
Family Educational Rights and Privacy Act (FERPA)

FERPA for School Officials (Part I)

Student Accessibility and Disability Services
Edgewood College

Objectives

- Understand the concept of FERPA
- Understand the regulations related to inspection and review of education records
- Understand the guidelines for the consent to disclosure

General



What is FERPA?

- It is a federal law enacted in 1974 that gives parents the rights:
 - To access their children's educational records
 - To seek to have the records amended
 - To have some control over the disclosure of personally identifiable information (PII) from the educational records
- When a student turns 18 years old, or enters a post-secondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”)

What is/are “education record(s)”?

- Records, files, documents, and other materials that contain information directly related to a student; they are maintained by an educational agency or institution or by a person acting for such agency or institute
- 4 categories of records are excluded
 1. Records in the sole possession of instructional, supervisory, and administrative personnel
 2. Records of a law enforcement unit which are maintained solely for law enforcement officials
 3. Records of employees who are not also in attendance
 4. Physician, psychiatrist, or psychologist treatment records for eligible students

A student is expelled from high school. A copy of his disciplinary record is sent to the school district's law enforcement unit so that school security can keep the student off campus. The law enforcement unit maintains that record and discloses it to a reporter in response to a State open records request. Is that permissible under FERPA?



No. The student disciplinary record, although now maintained by the school's law enforcement unit, does not become exempt from the definition of "education records" merely because it is maintained by the security unit. As such, the disciplinary record would be considered the student's "education records" and cannot be disclosed by the law enforcement unit to the media.

Can parents view a child's post-secondary education records?

- FERPA generally prohibits the non-consensual disclosure of information derived from education records, except in certain specified circumstances (e.g., if the student is a dependent student)

A teacher personally witnesses an incident, such as one student bullying another. Can the teacher call the victim's parents and tell them what she observed and who she saw bullying their child?



Yes. This is because FERPA prohibits the improper disclosure of information derived from education records. Therefore, information that is based on observation or hearsay and not specifically contained in education records will not be protected from disclosure under FERPA.

Are educational agencies and institutions required to notify parents and eligible students of their rights under FERPA?

- Yes. Educational agencies and institutions must annually notify parents and eligible student of their rights under FERPA, specifically their rights:
 - To inspect and review education records and the procedures to do so
 - To seek amendment of records the parent or eligible student believes are inaccurate and the procedures to do so
 - To consent to disclosures of education records, except to the extent that FERPA authorizes disclosure without consent
 - To file a complaint with Family Policy Compliance Office (FPCO) concerning potential violation

Does an educational agency or institution have discretion over what education records it decides to create and keep?

- Yes. FERPA does not require schools to create education records nor does it require schools to maintain education records, unless there is a request by a parent or eligible student to inspect and review the records

To which educational agencies or institutions does FERPA apply?

- FERPA applies to educational agencies or institutions that receive funds from program administered by the U.S. Department of Education, which include
 - Public schools
 - Local educational agencies (LEAs)
 - Post-secondary institutions
- Private and parochial schools at the elementary and secondary level are not subject to FERPA

Are schools required to record the disclosure of PII from students' education records whenever they make disclosures?

- Yes. For each request or disclosure, the record must include
 - The parties who have requested or received PII from the education records
 - The legitimate interest the parties have in requesting or obtain the information
- The school must record additional information whenever it discloses PII from a student's education records in connection with a health or safety emergency
- The school must maintain the record with the education records of the student as long as the education records are maintained

Schools do not have to record disclosure of PII from education records that are made to:

- The parent or eligible student
- A school official
- A party with written consent from the parent or eligible student
- A party seeking directory information
- A party seeking or receiving records in accordance with the provisions in FERPA related to disclosures pursuant to certain types of subpoenas or court orders
- State and local educational authorities and federal officials and agencies may make further disclosures of PII from students' education records without consent

Inspection and Review of Education Records



How long does an educational agency or institution have to comply with a request to view records?

- FERPA requires schools to grant access within a reasonable period of time, but no more than 45 days after receipt of a request
- Some states have laws that may require schools to grant access in a shorter time period

Does a school have to explain or interpret education records when requested by a parent or eligible student?

- Yes. Educational agencies and institutions are required to respond to reasonable requests for explanations and interpretations of education records

Are law enforcement records protected under FERPA?

- The law enforcement unit may refuse to provide a parent or eligible student with an opportunity to inspect and review law enforcement unit records
- Law enforcement unit may disclose law enforcement unit records to 3rd parties without the parent or eligible student's prior written consent

Consent to Disclose PII from Education Records



What must a consent to disclose education records contain?

- A consent for disclosure of education records must include:
 - Signature and date
 - Information that may be disclosed
 - Purpose of the disclosure
 - The requesting party or class of parties
- Oral consent for disclosure of information from education records will not meet FERPA's consent requirements

May an educational agency or institution disclose education records if they were involved in litigation against a parent of student or an eligible student?

- **Yes. Schools may disclose to the court the education records of the student that are relevant to the litigation**

May an educational agency or institution disclose information over the phone?

- FERPA does not specifically prohibit disclosure over the phone, but it does require the school uses reasonable methods to identify and authenticate the identity of the person or party who requests education records

What constitutes de-identified records and information?

- Records and information become de-identified once all PII has been removed

May parents or eligible students be provided access to education records that contain information on more than one student?

- No, the parents or eligible students may only inspect, review, or be informed the specific information about the student in question

For specific sections of FERPA,
please refer to

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