

## **NOTICE OF DISCLOSURE OF STUDENT RECORDS**

This notice is being provided to you pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(9)(ii), a federal law that protects the privacy of student records, as well as the Individuals with Disabilities Education Act, (“IDEA”), 20 U.S.C. § 1400, et seq., and N.J.A.C. 6A:32-7.5(e)(14). If you are the parent of a child with a disability attending school in New Jersey, or if you are a student with a disability who is eighteen (18) years of age or older, this notice may apply to you. Please read it carefully.

In the lawsuit entitled Disability Rights New Jersey , et al. v. New Jersey Department of Education, et al., Civil Action No. 07-2978, agencies that advocate on behalf of children with disabilities and their parents (“the Plaintiffs”) have requested that the New Jersey Department of Education, its Commissioner and the State Board of Education (“the Defendants”) disclose certain student records that may be relevant to the advocacy agencies’ claims. All parties and the Court have agreed that the requested records should be disclosed to the advocacy agencies, subject to FERPA’s requirements that this notice be provided in advance and that parents and eligible students be given the opportunity to object to disclosure. The Court entered an Order on January 26, 2010 directing that the requested records be disclosed after the time period for objections (listed below) has elapsed.

**INFORMATION THAT WILL BE DISCLOSED:** Information to be disclosed is limited to the student’s gender; year of birth; ethnicity; race; county, district and school code for residence, receiving and attending; school entry date; year of graduation; referral date; date of parental consent to evaluate; initial IEP meeting date; whether parental consent was obtained to implement IEP; annual IEP review meeting date; special education classification; reevaluation date; initial process delay reason; special education placement; whether the student receives counseling services; occupational therapy services; physical therapy services; speech language services; and other related services. The information and documents may also include Individualized Education Programs (IEPs) for particular students, including name, date of birth, and evaluations pursuant to N.J.A.C. 6A:14-3.3 and N.J.A.C. 6A:14-3.4.

**CONFIDENTIALITY:** The Court has entered a “Discovery Confidentiality Order” in this matter that prevents the parties (and their representatives) from sharing confidential documents and information, such as student records, with anyone outside of the lawsuit for any purpose. At no time will the names of any minors, birth dates, or social security numbers be released to the public. In addition, Plaintiffs have applied to the Court for an order requiring that any document from which a student might be identified shall be filed with the Court “under seal,” meaning that the document will not be disclosed to the public. The Discovery Confidentiality Order also requires that all confidential documents exchanged during the lawsuit be returned or destroyed after the lawsuit has concluded.

### **PARTIES:**

Plaintiffs: New Jersey Protection and Advocacy, Inc., The Education Law Center, The Statewide Parent Advocacy Network of New Jersey, and The Arc of New Jersey.

Defendants: New Jersey Department of Education, New Jersey State Board of Education, and Lucille E. Davy, in her capacity as Commissioner of Education.

**NATURE OF THE ACTION:** In this federal lawsuit, the advocacy agencies allege that the State has violated the Individuals with Disabilities Education Act (“IDEA”) and other related laws by failing to educate children with disabilities in the “Least Restrictive Environment.” The State denies these allegations.

**WHY STUDENT RECORDS HAVE BEEN REQUESTED AND HOW THEY WILL BE USED:**

The advocacy agencies have requested certain student records as part of the “discovery” phase of the lawsuit, in which the parties exchange documents and information that tend to either prove or disprove the advocacy agencies’ claims. The parties, their lawyers, and various experts employed by the parties may review the disclosed records in order to determine whether the NJ Department of Education is complying with IDEA. The parties may present some of the records to the Judge.

**OBJECTIONS TO DISCLOSURE:** If you believe that your child’s records should not be disclosed, you must fill out the attached form, “Objection to Disclosure of Student Records,” and mail it to Michael C. Walters, Deputy Attorney General, Department of Law and Public Safety, Division of Law, 25 Market Street, P.O. Box 112, Trenton, NJ 08625, by no later than March 11, 2010. You may also submit your objection, containing the same information as requested in the attached form, via electronic mail to [Ferpa.Objections@dol.lps.state.nj.us](mailto:Ferpa.Objections@dol.lps.state.nj.us), by no later than March 11, 2010. If your objection is not postmarked by March 11, 2010, the records listed above will be disclosed pursuant to the Court’s Order. As noted above, all records disclosed during the lawsuit will be kept confidential and will be returned to the NJ Department of Education or destroyed after the lawsuit has concluded.