

The Protection & Security of Student Information

The Family Educational Rights and Privacy Act of 1974, commonly known as FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. Students have specific, protected rights regarding the release of these records. FERPA requires that institutions adhere strictly to these guidelines prior to the release of student records.

“Educational records” are defined as all records, files, documents and other materials that contain identifiable information directly related to a student, including personally identifiable information; that is maintained by the school district or educational institution or by a person or agency acting on behalf of the district or institution. This includes all records regardless of the medium which the records are stored including, but not limited to, electronic files, computer files, physical files, microfilm and microfiche.

Employees of a school district or higher education institution that have access to individual student records are legally and ethically obligated to safeguard the student’s confidentiality.

In addition, documentation for students who attend a public school and are eligible for or are receiving services under the Individuals with Disability Education Act (IDEA), are considered educational records under FERPA.

Educational Records

FERPA gives students the following rights regarding educational records:

- The right to access educational records kept by the school;
- The right to demand educational records be disclosed only with student consent;
- The right to amend educational records;
- The right to file complaints against the school for disclosing educational records in violation of FERPA.

Students have a right to know about the purpose, content, and location of information kept as a part of their educational records. They also have a right to expect that their information will be kept confidential unless they give permission to the school to disclose such information.

This information can also include records kept by the school in the form of student files, student system databases kept in storage devices such as servers, or recordings or broadcasts which may include student projects.

Two Types of Educational Records

There are two types of educational records; those that contain directory information and those that contain non-directory information. Therefore, it is important to know the type of educational record that is being considered for disclosure since they are afforded different disclosure protections under FERPA.

Directory Information

Some information in a student's educational record is defined as directory information, Directory Information may include:

- Name;
- Address;
- Phone number;
- E-mail address;
- Dates of attendance;
- Degree(s) awarded;
- Enrollment status;
- Major Field of study.

Under a strict reading of FERPA, the school may disclose this type of information without the written consent of the student. If an institution discloses directory information, it must give "public notice" of its policy and explain what is included in such information. FERPA does not define "public notice," nor the method the institution must use to provide notification. However, the student can exercise the option to restrict the release of directory information by submitting a formal request to the school.

Non-directory Information

Non-directory information is any educational record not considered directory information. Non-directory Information may include:

- Social security numbers;
- Student identification number;
- Race, ethnicity, and/or nationality;
- Gender
- Transcripts;
- Grade reports

Non-directory information must not be released to anyone, including parents of the student, without the prior written consent of the student. Further, faculty and staff can access non-directory information only if they have a "*legitimate academic need to do so.*"

Transcripts are non-directory information and, therefore, are protected educational records under FERPA. Students have a right to privacy regarding transcripts held by the

school where third parties seek copies. Consequently, institutions should require that students first submit a written request to have transcripts sent to any third party.

Prior Written Consent

The school district or educational institution is responsible for ensuring all parents and eligible students are afforded all the rights provided them under FERPA. In general, a student's, or in the case of K-12 the parent or legal guardian of the student, prior written consent is always required before institutions can legitimately disclose non-directory information. Institutions may tailor a consent form to meet their unique academic needs. For most disclosures, the following items must be included as part of disclosure:

- Specify the records to be disclosed;
- The purpose of the disclosure;
- Identify the party or class of parties to whom the disclosure is to be made;
- The date;
- The signature of the student whose record is to be disclosed;
- The signature of the custodian of the educational record.

As a general practice, most institutions maintain a “consent to disclose” authorization. The consent document must be signed by the student or in case the case of K-12, the consent of the student's parent or legal guardian. However, this does not release the institution from its obligation to protect the student's information and does not release the institution from documenting the reason for a disclosure as indicated above. Most institutions charge their registrar's office with the responsibility to determine how their institutions will comply with FERPA disclosure requirements. Registrars commonly work with legal counsel in drafting and publishing their guidelines.

FERPA has strict guidelines regarding disclosing the educational records of dependent students. Though FERPA allows such disclosure, the act mandates that a school district publish clear policies and procedures for the disclosure of these records and that these guidelines are published annually in a format that is easily accessible to all interested parties.

It is recommended that both the dependent student and their parent(s) or legal guardian(s) sign written disclosure agreements stating, at a minimum, the following:

- The dependent student understands and allows parental access to their educational records;
- The dependent student and his/her parent(s) or legal guardians have been given a copy of the district's policies and procedures for the disclosure of student records.

Prior written consent is not required when disclosure is made directly to the student or to other school officials within the same institution where there is a “*legitimate educational interest*.” A legitimate educational interest may include enrollment or transfer matters, financial aid issues, or information requested by regional accrediting organizations.

Prior written consent is not required to disclose non-directory information where the health and safety of the student is at issue, when complying with a judicial order or subpoena, or where, as a result of a crime of violence, a disciplinary hearing was conducted by the school, a final decision was recorded, and the alleged victim seeks disclosure.

Records Not Considered As Educational Records

The following are not considered educational records under FERPA:

- Private notes of individual staff or faculty that are *not* kept in a student's folder;
- Campus police records;
- Medical records;
- Statistical data compilations that contain no mention of personally identifiable information about any specific student.

As general practice, faculty notes, data compilation, and administrative records kept *exclusively* by the maker of the document or record that are not accessible or revealed to anyone else are not considered educational records and, therefore, fall outside of the FERPA disclosure guidelines. However, these records may be protected under other state or federal laws such as the doctor/patient privilege. It is recommend that anyone who is asked to disclosure these documents or records verify with their registrar to ensure they are in compliance with the FERPA disclosure guidelines prior to any dissemination of the information.

Summary

As stated in the *Forum Guide to the Privacy of Student Information*:

“Safeguarding the confidentiality of individual student information is the responsibility of any and all organizations and individuals who collect, maintain, access, transfer, or use education records.”

As records transition from the physical paper based environment to the digital “on-line” environment, school districts and education institutions must review their existing policies and procedures and ensure they will meet their obligation to protect the student's information as provided under FERPA.

This paper is intended as a source of information only and does not provide any legal advice or guidance for obtaining or maintaining FERPA compliance.

The FERPA information website is located at: http://nces.ed.gov/forum/ferpa_links.asp