



Family Educational Rights and Privacy Act

Student education records are official and confidential documents protected by one of the nation's strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA). FERPA, also known as the Buckley Amendment, defines education records as all records that schools or education agencies maintain about students.

FERPA gives parents the right to review and confirm the accuracy of education records. These rights transfer to the student when the student turns eighteen years old or attends a postsecondary institution. At this time, the student is designated as an "eligible student" and holds the same rights as his or her parent held with respect to education records. This and other United States "privacy" laws ensure that information about citizens collected by schools and government agencies can be released only for specific and legally defined purposes. Since enacting FERPA in 1974, Congress has strengthened privacy safeguards of education records through this law, refining and clarifying family rights and agency responsibilities to protect those rights.

The primary rights of parents and eligible students under FERPA are:

- The right to inspect and review education records
- The right to seek to amend education records
- The right to have some control over the disclosure of information from education records

The mandates of this Federal act are specific and far-reaching. Administrators in public education may unwittingly violate a family's right to privacy and confidentiality because they are not knowledgeable regarding the letter and spirit of this law. Frequently asked questions regarding FERPA are answered in this publication in an effort to strengthen educators' knowledge and understanding of this important federal law. Over the past five years, FERPA has changed in a number of significant ways, and this briefing paper includes those more recent changes. This paper, however, does not include specific requirements that must be met by postsecondary institutions.

FERPA's legal statute citation can be found in the U. S. Code (20 USC 1232g) which incorporates all amendments to FERPA. FERPA regulations are found at Code of Federal Regulations (CFR) for Title 34; Part 99.

1. To which educational agencies or institutions do the FERPA regulations apply?

FERPA applies to public schools and state or local education agencies that receive Federal education funds. Most private and parochial schools at the elementary and secondary level do not receive these federal funds and, therefore, are not subject to FERPA.

2. What definitions apply to these regulations?

(a) “Education Records” are all records that:

- contain information directly related to a student including school health records for all students under the age of 18; student’s social security number; academic work completed; level of achievement records including grades and standardized achievement test scores; attendance data; scores on standardized intelligence, aptitude and psychological tests; interest inventory results; family background information; teacher or counselor ratings and observations; verified reports of serious or recurrent behavior patterns; and any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting, typewriting, print, magnetic tapes, film, microfilm, and microfiche; and
- are maintained by an education agency or institution or by a party acting for the agency or institution

Exceptions to “education records” include:

- ❖ records, such as personal notes that are kept in the sole possession of the maker of the record, that are used only as a memory aid and not revealed to anyone but a temporary substitute for the maker of the record;
- ❖ records of a school or school district’s law enforcement unit; and
- ❖ records of eligible students (18 years of age or older) that are (1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment.

(b) “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

(c) “Personally identifiable information” includes, but is not limited to:

- student’s name
- parents’ names
- address of the student or student’s family
- personal identifier, such as a social security number or student number
- list of personal characteristics or other information that would make the student’s identity easily traceable

(d) “Directory information” is information not generally considered harmful or an invasion of privacy if disclosed. School districts may, at their discretion, remove selected items so that parent consent for their release would need to be obtained. Directory information items include:

- name, address, telephone listing, electronic mail address
- field of study
- weight and height of members of athletic teams
- most recent educational institution attended
- photographs
- date and place of birth
- participation in officially recognized activities and sports
- dates of attendance, grade level, enrollment status (e.g., fulltime, part-time) degrees, awards and honors

(e) “Record” means any recorded information maintained in any way, including, but not limited to:

- handwriting
- print
- film
- computer media
- video or audio tape
- microfilm and microfiche

(f) “Dates of Attendance” means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter. The term does not include specific daily records of a student’s attendance at an educational agency or institution.

3. Are there any other state or federal laws that pertain to information on students that may be maintained by school personnel but are excluded from the provisions of FERPA?

