

**SUBJECT: FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (Student Records)**

**PURPOSE:** To ensure that Alma d'arte Charter High School (the "School") complies with all federal and state laws governing confidentiality and release of Education Records as contemplated by the Family Educational Rights and Privacy Act (FERPA) and Individuals with Disabilities Education Act (IDEA-B). This policy provides notice to parents and students concerning their rights under FERPA and sets forth procedures for collecting, maintaining, and releasing information about students that may be contained in their Education Records.

**BACKGROUND:** FERPA is a Federal law that is administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. section 1232g; 34 CFR Part 99. FERPA applies to the School, because it receives funding under certain programs administered by the Department. FERPA generally prohibits the improper disclosure of personally identifiable information derived from Education Records.

**I. DEFINITIONS:**

- (A) "Eligible Student" means a school student who reaches 18 years of age.
- (B) "Education Records" means records that contain information *directly* related to a student and which are *maintained* by the School or anyone acting on behalf of the School, e.g. a teacher or administrator. Records can include any information recorded in any way including but not limited to handwriting, print, computer media, video or audio tape, film or any other method of recording information about a student.

An Education Record DOES NOT include:

- 1. Records kept by teachers, counselors, supervisory or administrative personnel that are in the sole possession of the maker and are not revealed to any other person except as needed to a substitute teacher.
  - 2. Employment records of student employees, if those records relate exclusively to the student in the capacity as an employee and are not made available for any other use.
- (C) "Directory Information" means information that includes information contained in Education Records of a student that would not generally be considered harmful or an invasion of privacy; e.g. student's name, address, telephone number, email address, photograph, date/place of birth, grade level, weight and height of athletes, awards, etc.

- (D) “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 guardian (hereafter “Parent”). Note: The School will comply with all custody court orders that modify parental rights.

## II. RIGHTS TO REVIEW AND TO INSPECT EDUCATION RECORDS

- (A) *Who can inspect Education Records:* Those who have the right (or with School permission) to inspect and review the cumulative record folder kept about the student include:

1. Parent of a student who is under 18 years of age;
2. Parent of a student over the age of 18, but who is defined as a parent’s dependent under the Internal Revenue Code;
3. An Eligible Student.

- (B) *Rights under FERPA:* FERPA grants parents and Eligible Students the right to:

1. Review and inspect student’s Education Records;
2. Consent to the disclosure of personally identifiable information from the records (except in certain circumstances, see below “Directory Information”);
3. Seek to have the Education Records amended; and
4. File a complaint with the Department.

- (C) *Process for Inspection:* Parent or Eligible Students who wish to inspect and review Education Records shall submit a request in writing to the CAO/Principal.

1. When the CAO/Principal receives a written request for review of Education Records from a Parent or Eligible Student, the CAO/Principal shall schedule the review.
2. The appointment date shall be no later than 45 days after the request was made. The inspection and review shall be made at a place designated by the CAO/Principal.
3. A counselor, Principal/Assistant, CAO/Principal or other school official competent in interpreting student records shall be present to explain the purpose of the Education Records requested.

- (D) A Parent or Eligible Student who wishes to inspect their student records and who live within 50 miles of the School, must examine the Education Records at the place designated by Alma d’arte.

- (E) Parents or Eligible Students who live farther than 50 miles from the place where the records are kept may request that copies of the Education Records be mailed. The copies shall be sent by certified mail, return receipt requested.

- (F) Additionally, all students of any age, when accompanied by a parent/guardian, have the right to inspect the contents of their cumulative record folder, but only in the presence of a school administrator or designee.

### III. RIGHT TO REQUEST AMENDMENT TO EDUCATION RECORD

Parents or Eligible Students have the right to challenge the content of the student's Education Records when they believe the records contain information that is inaccurate, misleading or in violation of the student's rights of privacy. The following process for requesting an amendment applies:

- (A) Request Amendment: A request to amend an Education Record must be made in writing and specify the disputed content of the Education Record at issue. The written request for an amendment should be submitted to the CAO/Principal.

1. By five school days after receipt of a request to amend, the CAO/Principal shall decide whether to amend the Education Records.
2. If the CAO/Principal finds that the challenge is not justified, the CAO/Principal shall provide written notification to the Parent or Eligible Student of the reasons for denying the amendment request and of the right to request a hearing.

