 *et seq.*, C.R.S.: The Act declares that it is the public policy of the State of Colorado that all public records shall be open for inspection by an person at reasonable times, except as provided in the Act itself or as otherwise provided by law.

2.2.1 Common exceptions from the duty to disclose include the following:

- Where inspection would be contrary to other state or federal laws, regulations, or applicable rules;

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- Where disclosure would be contrary to the public interest;
- Medical, mental health, sociological and scholastic achievement data on individual persons;
- Personnel files. Personnel files include home addresses, telephone numbers, financial information (i.e. garnishment of wages), and other information maintained because of the employer-employee relationship;
- Letters of reference;
- Trade secrets, privileged information, and confidential commercial, financial, geographical, or geophysical data;
- Addresses and telephone numbers of elementary and secondary school students.
- Records of sexual harassment complaints or investigations; and
- Records submitted by an applicant for an executive position who is not a finalist and who requests that the records be kept confidential. The Act provides some exceptions to the release of information.

2.2.2 Limited disclosure is permitted in certain circumstances:

- Education records of students may be sent to another school district to which the student moves or transfers;
- The names, addresses, and home telephone numbers of secondary school students may be released to military recruiters unless the student requests in writing that such information not be released;
- Disclosures allowed under FERPA;
- Disclosures of information by public school administrators, teacher, and staff derived from personal knowledge or observation and not derived from a student's record maintained by the district; and
- School directors shall have access to all school records at all times.

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- 2.3 Safe Schools, 22-32-109.1(3)(c), C.R.S.: Each school district is required to establish policies consistent with state and federal laws (including Colorado's Public Records Act and FERPA) to share and release information directly related to a student and maintained by a public school or by a person acting for the public school in the interest of making schools safer. Confidentiality of records shall be in accordance with state and federal laws.
- 2.4 Colorado Children's Code Records and Information Act. A criminal justice agency investigating a criminal matter concerning a student, if necessary to effectively serve the student prior to trial, may seek disciplinary and truancy information from schools at which the student is or will be enrolled. Upon written certification by the criminal justice agency that the information will not be disclosed to any other party except as specifically authorized by law without the prior written consent of the student's parent, the school shall provide the student's attendance and disciplinary records to the requesting criminal justice agency.
- 2.5 Child abuse/neglect records: Reports and summaries of the reports that the District makes to Social Services are considered child abuse/neglect records that are required by law to remain confidential. There are a few exceptions to this confidentiality. A person who violates the confidentiality of these records is guilty of a class 2 petty offense.
- 2.6 The Individuals with Disabilities Education Act, 20 U.S.C. §§ 1412(a)(8) & 1417(c); 34 C.F.R. §§ 300.571(b), 300.572, & 300.574 (IDEA): IDEA provides that as a condition of receiving federal funds to assist in administering services and programs under the IDEA, the school district must take steps in accordance with the provisions of FERPA to protect the confidentiality of any personally identifiable student data, information, and records collected or maintained pursuant to IDEA.
- 2.7 Colorado Exceptional Children's Educational Act, 1 C.C.R. 301-8, §§ 2220-R-6.01 & -7.01(1)(c). The Act generally requires that the confidentiality of student special education records be maintained and that disclosure of such records only be made "as allowed by law."

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- 2.8 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794: Provides protection of records related to any person eligible for a Section 504 plan.
- 2.9 Colorado Certificated Personnel Performance Evaluation Act, §22-9-109, C.R.S.: The evaluation report and all public records as defined in the Public Records Act used in preparing the evaluation report shall be confidential and shall be available only to the certificated person being evaluated, to the duly elected and appointed public officials who supervise his/her work, and to a hearing officer conducting a dismissal hearing or the court of appeals reviewing the hearing officer's decision.
- 2.10 Americans with Disabilities Act: The ADA requires employers to keep protected medical records confidential. Medical information that should be kept confidential includes: post-offer medical exams, written requests for disability-related accommodations, medical documentation supporting an accommodation request, drug screen that reports lawful prescription uses, fitness for duty exams, information on an affirmative action form about a disability, and worker's compensation information.
- 2.11 Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. parts 160 and 164: Privacy standards issued under HIPAA impose sweeping requirements on covered entities to safeguard protected health information and to regulate the use and disclosure of such information. These standards apply to the use or disclosure of protected health information, which is any individually identifiable health information that is transmitted or maintained in any form or medium (including both paper and electronic records).
- 2.12 Theft of Medical Records and Information Act, § 18-4-412, C.R.S.: An person who, without proper authorization, knowingly obtains a medical record or medical information with the intent to appropriate the medial record or medical information to his own use or to the use of another, who steals or discloses to an unauthorized person a medical record or medical information, or who, without authority, makes or causes to be made a copy of a medical record of medical information commits theft of a medical record or of medical information.
- 2.13 Mental Health Records, § 27-10-120, C.R.S.: All information obtained and records prepared in the course of providing for the care and treatment of a mentally ill

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person are confidential and privileged matter. Disclosure of information is limited to certain circumstances.

- 2.14 Developmentally Disabled, § 27-10.5-120, C.R.S.: Records and information regarding services provided to developmentally disabled persons are confidential and may not be disclosed except as permitted by the statute. Disclosure is permitted to the person receiving the services, to the parents of a minor, to the person's legal guardian, or to a person authorized by any of the above. Disclosure is also permitted in communications between qualified professional personnel.
 - 2.15 "State FERPA", § 22-1-123, C.R.S.: State law requires school districts to comply with FERPA's requirements relating to the release of records without consent.
 - 2.16 Drug and Alcohol Abuse Treatment: Federal law and regulations impose specific confidentiality requirements on programs that provide drug and alcohol diagnosis or treatment.
 - 2.17 Other federal laws: Several federal laws contain either explicit or implicit record keeping and confidentiality requirements. These laws include: Age Discrimination in Employment Act; Equal Pay Act; the Family and Medical Leave Act; the Fair Labor Standards Act; and Title VII of the Civil Rights Act of 1964.
3. As a general rule, federal statutes preempt state laws that are in conflict. However, where the state law is designed to increase rights (increasing confidentiality protections in this case), the state law will prevail.
 4. Please call if you have further questions.