In response to an inquiry, the Family Policy Compliance Office of the U.S. Department of Education concluded that the report of suspected child abuse is accessible to parents but school administrators may copy the record to give to the parents and delete the name of the reporter.

Schools are encouraged to provide assistance to students with drug and alcohol abuse problems. Student Assistance Programs (SAPs) in public schools, developed to offer counseling and referrals for treatment for students with substance abuse problems, stress confidentiality for the student seeking assistance. Because maintaining absolute student confidentiality is a direct conflict with parental rights to access education records under FERPA, the U.S. Department of Education and the Alcohol, Drug Abuse and Mental Health Administration issued a joint memorandum on September 26, 1990, to clarify students’ confidentiality rights in federally funded Student Assistance programs. Three options to resolve this conflict were suggested.

- Students could be asked or required to consent to their parents’ access to their SAP records upon entry to the program;
- Student SAP records could be released only with written consent from the student or in response to court orders; or
- SAPs should minimize record keeping.

4. What must an educational agency or institution include in its annual notification?

Institutions must annually notify parents of students in attendance of their rights under FERPA including:

- the right to inspect and review records
- the right to request amendment of records
- the right to consent to disclosure, with certain exceptions
- the right to file a complaint with the U.S. Department of Education

The annual notification must also include the following:

- procedure to inspect and review records
- procedure for requesting amendment of records
- statement that education records may be disclosed to school officials without prior written consent, including:
 - specification of criteria for identifying “school officials” and
 - definition of “legitimate educational interest”

FERPA does not specify the means of notification other than “by any means reasonably likely to inform the parents.” Examples may be code of conduct handbooks, student handbooks, school newspapers or catalogues, local newspapers and inclusion of information in student registration packets.

5. Who is considered a “school official?”

Language contained in the FERPA model notice of rights of parents contains a definition of a school official. School districts may wish to consider this language as they review their student records policy. A school district has the flexibility, however, to define the term “school official.”

The model agreement defines “school official” as follows: “A school official is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health and medical staff and law enforcement unit personnel); a person serving on the school board; a person or company with whom the district has contracted to perform a special task (such as an attorney, auditor, medical consultant or therapist); a parent or student serving on an official committee such as disciplinary or grievance committee or assisting another school official in performing his or her tasks.”

6. Is there a definition of “legitimate educational interest?”

The FERPA model notice of rights of parents contains the following definition of “legitimate educational interest:”

“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 responsibility.” (Note - emphasis added)

7. What rights exist for a parent or an eligible student to inspect and review education records?

- The school must comply with a request within 30 days in accordance with State Board of Education Rule 6A-1.0955(6)(b), Florida Administrative Code (FAC)
- FERPA requires the school to give copies only if failure to do so would effectively deny access (e.g., parent is physically or geographically unable to come to the school to review the records). Section 228.093(3)(a)3, Florida Statutes, requires the school to furnish copies of records to the parent, guardian, pupil, or student upon request
- The school may not destroy records if a request for access is pending

The Florida Department of Education (and all state education agencies) is now required to afford parents and eligible students access to education records the state agency maintains on students (e.g., state achievement tests). This applies to all records even if a copy of the requested record is available in the local school district. In order to afford the parent(s) easier access to the records and to simplify the process at the Department of Education, the Department may forward records to the local education agency to afford parents easier access to records they are seeking.

8. What limitations exist on the right to inspect and review records?

If the records contain information on more than one student, the parent may inspect, review or be informed of only the specific information about his or her child.

9. Do the rights of noncustodial parents differ from those of custodial parents?

No. FERPA affords full rights to either parent unless the school has been provided with evidence that there is a court order, state statute, or legally binding document that specifically revokes these rights. This was endorsed by the 2001 Legislature through revisions to Section 61.13(2)(b), Florida Statutes, which clarifies the rights of access to records and information pertaining to a minor child, including the right to in-person communication with medical, dental, and education providers, apply to either parent in the absence of a court order specifically revoking these rights.

