
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The Family Educational Rights and Privacy Act of 1974, more commonly referred to as FERPA, is designed to safeguard the confidentiality of student education records. Also known as the Buckley Amendment after its primary sponsor, FERPA applies to all educational institutions that receive federal funds, which includes not only public schools but private schools, colleges, universities, and other institutions of higher learning as well. This entry describes key provisions of the law

Student and Parent Rights

FERPA grants parents rights to access the educational records of their children; these rights are transferred to students when they turn 18 or enter postsecondary institutions, regardless of their age at that time. Under FERPA, parents and students have the right to inspect and review any educational record that the school collects and maintains. Educational records include any type of information or record that is documented and relates directly to a student. Records may be in any medium and thus may include paper records, electronic records, or online data. Further, records include those that are maintained by institutions themselves (such as in a registrar's office) or by individual staff persons (such as teachers). Schools do not have to provide copies of the records to parents or students, unless it is not possible for them to have access to the original records. When copies of educational records are needed, the school may designate a reasonable fee for providing these copies.

If parents or eligible students believe that school records are incorrect or misleading, they may request that the official record be amended. If school officials decline to change the record, then parents or students may request formal hearings. If officials refuse to

change the records after hearings, then students or parents may write statements that must be placed with the official records, explaining their side of the story.

FERPA guidelines protect current and former students. The guidelines do not apply to deceased students or those who applied to an institution but never attended. While rights regarding educational records eventually transfer to students as noted earlier, parents may obtain information regarding students who are over 18 if they can prove that the students are still financial dependents. Such financial dependency must be established through proof that the student was claimed as a dependent on the parent's most recent federal tax return. Parents may also receive information through written consent from students.

Protected Information

Information that is protected by FERPA can vary widely. Students' social security and identification number (as designed by local institutions) are considered personally identifiable information that is protected by FERPA. Specific data regarding academic performance also fall under the protection of FERPA; specific examples of these are student grades, grade point averages, academic standing, and test scores.

Not every piece of data and not all information is automatically considered an educational record subject to FERPA guidelines, however. Personal notes about a student written by a faculty or staff member are considered to be sole source documents, meaning that they are not part of a student's official educational record. These personal notes specifically are not kept in a student's permanent file and are not shared with anyone else—they are the teacher's own personal notes and are used solely by the teacher. Insofar as these notes are not shared with other educators and are not kept in student files, they are exempt from disclosure, because they are not considered educational records.

Less protected is so-called directory information, which may include items such as students' names, addresses, telephone numbers, dates of birth, birthplaces, honors, awards, dates of attendance, and height and weight. Information that is not considered to be harmful or an invasion of privacy is typically considered

to be directory information, although each institution develops its own specific definition, within the broader FERPA guidelines, of what data specifically constitute directory information; schools also designate when and to whom directory information may be released. While directory information may be released without consent, it is at the discretion of the institution to actually do so. Thus, schools are not required to release directory information. In order to release directory information, school officials must notify parents and qualified students that it may or will be released. Students and parents may request in writing that directory information regarding the student not be released.

Notification and Consent

In most instances, school officials must secure written consent from parents or eligible students in order to release educational information. FERPA does allow exceptions to this requirement, meaning that in some instances officials may release student information without consent. Information may be released without consent to any school official with legitimate educational interests in the student. Legitimate educational interests are defined as those occurring when educators need to review records in order to fulfill professional duties. For example, educational diagnosticians must evaluate educational records for students who have undergone testing for special services; although diagnosticians do not directly teach students in classrooms, they must have access to students' educational records in order to fulfill their duties.

If students move or transfer to other schools, records may be released without consent, but they or their parents must be so notified. Officials who work for accrediting agencies may also review student records without consent when they are acting in their official capacity, but they may not use personally identifiable information. Likewise, specified persons who conduct evaluations and audits of student services and records may also review such records without consent. Records may be released without consent in order to comply with a judicial order or subpoena, and officials involved with a health or safety emergency may also have access to student records. In accordance with state laws, state and local authorities involved with the

juvenile justice system may have access to student records without consent. Finally, persons who are involved with student financial aid services are also permitted access to student records. In addition to these areas of exception, schools may also release, without written consent, information that is referred to as *directory information*, described below.

School officials are required to notify parents and students of their rights under the FERPA each year. The actual format for notice may vary at an institution's discretion or policy; notice may be given in a letter, in a handbook, in a newspaper article, in a brochure, or in any other public medium. Institutional policies regarding the release of information must be made available and given to students or parents on request.

In securing written consent from parents or qualified students, schools must state specifically what records are to be released. Consent must also define the purpose behind the release of the records and must identify the person to whom the records may be released. Written requests may not be granted via e-mail, because e-mail neither allows for the verification of senders' identities nor permits official signatures. The Department of Education is currently reviewing the release of information based on electronic consent and should issue a policy specific to this situation soon.

School officials must keep detailed records of each time requests are made for access to or the release of student records. This record of access must be kept current for however long students are enrolled at the schools and must specifically identify the persons who have requested or received information from files as well as the reasons for requesting access along with whether it was granted or denied. Records of access do not have to include information about the release of directory information.

Parties who are denied access to records under FERPA may file written complaints alleging specific violations with the Federal Department of Education's Family Policy Compliance Office (FPCO) within 180 days of alleged violations. If the FPCO agrees that there were violations, the Department of Education may sanction institutions by withholding payments, ordering them to comply, or declaring them ineligible for federal funding.

The Supreme Court twice reviewed issues arising under FERPA. In *Owasso Independent School District No. 1011 v. Falvo* (2002), the Court permitted a private claim to proceed in deciding that peer grading does not turn papers into educational records covered by FERPA. The Court ruled that a board did not violate FERPA by permitting teachers to use the practice over a mother's objection. In the same term, in *Gonzaga University v. Doe* (2002), the Court rejected a student's challenge to the unauthorized release of his records. The Court, in repudiating its earlier having allowed a private claim to proceed, decided that FERPA does not permit aggrieved parties to file suits against institutions in disputes over impermissible release of their records. The Court maintained the student's only recourse was to have petitioned the Department of Education for redress.

Stacey L. Edmonson

See also *Owasso Independent School District No. 1011 v. Falvo*

Further Readings

United States Department of Education (2007). *Family Educational Rights and Privacy Act*. Retrieved January 20, 2007, from <http://www.ed.gov/policy/gen/guid/fpcg/ferpa/index.html>

Van Dusen, M. (2007). *FERPA: basic guidelines for faculty and staff. A simple step-by-step approach for compliance*. Retrieved January 20, 2007, from <http://www.nacada.ksu.edu/Resources/FERPA-Overview.htm>

Legal Citations

Code of Federal Regulations, 34 C.F.R. §§ 99.1 *et seq.*
Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

Gonzaga University v. Doe, 536 U.S. 273 (2002).

Owasso Independent School District No. 1011 v. Falvo, 534 U.S. 426 (2002).