

STUDENT EDUCATIONAL RECORDS AND CONFIDENTIALITY



MICKES GOLDMAN O'TOOLE, LLC

FERPA

- Family Educational Rights and Privacy Act
- The Family Educational Rights and Privacy Act is a Federal law that protects the privacy of students' education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.



3 MAIN PURPOSES of FERPA

☐ Prohibit Disclosure:

- Prohibits schools and agencies from disclosing a student's **educational records** or **personally identifiable information contained in those records** without written parental consent.

• Access:

- Gives parents or eligible student the opportunity to inspect and review the student's educational records.

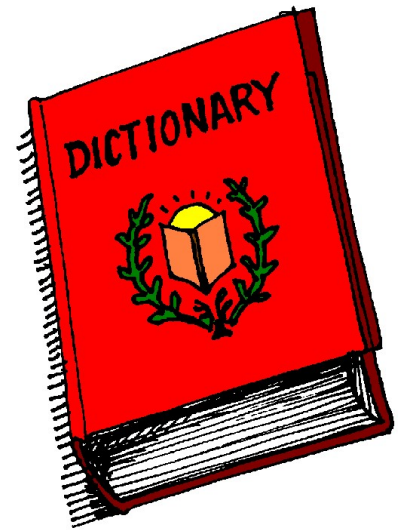
• Amendment:

- Gives parents or eligible students right to request amendment of records they believe are inaccurate or misleading.



WHO HAS RIGHTS?

- Parents and eligible students.
- Parent is defined as “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.”
- Rights transfer to student when he or she turns 18 years of age or enters a postsecondary educational institution at any age.



WHO HAS RIGHTS

- FERPA vests rights in parents of a minor student or an eligible student.
- FERPA does not provide for those rights to be invested in a third party, such as a parent advocate.



Parent Rights

- FERPA, affords full rights to either parent, custodial or non-custodial.
- UNLESS the District is provided with evidence that there is a **court order, state statute, or legally binding document relating to divorce, separation, or custody that specifically revokes these rights.**
- Under IDEA, a parent is presumed to have authority to inspect and review unless the District is advised that the parent does not have such authority under applicable state law.



PARENT RIGHTS



- *Letter to Parent (FPCO 2004)* – a parent is absent if he or she is not present in the day-to-day home environment of the child. Thus, a stepparent has FERPA rights where the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from that home. That stepparent has the same rights as natural parents.



Access to Records – Missouri Law

- Unless a parent has been **denied** visitation rights, both parents must be given access to school records.
- If District refuses to provide access to school records to a noncustodial parent, the District could be sued and noncustodial parent could collect all costs from the District, including attorneys' fees.

Section 452.375 RSMo.

Eligible Student Rights

- All rights transfer to the student when he/she turns 18 years old or enters a postsecondary institution at any age.
- However, FERPA provides ways in which a school may – but is not required to – share information from an eligible student’s education records with parents, without the student’s consent. For example:
 - Schools may disclose education records to parents if the student is claimed as a dependent for tax purposes.
 - Schools may disclose education records to parents if a health or safety emergency involves their son or daughter.
 - Schools may inform parents if the students, if he or she is under 21, has violated any law or policy concerning the use or possession of alcohol or a controlled substance.
 - Schools official may generally share with a parent information that is based on that official’s personal knowledge or observation of the student.



What are Educational Records?

- ***Educational records*** are those that are:
 - ▣ Directly related to a student; and
 - ▣ Maintained by an educational agency or institution or by a party acting for the agency or institution.
 - Includes information recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, etc.



What is an education record?

- Definition is dependent on the information in the records and not where the records are kept.
- Definition does not require that the information be kept in an official “file.” Information could be in teacher’s desk, nurse’s logs, principal’s file, etc.



Records need not be created by the school.

EDUCATIONAL RECORDS DO NOT INCLUDE SUCH RECORDS AS

- “SOLE POSSESSION RECORDS” are exempt from the definition of education records and are, therefore, not subject to the parent’s right to inspect and review.
- Defined as “records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.”



EDUCATIONAL RECORDS DO NOT INCLUDE SUCH RECORDS AS

- Law enforcement unit (“LEU”) records of an educational agency or institution subject to certain other provisions.
- LEU can be an “individual, office, department, or other component of a school or school district” that is officially authorized by the district to enforce the law or to maintain school safety. That designation should be in writing.
 - Can designate SROs, employees, local police department as the LEU.



EDUCATIONAL RECORDS DO NOT INCLUDE SUCH RECORDS AS

- Alumni records: Information about a student after he is no longer a student, such as a former student now serves as CEO of ex-company.
- Peer-graded papers before they are collected and recorded by teacher.