10. Do stepparents have parental rights under FERPA?

FERPA allows a stepparent to exercise all record-access rights granted to a parent when the stepparent is present in the home on a day-to-day basis, together with the child and a natural parent, and the other parent is absent. In such cases, stepparents have the same rights under FERPA as natural parents. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child has no FERPA rights with respect to the child's records.

11. What rights exist for a parent of an eligible student?

When a student becomes an eligible student, the rights accorded to, and consent required of, parents transfer from the parents to the student. Prior consent, however, is not required for schools to disclose information from the education record to the parents if the eligible student is a dependent as defined in section 152 of the Internal Revenue Code of 1986.

12. Are there any special provisions regarding the right to inspect records that applies to students with disabilities?

Yes. In accordance with the Individuals with Disabilities Education Act (IDEA), a parent of a student with a disability has the right to have a representative of the parent inspect and review the records.

13. May an educational agency or institution charge a fee for copies of education records?

Yes, unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review records.

14. What are the procedures for amending education records?

The following steps should be taken to amend education records:

- The parents should identify the portion of the record believed to be inaccurate, misleading, or a violation of the privacy of the rights of the student
- The school must decide within a reasonable period of time whether to amend as requested
- If the school decides not to amend, it must inform the parents of their rights to a hearing
- After the hearing is held, if the decision continues to be not to amend the records, the parents have a right to insert a statement of disagreement in the record. This statement must be maintained with the contested part of the record and disclosed whenever the corresponding part of the student record is released. If, as a result of the hearing, the school decides that the information is inaccurate, misleading or a violation of the privacy rights of the student, it will amend the record and inform the parent in writing of the amendment.

15. Under what conditions is prior consent required to disclose information?

A parent or eligible student shall provide a signed and dated written consent before a school may disclose records. The consent must:

- specify the records that may be disclosed
- state the purpose of disclosure; and
- identify the party or class of parties to whom disclosure may be made

16. Under what conditions is prior consent not required to disclose information?

The exceptions to prior consent for disclosure that apply to school districts are when records are released

- to school officials who are determined to have legitimate educational interest. (As noted previously, school districts must define “school officials” and “legitimate educational interest” in their annual notice to parents.)
- to schools or institutions of postsecondary education in which a student seeks or intends to enroll
- to federal, state, and local authorities involving an audit or evaluation of compliance with education program requirements
- in connection with financial aid, such as a college loan
- to organizations conducting studies for or on behalf of educational institutions
- to parents of a dependent student as defined by the Internal Revenue Services Code
- to accrediting organizations
- to comply with a judicial order or subpoena
- in a health or safety emergency
- as directory information
- to the parent of a student who is not an eligible student or to the student
- to state or local officials in connection with serving the student under the juvenile justice system in accordance with an interagency agreement as required by Section 228.093, Florida Statutes
- if a school district initiates legal action against a parent, or if a parent initiates legal action against a school district. In such circumstances, the school district may disclose

to the court, without court order or subpoena, the education records of the student that are relevant for the school district to proceed with legal action as the plaintiff or to defend itself

(Note: There are additional provisions that apply exclusively to postsecondary institutions.)

17. Is prior consent for disclosure required when the school board is conducting an expulsion hearing?

If the school board has been identified as a “school official” in the annual notice to parents, then they may have access to personally identifiable information on students in order to conduct an expulsion hearing. However, public records of the hearing may not contain any personally identifiable information on students who are the focus of the expulsion hearing. For example, public records pertaining to expulsion decisions or disciplinary actions should be reflected in the minutes as “Case #XXXX: Expelled for one year for possession of a weapon on school grounds.”

18. Are there specific records requirements for school readiness coalitions and the Florida Partnership for School Readiness in order to carry out their assigned duties.

Section 411.011, Florida Statutes, states that the individual records of children enrolled in school readiness programs provided under the Florida Partnership for School Readiness, when held in the possession of the school readiness coalition or the Florida Partnership for School Readiness, are confidential and exempt from the provisions of Section 119.07, Florida Statutes, also known as the Public Records Law. These records would only come under FERPA requirements when they become student education records.