- (B) Hearing to Amend Education Records:

1. The CAO/Principal or designee (if CAO/Principal has a direct interest in the outcome of the hearing) serving as the hearing officer shall set a date for the hearing as soon as possible, but not more than 10 school days after the request for the hearing.
2. The hearing officer shall give the Parent or Eligible Student at least five school days advance written notice of where and when the hearing will be held.
3. At the expense of the Parent or Eligible Student, an attorney or anyone else of their choice may assist at the hearing.
4. The hearing officer shall render a written decision as soon as possible but within five school days after the hearing.
5. The decision shall be based only on evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decisions.
  - a. If the hearing officer decides that the information in the cumulative record folder is not inaccurate or misleading or does not otherwise violate the student's rights, the Parent or Eligible Student shall be notified in writing of the decision.
  - b. The hearing officer's notice of decision shall also inform the Parent or Eligible Student of the right to submit to the CAO/Principal a statement of objection (of reasonable length) to the information contained in the Education Record(s) at issue.
  - c. Any explanation submitted by the Parent or Eligible Student shall be maintained with the contested part of the Education Record for as long as the record is maintained and shall be disclosed by Alma d'arte whenever the contested portion of the cumulative record is disclosed.

6. A Parent or Eligible Student who is dissatisfied with the decision of the hearing officer may appeal to the Governance Council within 15 days of the hearing date. The review shall be held in a closed session on the record established at the initial hearing and shall not be a hearing *de novo*. An aggrieved Parent or Eligible Student may file a complaint to the Office of Family Policy Compliance of the U.S. Department of Education. See contact information below.

#### IV. DISCLOSURE WITHOUT PRIOR CONSENT OF PARENT OR ELIGIBLE STUDENT

##### (A) Persons Authorized to Have Access:

Alma d'arte may, without the consent of the Parent or Eligible Student, disclose Education Records to the following persons, or as otherwise set forth in 34 CFR 99.31:

1. School officials who have a legitimate educational interest in examining the information. School officials include the following: persons employed by the School, whether paid or unpaid, administrators, supervisors, instructors, support staff or school Governing Council members; authorizing bodies (Public Education Commission or its staff, the Charter Schools Division), vendors employed by or under contract with the school, such as ancillary service providers, the School's attorney(s), auditors, consultants, or a parent, student or volunteer serving in an official school capacity. A School official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the School.
2. Authorized representatives of the U.S. Comptroller General, U.S. Department of Education, U.S. Department of Health and Human Services, or officials of the New Mexico Public Education Department, if they seek the information in connection with either the audit and evaluation of state or federally funded programs or the enforcement of state or federal legal requirements that relate to these programs.
3. Accrediting organizations that seek the information to carry out their accrediting functions.
4. Persons or organizations conducting studies for or on behalf of the school or another educational agency to develop or validate predictive tests, administer student aid programs, or improve instruction. Any report released on the basis of data collected under this paragraph may not include information that personally identifies students or their parents/legal guardians.
5. Persons who seek the information in connection with a student's application for or receipt of financial aid.
6. Officials of another school in which the student applies to enroll. Alma d'arte shall forward the requested Education Records without notifying the parents/legal guardians or student of the transfer or seeking their consent. If the Parents or the Eligible Student so requests, the CAO/Principal shall provide them with an unofficial copy of the records to be transferred and give them an

opportunity to correct any inaccuracies in accordance with the procedure set forth in this policy.

7. Persons who seek information in connection with a health or safety emergency that threatens the health or safety of the student or other persons.
8. In response to a judicial order or lawfully issued subpoena.
9. Information the School has designated as “directory information”. See below, Section V.

#### V. DIRECTORY INFORMATION:

(A) The School may disclose Directory Information about a student without prior consent, so long as the School has given public notice to Parents and Eligible Students of the following:

1. The types of personally identifiable information that the School has designated as Directory Information;
2. Notice of the right of Parents or Eligible Student to refuse to let the School designate any or all of the types of information about the student as “Directory Information”
3. The deadline by which the Parent or Eligible student must notify the School that he/she does not want the information designated as “Directory Information.”