What is Personally Identifiable Information (PII)?

- ❑ ***Personally identifiable information*** includes:
 - ▣ Student's name
 - ▣ The name of student's parent/guardian or other family member
 - ▣ The address of the student or student's family
 - ▣ A personal identifier, such as the student's SSN or student number
 - ▣ Date of Birth
 - ▣ A list of personal characteristics that would make the student's identity easily traceable
 - ▣ Other information that would make the student's identity easily traceable



What is Directory Information?

- ***Directory information*** - information in the education record of a student that would not generally be considered harmful if disclosed.
 - Student's name
 - Address
 - Telephone listing
 - Date or place of birth
 - Major field of study
 - Participation in officially recognized activities and sports
 - Weight and height of members of athletic teams
 - Dates of attendance
 - Degrees and awards received
 - The most recent previous school attended
 - Photographs



Limited Directory Information

- FERPA regulations now allow districts to limit the release of directory information to specific persons or for particular purposes.
- Previously, if a type of information was included in directory information, the information was available to anyone in the public.
- The DOE has recognized that while districts may be willing to provide information to some groups, most districts would feel uncomfortable releasing the same information upon request to an unknown member of the public.
- The FERPA regulations allow districts to designate limited directory information for disclosure to specific groups.

PROCEDURES FOR DISCLOSING PERSONALLY IDENTIFIABLE INFORMATION

- When Consent is Required
 - Must obtain a signed and dated written consent from parent/guardian or eligible student
 - Written consent must specify:
 - The records that may be disclosed
 - State the purpose of the disclosure
 - Identify the party or parties to whom disclosure may be made



When is Consent Not Required Before Disclosing PII in Education Records?

- Disclosure may be made to other school officials, including teachers, within the District **whom the District has determined to have legitimate educational interests** (defined in annual notification);
- To schools in which a student seeks or intends to enroll;
- To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
- To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address in advance of compliance)



When is Consent Not Required Before Disclosing PII in Education Records?

- To parents of a dependent student;
- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency; and
- Directory information.

Scenario: Request for Records

Dear Ms. Smith:

I am an attorney representing Mr. and Mr. Barnes in litigation against their insurance company related to the accident Beth was in. I need her school records to show how her grades dropped after her accident. Accordingly, please send me Beth's entire student file by Friday.

Sincerely,

Demanding Lawyer

Answer

- Get written consent from Beth's parents
- You have 45 days to comply!
- Refer to Board Policies
 - Could elect to only provide "access"
 - Can charge for copies

Scenario: Subpoena

- You receive a subpoena from the attorneys at the insurance company in Beth's case and they ask you to provide documents within 15 days.
- "Make reasonable effort to notify parent/guardian of the subpoena in advance of compliance."
 - except when a parent is a party to a court proceeding involving child abuse and neglect

VOLUNTEERS

- FERPA recently amended to specifically authorize volunteers as individuals with a legitimate educational interest.
- District's annual FERPA notification should state that volunteers are considered individuals with a legitimate educational interest.
- emphasize the need not to re-disclose.
- School district remains responsible for outside individual's compliance with FERPA requirements.



What are the recordkeeping requirements?

- An educational agency or institution must maintain a record of each request for access to and each disclosure from an education record, as well as the names of State and local educational authorities and Federal officials and agencies listed in §99.32(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under §99.33.

What limitations apply to the redisclosure of PII?

- Receiving party should be informed that the information may not be further disclosed, except when the disclosure is:
 - to the parent or eligible student;
 - on behalf of the school under 99.31;
 - pursuant to a court order; subpoena, or in connection with litigation between the school and parent/student;
 - to the parents of a dependent student; or
 - directory information.

Right to inspect...

- School must comply with a request to inspect and review education records within 45 days.
 - That is comply, not merely respond.
- Schools are generally required to give copies, or make other arrangements for access, only if failure to do so would effectively deny access—example would be a parent or eligible student who does not live within commuting distance.
- School may not destroy records if request for access is pending.

ACCESS TO RECORDS

- If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.
- FERPA *does not* require districts to provide access to records that are not education records.



AMENDMENT RIGHTS

- Parents and eligible students have the right to seek amendment of the records that they believe are “inaccurate, misleading, or otherwise in violation of the student’s privacy rights.”
- If District receives a request, must decide whether to amend the record as requested within a reasonable time after receipt of the request.
- If school district decides not to amend as requested, it must inform the parent of that decision and the right to request a hearing.
- After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.
- The right to seek amendment is not unlimited; a school is not required by FERPA to afford a parent the right to seek to change substantive decisions (or opinions) made by school officials, such as grades or other evaluations of a student. So, while FERPA affords parents the right to seek to amend education records which contain inaccurate information, this right cannot be used to challenge a grade, disciplinary rulings, disability placements, or other such determinations.



