



The Family Educational Rights and Privacy

Act Guidance for Parents

February 2011

The following guidance provides parents with general information about the Family Educational Rights and Privacy Act (FERPA). This document is a compilation and update of various letters and guidance documents previously issued that respond to a variety of questions about FERPA. While this guidance reflects our best and most current interpretation of applicable FERPA requirements, it does not supersede the statute or regulations. We will attempt to update this document from time to time in response to questions and concerns.

FERPA is a Federal law that is administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA applies to educational agencies and institutions (e.g., schools) that receive funding under any program administered by the Department. Private and parochial schools at the elementary and secondary levels generally do not receive such funding and are, therefore, not subject to FERPA.

FERPA gives custodial and noncustodial parents alike certain rights with respect to their children's education records, unless a school is provided with evidence that there is a court order or State law that specifically provides to the contrary. Otherwise, both custodial and noncustodial parents have the right to access their children's education records, the right to seek to have the records amended, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances specified in the FERPA regulations, some of which are discussed below), and the right to file a complaint with the Department. When a student reaches 18 years of age or attends a postsecondary institution, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution.

FERPA generally prohibits the improper disclosure of personally identifiable information derived from education records. Thus, information that an official obtained through personal knowledge or observation, or has heard orally from others, is not protected under FERPA. This remains applicable even if education records exist which contain that information, unless the official had an official role in making a determination that generated a protected education record.

Under FERPA, a school is not generally required to maintain particular education records or education records that contain specific information. Rather, a school is required to provide certain privacy protections for those education records that it does maintain. Also, unless there is

Disclosure of Education Records

Under FERPA, a school may not generally disclose personally identifiable information from a minor student's education records to a third party unless the student's parent has provided written consent. However, there are a number of exceptions to FERPA's prohibition against nonconsensual disclosure of personally identifiable information from education records. Under these exceptions, schools are *permitted* to disclose personally identifiable information from education records without consent, though they are not *required* to do so by FERPA. Following is general information regarding some of these exceptions.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions.

A school may disclose personally identifiable information from education records without consent to a "school official" under this exception only if the school has first determined that the official has a "legitimate educational interest" in obtaining access to the information for the school. A school that allows school officials to obtain access to personally identifiable information contained in education records under this exception must include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Another exception permits a school to disclose personally identifiable information from a student's education records, without consent, to another school in which the student seeks or intends to enroll. The sending school may make the disclosure if it has included in its annual notification of rights a statement that it forwards education records in such circumstances. Otherwise, the school must make a reasonable attempt to notify the parent in advance of making the disclosure, unless the parent or eligible student has initiated the disclosure. The school must also provide a parent with a copy of the records that were released if requested by the parent.

FERPA permits a school non-consensually to disclose personally identifiable information from a student's education records when such information has been appropriately designated as directory information. "Directory information" is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name, address, e-mail address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of

As stated above, the conditions specified in the FERPA regulations have to be met before a school may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned above.

Annual Notification of FERPA Rights

Under FERPA, a school must annually notify parents of students in attendance of their rights under FERPA. The annual notification must include information regarding a parent's right to inspect and review his or her child's 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. The school must also inform parents of its definitions of the terms "school official" and "legitimate educational interest."

FERPA does not require a school to notify parents individually of their rights under FERPA. Rather, the school may provide the annual notification by any means likely to inform parents of their rights. Thus, the annual notification may be published by various means, including any of the following: in a student handbook; in a notice to parents; in a calendar of events; on the school's website (though this should not be the exclusive means of notification); in the local newspaper; or posted in a central location at the school or various locations throughout the school. Additionally, some schools include their directory information notice as part of the annual notice of rights under FERPA.

Law Enforcement Units and Law Enforcement Unit Records

A "law enforcement unit" means any individual, office, department, division or other component of a school, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by the school to: enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization; or to maintain the physical security and safety of the school. The law enforcement unit does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the school, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceeding against a student.

"Law enforcement unit records" (i.e., records created by the law enforcement unit, created for a law enforcement purpose, and maintained by the law enforcement unit) are not "education records" subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent's prior written consent. However, education records, or personally identifiable information from education records, which the school shares with the law enforcement unit do not lose their protected status as education records because they are shared with the law enforcement unit.

Complaints of Alleged Failures to Comply with FERPA

information for which amendment was requested; and the evidence provided to the school to support the assertion that such information is inaccurate.

Complaint Regarding Disclosure

If a parent believes that a school has violated FERPA by improperly disclosing personally identifiable information from his or her child's education records, the parent may complete a FERPA complaint form and should include the following specific information: the date the alleged improper disclosure occurred or the date the parent learned of the disclosure; the name of the school official who made the disclosure, if that is known; the third party to whom the education records were disclosed; and the specific nature of the information disclosed.

This guidance document is designed to provide parents of minor students with some basic information regarding FERPA and their rights, and to address some of the basic questions most frequently asked by parents. You can review the FERPA regulations, frequently asked questions, significant opinions of the Office, and other information regarding FERPA at our Website as follows:

www.ed.gov/policy/gen/guid/fpco/index.html

If, after reading this guidance document, you have questions regarding FERPA that are not addressed here, you may write to the Office for additional guidance at the following address:

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