If a Parent or Eligible Student provides timely notification of the information he/she does not want designated as Directory Information, the information will not be published until the Parent/Eligible Student notifies the School in writing.

(B) The following information is designated by the School as Directory Information:

1. Student’s name and age;
2. Student's school and grade level;
3. Participation in officially recognized activities and sports;
4. Photographing and/or videotaping of student for publicity or promotions;
5. Degrees, honors, and awards received; and
6. Years of attendance at school.

(C) The School shall not sell or release Directory Information for marketing purposes.

(D) The School may provide the names, addresses and telephone numbers of students to military recruiters when requested to do so, unless Parents or Eligible Students have advised the School that they do not want the information disclosed without prior written consent.

#### VI. PARENT/LEGAL GUARDIAN OR STUDENT CONSENT:

Consent of the Parent or Eligible Student to review or obtain Education Records or personally identifiable information contained therein, is required for any other persons not

listed above in Section IV, or unless the information is designated as “Directory Information.” Consent from a Parent or Eligible Student must:

- (A) Be in writing and signed by the Parent/Eligible Student;
- (B) Specify the records that may be disclosed;
- (C) Identify the persons or class of persons to whom the disclosure may be made; and
- (D) The effective dates of the consent.

Upon request, the School will supply a copy of the Education Records that were released to the third party pursuant to the written consent.

If the parents/legal guardians give consent for a student, the parents/legal guardians may request that a copy of the records released be given to the student even though the student is not yet 18 years of age.

When a School official discloses personally identifiable information or Education Records, other than Directory Information, to anyone other than the Parent or the Eligible Student or other school officials, the School shall inform the recipient of the information in writing, that it may not be transferred to any other party without the written consent of the Parent or Eligible Student.

#### VII. COMPLIANCE WITH COURT ORDER/SUBPOENAS:

- (A) Upon receipt of a valid court order or subpoena, the CAO/Principal shall immediately send written notice to the Parent/Eligible Student at their last known address that a court order or subpoena has been received, enclosing a copy of the court order or subpoena.
- (B) The School will make reasonable efforts to notify the Parent/Eligible student of the court order/subpoena in advance of providing the documents, except under circumstances as defined in law. It is the Parents/Eligible Student’s obligation to seek a protective order to prevent disclosure, if disclosure is not desired.

#### VIII. INSPECTION OF RECORDS:

- (A) The CAO/Principal shall maintain a record of each request for access to Education Records and disclosure of personally identifiable information from the Education Records of each student, as well as the names of state and local educational authorities, and Federal officials that request information from a student’s Educational Records.
- (B) The inspection record shall include the name and reason for inspection of each person who requests access to the Education Records of any student.

(C) School officials, including teachers, nurses, counselors, or other staff who have a legitimate educational interest in obtaining this information, are not required to log access on the Inspection Record.

(D) The Inspection Record may be reviewed by the Parent or Eligible Student.

IX. NOTICE TO PARENTS/LEGAL GUARDIANS OR STUDENTS:

In compliance with the Family Educational Rights and Privacy Act (FERPA): A copy of this Alma d' arte Charter School FERPA Policy shall be published on the Alma d' arte school's website and provided to Parents and Eligible Students during registration each year.

X. RIGHT TO FILE COMPLAINT:

Parents and Eligible Students have the right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the federal office that administers FERPA is:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4605.  
1-800-872-5327

XI. SPECIAL EDUCATION STUDENT RECORDS:

In addition to the policies and regulations pertaining to confidentiality of student records, additional regulations apply to student special education records. Alma d'arte will follow the state and federal regulations governing the collection, storage, disclosure, and destruction of:

(A) Reports of professionals who have screened, assessed, and/or evaluated the student;

(B) Reports from outside agencies or specialists;

(C) Anecdotal records; and

(D) Individualized Education Plan (IEP) documentation.

The New Mexico Administrative Code (NMAC 1.21.2 [10.1.2015]) requires the school to maintain records for special education students for five years after services have been provided.

*Legal References:* 20 U.S.C. §1232g, §1400 *et seq.* and §7908, 10 U.S.C. §503, NMAC 1.21.2 [10.1.2015]

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