19. What conditions apply to disclosure of information to the juvenile justice system?

Nonconsensual disclosures made in connection with the juvenile justice system that are permitted by Florida statute are now also permitted under FERPA. The requirements for disclosure are:

- The disclosure must be related to the juvenile justice system’s ability to “effectively serve” the student whose records are released
- The disclosure must concern the juvenile justice system’s ability to serve the student prior to adjudication. Also, the officials to whom the information is disclosed must certify, in writing, that the records will not be redisclosed to any other party except as provided by State law
- In Florida, Section 228.093(d)(13), Florida Statutes, requires that such disclosures be in accordance with an interagency agreement

20. What record keeping requirements exist concerning requests and disclosures?

A school must maintain a record of each request for access to, and each disclosure from, an education record. Also, the school's log:

- must be maintained as long as the record is maintained
- must include the parties who have requested or received information from the records
- must include the legitimate interest parties had in receiving information

The record keeping requirement does not apply if the request was from, or the disclosure was made to:

- the parent or eligible student
- a properly designated school official
- a party with written consent from the parent or eligible student
- a party seeking directory information
- a party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed

21. What limitations apply to the redisclosure of information?

When disclosing information from public school education records, the school should inform the receiving party that the information may not be further disclosed and may use the information only for the purposes for which the disclosure was made. Exceptions to this include:

- disclosure to the parent, eligible student, or parents of dependent students as defined by the Internal Revenue Code
- receiving party discloses information on behalf of the educational, agency or institution and meets the criteria for disclosure without prior consent (see Question #15) and has appropriately recorded the disclosure
- directory information
- court order or subpoena

Disclosures to parties that improperly redisclose education records are not permitted for a period of less than five years. This does not apply to school officials within the educational agency or institution.

22. What conditions apply to disclosure of information for Federal or State program purposes?

Federal, State and local officials may have access to records only:

- in connection with an audit or evaluation of Federal or State supported education programs, or
- the enforcement of compliance with Federal legal requirements which relate to those programs

23. What conditions apply to disclosure of information in health or safety emergencies?

In the event of a health or safety emergency, FERPA allows:

- disclosure of information to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or others

24. What conditions apply to disclosing directory information?

An institution may disclose directory information if it has given public notice to parents of students in attendance of:

- what the school has designated as directory information
- a parent's right to refuse to let the school designate any or all of the information about the student as directory information
- the time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information

For the purpose of disclosing directory information, FERPA does not define "public notice." "Public notice" is left to the individual school to define. The means of notice could include the student handbook or code of conduct, the school or local newspaper or information included in the student registration packet. The school may choose to include notice regarding directory information with the annual notification of the parents and student's rights under FERPA.

25. What are the enforcement procedures for FERPA?

The Family Policy Compliance Office is authorized by the U.S. Secretary of Education to investigate, process and review complaints and violations under FERPA. Parents and eligible students may file complaints with the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC, 20202-4605. Complaints must be filed in a timely manner, which is considered 180 calendar days.

26. Where can public school officials obtain advice and technical assistance regarding FERPA?

Public schools and parents can contact:

- The Florida Department of Education
Division of Public Schools and Community Education
Bureau of Instructional Support and Community Services
501 Turlington Building
325 West Gaines Street
Tallahassee, FL 32399-0400
Phone: 850/487-3510
Fax: 850/488-9840

For informal requests for technical assistance, please email
butlerm@mail.doe.state.fl.us
or
swandoj@mail.doe.state.fl.us

or

- Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4605
Phone: (202) 260-3887
Fax: (202) 260-9001

For informal requests for technical assistance, please email:
FERPA@ed.gov

For the Family Policy, Compliance Office Homepage, please contact:
<http://www.ed.gov/offices/OM/fpco>

This document is available on the Florida Department of Education homepage at
<http://www.firn.edu/doe/bin00014/pub-home.htm>

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