

# **TERMS OF MUTUAL UNDERSTANDING**

## **COMMUNICATION WITH and BETWEEN LOCAL LAW ENFORCEMENT AGENCIES**

**Between**

**Savannah-Chatham Board of Education Board of Education Police Department**

**And**

**Thunderbolt Police Department**

These Terms of Mutual Understanding (TMU) are shared and acknowledged by the Thunderbolt Police Department (hereinafter the TPD), represented by Chief Sean Clayton, whose address is 2821 River Drive, Thunderbolt, Georgia 31404 (hereinafter referred to as the City) and the Savannah Chatham County Public School System (SCCPSS).

### **I. Introduction**

The purpose of this TMU is to establish a common understanding regarding legal requirements and processes for the sharing of information between a local police agency and a public school district as well as designating points of contact and information sharing between the parties.

This TMU is created in accordance with legal mandate established under O.C.G.A. 20-2-1183.

Nothing in this TMU creates any requirement for provision of staffing, services and resources.

Nothing in this TMU establishes a law enforcement unit relationship under FERPA.

### **II. Background Information on the Family Educational Rights and Privacy Act (FERPA)**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records.<sup>2</sup> FERPA protects the rights of parents and eligible students to:

- Inspect and review education records;
- Seek to amend education records; and
- Consent to the disclosure of personally identifiable information (PII) from education records, except as specified by law.

The following definitions and terms of art are based on how those terms are defined and applied

under FERPA.

a. Definitions

- Directory Information - “Directory information” is information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. “Directory information” may include the student’s name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.<sup>3</sup>
- Disclosure - “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.<sup>4</sup>
- Education Records - “Education records” under FERPA are defined as those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.<sup>5</sup> Under state law, an “education record does not include the types of student data excepted in FERPA, does not include student data collected by an operator when it is used for internal operations purposes, does not include student data that is not formatted for or expected to be accessed by school, local board of education, or department employees, nor does it include student data that a local board of education determines cannot reasonably be made available to the parent or eligible student.”<sup>6</sup>
- Law Enforcement Unit - A “law enforcement unit” means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of Georgia POST certified police officers or non-sworn security staff, that is officially authorized or designated by that agency or institution to: (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 (2) maintain the physical security and safety of the agency or institution.<sup>7</sup> Note: The only officially designated and authorized law enforcement unit for SCCPSS is the SC BOEPD.
- Law Enforcement Unit Records - Records of a law enforcement unit means those records, files, documents, body-worn camera video and other materials that are: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit.<sup>8</sup>
- Parent - A “parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.<sup>9</sup>
- Personally Identifiable Information (PII) - This term includes, but is not limited to, the following:
  - 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; or 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.<sup>10</sup>

- Student - A "student" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.<sup>11</sup> An "eligible student" is a student that has reached the age of 18 years of age.

- School Official - A "school official" is an individual that the Local Educational Agency (i.e. SCCPSS) has determined has a legitimate educational interest in a student's education record and to whom the Local Educational Agency may disclose a student's education record.<sup>12</sup> A school official may include a teacher, school principal, president, chancellor, board member, registrar, counselor, admissions officer, attorney, accountant, human resources professional, information systems specialist, and support or clerical personnel.<sup>13</sup>

FERPA permits schools to outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided that the outside party:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Is subject to the requirements in 34 C.F.R. § 99.33(a) that PII from education records may be used only for the purposes for which the disclosure was made, such as to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and Meets the criteria specified in the Local Educational Agency's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

- Record - A "record" is any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.<sup>14</sup>

#### b. Allowable Non-Consensual Education Record Sharing Under FERPA

Below is a summary of potential exceptions to FERPA's confidentiality provisions

regarding student records that could be relevant to a collaborative written agreement. The parties to the collaborative written agreement can determine if such exemptions should be included in the document.

- Directory Information - A Local Educational Agency may disclose directory information if it has given public notice to parents and eligible students in attendance at the agency or institution of:
- The types of personally identifiable information that the agency or institution has designated as directory information;
- A parent's or eligible student's right to refuse to let the agency or institution designate any or all those types of information about the student as directory information; and
- The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.<sup>15</sup>

A parent or eligible student may opt out of the disclosure of directory information.

- Health or Safety Emergency Exception - FERPA regulations permit school officials to disclose PII from education records without consent to appropriate parties only when there is an actual, impending or imminent emergency, such as an articulable and significant threat. Local Educational Agencies have the discretion to determine what constitutes a health or safety emergency. Appropriate parties typically include law enforcement officials, first responders, public health officials, trained medical personnel, and parents. This exception is temporarily limited to the period of the emergency and does not allow for a blanket release of PII.<sup>16</sup>
- Subpoena, Warrant or Court Order – A Local Educational Agency can produce education records without consent in response to a legally valid subpoena, warrant or court order. The Local Educational Agency should give the parent or student with the right to the records the opportunity to legally challenge a subpoena prior to producing protected education records in response to a subpoena.

