



**U.S. Department of Education Issues New Regulations Implementing Family Educational Rights and Privacy Act**--On December 2, 2011, the U.S. Department of Education issued [new regulations](#) implementing the *Family Educational Rights and Privacy Act* ("FERPA") to help ensure that student information continues to be protected as more education records are digitized and shared electronically. **These new regulations became effective on January 3, 2012.**

The new regulations amend the definition of "directory information" and provide school districts with the option of adopting a limited directory information policy. "Directory

information" is defined to include things that are not usually considered to be an invasion of privacy if disclosed (e.g., name, address, date of birth). School districts are required to (1) provide annual notification to parents and students of the types of information designated as directory information, and (2) inform parents and students of their right to opt out of having the child's information designated as directory information and disclosed as such.

Under FERPA, directory information includes, among other items, a student ID number, user ID or other unique personal identifier used by a student for accessing or

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**Seventh Circuit Federal Appellate Court Upholds Compensatory and Punitive Damage Award Against Building Principal For Being Aware of and Failing to Stop Teacher's Sexual Abuse of Students**--The Seventh Circuit Court of Appeals (which governs Illinois) [has upheld](#) a jury's compensatory and punitive damage award against a school building principal because she knew that a teacher was sexually abusing his students and did nothing to stop it.

In this closely watched case, nine female elementary students of South Berwyn School District No. 100 alleged that their band teacher, Robert Sperlik, sexually abused them. The complaint further alleged that the principal violated Title IX of the Education Amendments of 1972 ("Title IX"), because she knew or had reason to know of Sperlik's sexual misconduct and failed to take sufficient action to stop the abuse.

After the jury's verdict against the principal for more than 3.4 million dollars, eight of the plaintiffs reached a settlement with the principal for compensatory and punitive damages and attorneys' fees.

The named plaintiff, G.G., who was a ten-year-old fifth grade student at the time of Sperlik's abuse, did not enter into a settlement with the principal. As G.G.

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**Consumer Price Index**

Percent change for the month of **November 2011**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.2	-0.2
12 Mth	2.9	3.4
St. Louis-6 Mth	2.0	2.4
12 Mth	3.3	3.9
U.S. Mthly	-0.1	-0.1
12 Mth	3.4	3.8

December CPI figures will be released January 14, 2012. For the most recent CPI, visit our website at: [www.hlerk.com](http://www.hlerk.com).

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**Reminders & Notes**

Welcome to 2012! Join HLERK as we serve the legal community by serving *your* professional organizations IASPA and IAASE:

- Join **Cindi DeCola** at the Illinois Association of School Personnel Administrators' Conference at the Hyatt-Lisle on January 26 and 27. Visit [www.iaspa.org](http://www.iaspa.org) for information and registration.
- Join **Bennett Rodick** and **Michelle Todd** at the Illinois Alliance of Administrators of Special Education Winter Conference in Springfield on January 26-27 where he will present the Keynote Address and chair the "attorneys panel." Visit [www.iaase.org](http://www.iaase.org) to register.

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**Abuse Cont.** did not join the settlement, the principal requested that the court reduce the jury's compensatory damage award of \$250,000 to G.G. on the grounds that it was not supported by the evidence at trial, and that the punitive damage award be stricken entirely or that the amount awarded to G.G. be reduced pro rata. The lower court denied her request and she appealed.

The court upheld the jury's compensatory damage award to G.G. in the amount of \$250,000 because it was rationally connected to the evidence presented at trial and consistent with other jury awards in similar cases.

Finally, the principal argued that the punitive damage award should be stricken. In this regard, she argued that the jury's punitive damage award against her was excessive because it was based upon Sperlik's conduct, not her own. She also argued that the punitive

damage award was excessive because she did not actually engage in any of the brutal acts against the students.

In rejecting these arguments, the court noted that the principal overlooked the fact that the jury found her guilty of "turning a blind eye to warning signs that Sperlik was abusing his students." The court determined that the punitive damage award of \$100,000 against the principal was appropriate because the jury determined that she acted wantonly and willfully in failing to stop the abuse and G.G. agreed to accept her pro rata share of that amount which totaled \$7,250.

***This case illustrates the vital importance of investigating all alleged instances of abuse whether or not the alleged acts appear egregious and documenting all matters investigated as well as fulfilling mandatory reporter responsibilities under Illinois law.***

**FERPA Cont.** communicating via electronic systems if that identifier cannot be used, except in conjunction with a PIN, password or other factor known only by an authorized user, to access education records. Under FERPA, directory information may now include a student badge that has such student ID number, user ID or other unique personal identifier printed on it.

In response to confusion regarding whether parents have the right to opt out of having their child wear an ID card or name badge, the new regulations permit school districts to require students to wear or display ID cards and badges which have a student ID number or unique personal identifier so long as that identifier or number cannot be used, except in conjunction with a PIN, password or other factor known only by an authorized user, to access education records.

In addition, school districts may now adopt a limited directory information policy which specifies that disclosure of directory information will be limited to specific parties, for specific purposes, or both. If a school district adopts a limited directory information policy, the annual notification to parents and students

must specify such policy.

The Department of Education has also defined the terms "authorized representative," "education program," and "early childhood education program," in an effort to allow non-educational agencies easier access to students' personally identifiable information to evaluate the education programs they administer.

Finally, the new regulations provide the Department of Education with stronger, more specific enforcement authority over educational agencies, educational institutions, and third parties that are found to violate FERPA.

Please note, however, that ISBE has also recently issued proposed regulations for the *Illinois School Student Records Act*. Illinois school districts and charter schools must follow *both* ISSRA and FERPA.

***For questions about these new regulations and/or student record requirements under FERPA and ISSRA, please contact Lori Martin or Jennifer Deutch.***