Do Not Forget that FERPA Applies Everywhere

- Inappropriate, unguarded discussion of students and/or events
 - Grocery stores/ball games/community
- E-mails and Electronically Stored Documents
- Refrain from discussing students in an email amongst staff
 - Never disparage students or parents in an email



Annual Notification of Rights

- Annually notify parents or eligible students of their rights under FERPA.
- The annual notification must include information regarding an eligible student's right to inspect and review his or her education records, the right to seek to amend the records, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances), and the right to file a complaint with the Office regarding an alleged failure by a school to comply with FERPA.
- Notice must inform eligible students of the school's definitions of the terms "school official" and "legitimate educational interest."

Annual Notification of Rights

- Notice can be provided by publication in:
 - a schedule of classes;
 - a student handbook;
 - a calendar of school events;
 - the school's website (should not be the exclusive means of notification);
 - the student newspaper; and/or
 - posted in a central location at the school or various locations throughout the school.

Scenario: Reporter Request

- Your school designates name, address, telephone listing, email address, and honors and awards received as directory information. A St. Louis post-dispatch reporter calls your school and informs your school that he is writing an article about the success of Hispanic students who made the honor roll for the current school year. Are the names and contact information for all of the Hispanic students who made the honor roll for the current school year “directory information?”

Answer:

- No. You cannot link “directory information” with an item that cannot be designated as a “directory information” item, such as race, national origin or ethnicity status. The school could send home a note to the parents of these students and ask them to sign a consent form giving permission to disclose the students’ names to the organization.

Scenario: Dates of Attendance

- A student is expelled from high school. A reporter makes a request for a student's dates of attendance and specifically requests the daily records of this student. The reporter states that the District has included "dates of attendance" as directory information. Is that permissible under FERPA?

Answer:

- No. While the definition of “directory information” includes, “dates of attendance,” that term means the period of time during which a student attends or attended an educational agency or institution, such as an academic year, a spring semester, or a first quarter. The term **does not** include the specific daily records of a student’s attendance at a school.

Scenario: Overdue Library Books

- A public school district lists the names of students who have overdue library books on their website, as well as posts the list on the school bulletin board. Is this permissible under FERPA?

Example taken from U.S. Dept. of Education
www2.ed.gov/policy/gen/guid/ptac/pdf/slides.pdf

Answer:

- No. Generally, information about overdue material or payments owed by a student meets the definition of “education records” and there is no exception to the general consent rule that permits it to be publicly disclosed without consent.

Scenario: Access to Records

Custodial parent demands that school refuse to release grade cards or other information about the child to the noncustodial parent.

Should you accommodate this request?

Answer

- No. Don't accommodate this request.
- The Family Educational Rights and Privacy Act (FERPA) require districts to keep student records open for inspection by parents and guardians.
- Missouri law specifically mandates access to student records by both parents.
Section 452.376 RSMo.

Scenario: Amendment of Records

You have just been contacted by Bradley Manning, a former alum. He is starting his 35 year sentence due to his convictions for violations of the Espionage Act, but he now wishes to be called Chelsea. Manning would like her high school transcript to reflect her female gender and her new name, Chelsea. Does FERPA require the change?

Answer

- No
- FERPA Amendments Contemplate “Inaccurate” or “Misleading” Documentation.
- In a 1991 opinion letter, the FPCO concluded that FERPA does not apply to a transgender former student requesting a name and gender change in his or her education records.
- FERPA neither prevents nor compels a district to change the records.

Scenario: Dually- Enrolled Students

- A student who is under 18 is still in high school but is also taking classes at the local college. Have FERPA rights transferred to the student? Can her parents see the records at the local college?

Answer:

- It's complicated.
- At the high school, the rights have not transferred because the student is under 18.
- At college, the student is now considered an “eligible student” and rights have transferred to the student.
- The high school and college may share records on the students who are attending both schools. Therefore, if the college sends documents to the high school, then the parents have the right to now see the college records.
- Otherwise, the college “may” but is not required to share records with the parents if the parents claim the student as a dependent for federal income tax purposes.

Scenario: Student Health Records

- The school nurse at a middle school wants to share information with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

Answer:

- FERPA. At the elementary/secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered “education records” subject to FERPA – not the HIPAA Privacy Rule. A school nurse may share information on students with other school officials if these school officials have a legitimate educational interest in the records. Typically, if there is a health condition about which other teachers and school administrators need to be aware in order to provide a safe and healthy environment for the student, then the school could include such a criteria for what it considers to be a “legitimate educational interest.”