### **III. Terms of Understanding, Acknowledgement and Commitment**

#### **a) Mutual Term(s)**

Both parties understand, acknowledge and commit to the following:

- o Any inter-agency sharing of student information should be done in compliance with O.C.G.A. § 20-2-662 regarding student education records, student data and student personally identifiable data as applicable.
- o Any student education records provided under this agreement are protected under FERPA and may only be disclosed as provided by FERPA or under the terms of this Agreement. Educational records do not lose their protected status when the LEA has transferred the records to a party under the terms.

o The SC BOEPD is unable to produce education records that it has accessed through its “school official” status unless there is parental or adult student consent for the production or if some exception to nonconsensual sharing applies.

o The SC BOEPD can share its law enforcement agency records with other government agencies. However, the SC BOEPD may require some time prior to honoring a production request to make sure that its files do not include education records that cannot be shared at the SC BOEPDs discretion.

o Legally enforceable subpoenas, court orders and warrants are legal ground for the nonconsensual production of education records. SCCPSS prefers advance notice to subpoenas, court orders and warrants for education records so that it has the opportunity to provide notice of the warrant and an opportunity to oppose the warrant to the parent/adult student under FERPA.

o The SC BOEPD does not have exclusive police jurisdiction over SCCPSS premises and events. SC BOEPD law enforcement jurisdiction is supplemental to the police powers of the TPD with general jurisdiction over the site of a school.

o TPD will honor SC BOEPD requests assistance from local law enforcement to address suspected criminal activities and investigative responses thereto for activities and events that take place within the jurisdiction of the TPD.

b) Savannah-Chatham County Public School System (SCCPSS)

**SCCPSS understands, acknowledges and commits to the following:**

o SCCPSS may release student education records to appropriate parties, such as law enforcement and other first responders in an emergency situation, in order to protect the health and safety of a student or other individuals in accordance with 34 C.F.R. § 99.36. The school official must be able to explain, based on all the information available at that time, what the safety threat is and why it is significant when he or she makes the disclosure.

o SCCPSS is required to maintain a record of request for access to and disclosure of PII from a student’s education record in accordance with 34 C.F.R. § 99.32.

o SCCPSS is required to designate certain types of student information as “Student Directory Information” each year.

o SCCPSS commits to providing directory information regarding a student without the written consent of the student’s parent or the eligible student to law enforcement, a judge or court personnel, or another state or local agency or officer with a legal interest in such information, provided that the parent or eligible student has not opted out of the disclosure of directory information.

o SCCPSS commits to reviewing its annual FERPA notification and directory information designation following the execution of any collective written agreement to determine if any updates to the FERPA notification or directory information designation

are necessary.

o If TPD will play an integrated role in any SCCPSS school safety plan established under O.C.G.A. § 20-2-1185, SCCPSS will establish the means for FERPA compliant record sharing if there is a need for sharing beyond the sharing of directory information or sharing on an emergency basis.

Note: There are no current officers of the TPD who have been designated as school resource officers by SCCPSS. Any off duty officers hired as independent contractors to provide security services at SCCPSS events do not serve as school resources officers.

c) Thunderbolt Police Department

TPD understands, acknowledges and commits to the following:

o TPD will limit access to student education records, data, and PII disclosed during an investigation that is intended to protect the health and safety of students, staff, or other individuals or to ensure the physical safety of the school campus.

o TPD will comply with O.C.G.A. § 20-2-700 by providing SCCPSS with any written reports relating to any official encounter with a school age youth enrolled or potentially enrolled in the LEA by virtue of the youth's primary address in which the interaction is directly related to a credible report or other credible information that the youth has threatened the death of, or serious injury to, one or more individuals who are or will likely be at or within a school in the SCCPSS. This report shall be made to the SCCPSS Student Affairs Specialist. The law enforcement agency shall provide any written reports of an official encounter to the school official as soon as possible, but no later than five days from the date of the official encounter.

o TPD will notify the SCCPSS Student Affairs Specialist] if a school age youth enrolled in SCCPSS schools is charged with a Class A or Class B designated felony act, as defined by O.C.G.A. § 15-11-2 and provide updates to this same school official on any court dispositions that may occur during the course of the criminal proceedings.

o TPD will notify the SCCPSS Student Affairs Specialist if law enforcement receives a records request under federal or state law regarding any documents that are provided to law enforcement by SCCPSS under based on a non-consensual sharing of education records protected under FERPA. This notification shall be provided prior to the law enforcement agency responding to any records request.

#### IV. NOTICE

Any notice, consent or other communication in connection with this TMU shall be in writing and may be delivered in person, by mail or by email. If hand-delivered, the notice shall be effective upon delivery. If by email, the notice shall be effective when sent. If served by mail, the notice shall be effective three (3) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

Chief Sean Clayton  
2821 River Drive  
Thunderbolt, Georgia 31404

Chief Terry Enoch  
208 Bull Street  
Savannah, Georgia 31408

Dr. S. Denise Watts  
Superintendent  
Savannah-Chatham County Public School System  
208 Bull Street  
Savannah, Georgia 31408

### V. SIGNATURE BLOCK

This has been agreed to in cooperation with the Thunderbolt Police Department and the Savannah-Chatham County Board of Education. As agreed to and executed:

\_\_\_\_\_  
Chief Sean Clayton

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Terry Enoch

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. S. Denise Watts

\_\_\_\_\_  
Date

#### Additional Resources

- a) b) c) d) e) 34 CFR PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY
- Protecting Student Privacy - U.S. Department of Education
- Protecting Student Privacy - U.S. Department of Education - K-12 School Officials
- Protecting Student Privacy - U.S. Department of Education – SRO FAQ
- Protecting Student Privacy - U.S. Department of Education – FERPA Disaster Guidance

#### FOOTNOTES

- 1 For example, these other agencies could include the local emergency management system or the Division of Family and Children's Services.
- 2 See 34 C.F.R. § 99.2.
- 3 34 C.F.R. § 99.3 and 34 C.F.R. § 99.37.
- 4 34 C.F.R. § 99.3.
- 5 34 C.F.R. § 99.3.
- 7 34 C.F.R. § 99.8(a)(1).
- 9 34 C.F.R. § 99.3.
- 10 34 C.F.R. § 99.3.
- 11 34 C.F.R. § 99.3.
- 12 See 34 C.F.R. § 99.31 .
- 13 See 34 C.F.R. § 99.31(a)(1).
- 14 34 C.F.R. § 99.3.
- 15 34 C.F.R. § 99.37.
- 16 34 C.F.R. § 99.36.