
Family Educational Rights and Privacy Act (FERPA)

FERPA for School Officials (Part III)

Student Accessibility and Disability Services
Edgewood College

Objective

- Learn education record disclosure in different legal situations under FERPA

Disclosure to Comply with a Judicial Order or Subpoena



May schools comply with a subpoena or court order for education records without the consent of the parent or eligible student?

- Yes. Disclosure of education records without consent in compliance with a lawfully issued subpoena or judicial order is permitted
- A school must attempt to notify the parent or eligible student before complying with it
 - This is to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply (next slide)

Exceptions to the requirement of prior notification apply to

- A federal grand jury subpoena or other subpoena issued for a law enforcement purpose
- An ex-parte order obtained by the United States Attorney General concerning investigations or prosecutions of terrorism or other specified offenses
- When a parent is party to a court proceeding involving child abuse and neglect or dependency matters

**Disclosure to a Victim of an Alleged
Perpetrator of a Crime of Violence or a
Non-Forcible Sex Offense**

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May a post-secondary institution disclose information about a disciplinary proceeding to the victim of a crime of violence or a non-forcible sex offense?

- Yes. A post-secondary institution may disclose only the final results of the disciplinary proceeding regardless of whether the institution concluded a violation is committed

Disclosure in Connection with a Disciplinary Proceeding at a Post-Secondary



What constitutes the “final results” of a disciplinary proceeding?

- A decision or determination, made by an authorized entity to resolve disciplinary matters within the institution

What constitutes a crime of violence or a non-forcible sex offense?

- Arson
- Assault offenses
- Burglary
- Criminal homicide
- Destruction/damage/vandalism of property
- Kidnapping/abduction
- Rubbery
- Forcible sex offenses
- Statutory rape
- Incest

May post-secondary institutions disclose results of disciplinary proceedings?

- Post-secondary institutions may disclose the final results of disciplinary proceedings if the institution has found that the student has violated the institution's rules or policies in regards to a crime of violence or a non-forcible sex offense
- The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of that student

Disclosure to Accrediting Organizations



Is an educational institution or agency permitted to disclose student records without consent to accrediting organizations?

- Yes. Schools are only permitted to disclose student records that are necessary for accrediting organizations to carry out their accrediting function

Sharing Information with School Law Enforcement Units and School Resource Officers



Can a school's law enforcement unit officials be considered schools officials with legitimate educational interests?

- Yes, but certain conditions apply

Can off-duty police officers or School Resource Officers (SROs) be considered school officials under FERPA and, therefore, have access to students' education records?

- Yes, but certain conditions apply
- These officers are subject to FERPA's re-disclosure requirements, which they may not re-disclose without consent, unless the disclosure fits within one of the following exceptions
 - Subpoena or court order
 - Health or safety emergency
 - Directory information

What is a law enforcement unit?

- Any individual, office, department, division, or other component of school that is officially authorized or designated by that school or school district to
 - Enforce laws or refer to appropriate authorities for enforcement of laws
 - Maintain the physical security and safety of the agency or institution
- Schools vary in who they authorize or designate to be their law enforcement unit, usually depending upon their size and resources

What is a law enforcement record?

- It is a record
 - Created by a law enforcement unit
 - Created for a law enforcement purpose
 - Maintained by the law enforcement unit
- Law enforcement unit records are NOT protected by FERPA

Law enforcement records cont.

- FERPA permits schools to disclose law enforcement unit records to anyone, including outside law enforcement authorities, without consent from parents or eligible students
- Law enforcement unit records do not include
 - Records created by a law enforcement unit for a law enforcement purpose
 - Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose

When can law enforcement unit officials serve as “school officials”?

- They must meet the criteria for the constitution of a school official that is indicated in the schools’ annual notification to parents and eligible students of their rights
- Schools must also determine that the school official’s interest in accessing the education records meets the criteria for legitimate educational interests

Does a school have to use only employees to staff its law enforcement unit?

- This is outside the scope of FERPA. Schools are not required to use only employees to staff its law enforcement unit
- Local police officers and other law enforcement personnel employed by local or State authorities also may serve as the “law enforcement unit” of an educational agency or institution

Are School Resource Officers (SROs) or other outside local law enforcement officials who serve as a school's law enforcement unit automatically considered school officials?

- No. These officials may be considered as “school officials” only if they
 - Perform an institutional service or function
 - Are under the direct control of the agency or institution
 - Are subject to the requirements for PII disclosure
 - Meet the criteria specified in the school or LEA's annual notification of FERPA rights for being a school official

Can a school provide local or other local law enforcement officials with “directory information” on students?

- Yes, under the following conditions:
 - Schools have a directory information policy under FERPA that permits this disclosure
 - Schools have given public notice of the types of information which has designated as “directory information”
 - Parents or eligible students have not opted out of this disclosure
- Parent or eligible students have right to restrict the disclosure of such information

Does FERPA distinguish between School Resource Officers (SROs) and other local police officers who work in a school?

- No. SROs may be designated by the school as “law enforcement unit” officials under FERPA
- They typically serves as on-site law enforcement officers and as liaisons with the local police or sheriff’s department
- They may work with teachers and school administrators to promote school safety and to help ensure physical security

SROs as on-site law enforcement officers

- A school must have direct control over a SRO's maintenance and use of education records
- SROs may only use the PII from education records for the purpose for which the disclosure is made
- SROs are subject to the re-disclosure requirements
 - An SRO who is serving as a “school official” under FERPA may not disclose PII from education records to others without consent unless the re-disclosure fits within one of the exceptions to FERPA's consent requirement

Disclosing Information with the Juvenile Justice System



Does FERPA permit the disclosure of PII from education records to officials of a State's juvenile justice system?

- Schools are permitted to disclose, without consent, PII to State and local officials or other authorities
 - If the disclosure is allowed by a State law adopted after Nov. 19, 1974
 - If the disclosure concerns the juvenile justice system and its ability to serve the student whose records are disclosed
- The officials and authorities who request PII must certify in writing to the school that the information will not be provided to any other party
 - Except as provided for under State law without written consent

For specific sections of FERPA,
please refer to

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<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf>