



MANAGEMENT OF STUDENT RECORDS

Frequently Asked Questions (FAQ)

DEFINITIONS

What is FERPA?

The [Family Educational Rights and Privacy Act \(FERPA\)](#) is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. [34 CFR Part 99]

What is "Directory Information?"

FERPA defines "directory information" as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, "directory information" includes information such as name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, and dates of attendance. [34 CFR §99.37]

What is an "Eligible Student?"

FERPA defines an "eligible student" as a student who has reached 18 years of age or is attending an institution of postsecondary education. [34 CFR §99.3]

NOTIFICATION

How are parents/eligible students notified about rights under FERPA?

Educational agencies and institutions are required to annually notify parents and eligible students about their rights under FERPA. [34 CFR §99.7]. A model notification is available on the Family and Policy Compliance Office (FPCO) website at: <https://www2.ed.gov/policy/gen/guid/fpcoc/doc/ferpa-mod-not-rights.doc>

How does a school provide this annual notification to parents/eligible students?

Schools do not have to individually notify parents and eligible students, but do have to notify them by any means that are reasonably likely to inform the parents or eligible students of their rights. [34 CFR §99.7(b)]

COLLECTION AND STORAGE

Can records be scanned and stored in lieu of paper copies of records?

Electronic copies are treated as the original as long as those copies adequately capture any handwritten notes and signatures.

Are student health records protected under HIPAA?

No. HIPAA Privacy Rule does not apply to primary and secondary schools. A student's health records are defined as education records protected under FERPA when the records are released to, and are maintained by the school. [*In re: Student with a Disability*, 40 IDELR 119 (SEA NM 2003)]. However, HIPAA and FERPA may overlap at higher education institutions.

ACCESS TO STUDENT RECORDS

How quickly must a school respond to a request for access to records?

Schools must provide access to records within a reasonable amount of time, and in no case more than forty-five (45) days after the request was made. [34 CFR §99.10(b)]

IDEA: *The IDEA states that a school must comply with a request to review records “without unnecessary delay” and before any meeting regarding an IEP, or any hearing, or resolution session, and in no case more than 45 days after the request has been made. [34 CFR §300.613(a)]*

Must a school provide copies of student records if requested?

Generally, no. However, if circumstances effectively prevent parents from exercising the right to inspect and review the student's education records, the school must provide a copy of the requested records. [34 CFR §300.613(b)(2)]. The Office for Special Education Programs (OSEP) has provided that persons who live outside of commuting range are effectively prevented from exercising the right to inspect and review. [*Letter to Longest*, 213 IDELR 173 (OSEP 1988)]

IDEA: *The IDEA requires a school to provide copies of the Eligibility Report and related documentation, IEP, and any revised IEP after an amendment. [34 CFR §§ 300.306(a)(2), 300.322(f), & 300.324(a)(6)]*

May a school charge a fee for copies of educational records?

Yes. However, the fee for copies must be waived when the charge would effectively prevent the parent from exercising the right to review and inspect the records. [34 CFR §99.11(a)]

May a school charge a fee to search for or retrieve records?

No. [34 CFR §99.11(b)]

Can parents/eligible students review and inspect test protocols?

Parents do not have the right to review and inspect documents such as test instruments, test protocols, question booklets, or interpretive materials, which do not contain personally identifiable information relating to their child. [*Pasadena Unified Sch. Dist.*, 114 LRP 49748 (SEA CA 2014); *Montgomery County Pub. Schs.*, 15 FAB 17 (SEA MD 2011); *Letter to Anonymous*, 14 FAB 32 (FPCO 2010); *Letter to Shuster*, 11 FAB 30 (OSEP 2007); *Letter to MacDonald*, 20 IDELR 1159 (OSEP 1993); *Letter to Philbin*, 115 LRP 18883 (FPCO 10/02/97)]

However, test protocols that include personally identifiable information or are co-mingled with education records may be education records within the meaning of the IDEA and FERPA, and, therefore, parents may have the right to inspect and review them. [*Letter to Price*, 57 IDELR 50 (OSEP 2010); *Letter re: Westport Cent. Sch.*, 8 FAB 35 (FPCO 2005); and *Letter to Shuster*, 108 LRP 2302 (OSEP 2007)]

Does a parent still have rights if the student is a minor and taking classes at a college while still in high school?

If a student is attending a postsecondary institution - at any age - the rights under FERPA have transferred to the student. [34 CFR §99.5(a)(1)]. However, in a situation where a student is enrolled in both a high school and a postsecondary institution, the two schools may exchange information on that student. [34 CFR §99.31(a)(2)]. If the student is under 18, the parents still retain the rights under FERPA at the high school and may inspect and review any records sent by the postsecondary institution to the high school. [34 CFR §99.5(a)(2)]

Does a parent still have rights if the student is a college student, but still a minor?

The rights under FERPA transfer from the parents to the student once the student turns 18 years old or enters a postsecondary institution at any age. [34 CFR §99.5(a)(1)]. However, although the rights under FERPA have now transferred to the student, a school may disclose information from an "eligible student's" education records to the parents of the student, without the student's consent, if the student is a dependent for tax purposes. Neither the age of the student nor the parent's status as a custodial parent is relevant. If a student is claimed as a dependent by either parent for tax purposes, then either parent may have access under this provision. [34 CFR § 99.31(a)(8)]

What circumstances can a parent review their adult student's records after the student becomes an adult and FERPA rights have transferred to the adult student?

- When the student is claimed as a dependent for federal income tax purposes by either parent [34 CFR §99.31(a)(8)];
- The disclosure is in connection with a health or safety emergency under 34 CFR §99.36;
- The disclosure is in regard to the student's violation of law or policy [34 CFR §§ 99.31(a)(14) & (15)]; or
- The disclosure meets any other provision of 34 CFR §99.31(a).

Can the custodial parent prevent a noncustodial parent from accessing records?

No. FERPA rights are given to both parents. The school should assume that a parent has FERPA rights unless provided evidence to the contrary. [34 CFR §300.613(c)]

Can a parent designate a representative to inspect a student's record on behalf of the student's parent?

FERPA does not explicitly address this issue. Thus, a school *may* allow a person assigned by the parent as a delegate to review a student's records on behalf of the parent.

IDEA: *The IDEA specifically grants the right of a parent to have a representative of the parent inspect and review the records. [34 CFR §300.613(b)(3)]*

DISCLOSURE OF STUDENT RECORDS

Under what circumstances may a school disclose information from education records without consent?

There are numerous exceptions to FERPA's general prior consent rule that are set forth in the statute and the regulations. See §99.31 of the FERPA regulations. (34 CFR §99.31)

When may a school disclose "directory information" to third parties without consent?

A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." [34 CFR §99.31(a)(11)]

I received a subpoena or judicial order to produce student records. Are there any precautionary measures I should take before disclosing records in response to a subpoena or judicial order?

Yes. FERPA requires that the school make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance. This allows the parent or eligible student an opportunity to seek protective action (e.g. file a motion to quash) prior to the disclosure of information. [34 CFR §99.31(a)(9)]

Must a school receive parental consent prior to sharing information with law enforcement authorities or probation officers?

Yes. Unless there is a court order or subpoena allowing disclosure of the student's education record—or it meets an exception under §99.31 of the FERPA regulations—schools should obtain consent prior to disclosing information to law enforcement authorities.

DESTRUCTION OF STUDENT RECORDS

Why should student records be destroyed when they are no longer needed?

Records should be destroyed when they are no longer needed — following an appropriate record retention policy — to minimize information technology and storage costs, and reduce the likelihood of inadvertent disclosure of student information.

When does FERPA allow a school to destroy student records?

FERPA does not require schools to destroy education records. Schools should refer to state and local record retention policies, including time frames for eventual destruction of student records. It is recommended that schools adopt an appropriate records retention policy prior to proceeding with the destruction of student records.

How long should student records be retained before they are destroyed?

Although FERPA does not designate a retention time period, when developing a record retention policy, the school should keep in mind other record retention laws. Medicaid related records must be kept for a period of five (5) years. The General Education Provisions Act (GEPA) requires that special education records be kept for at least five (5) years.

Must parents/eligible student be notified before destroying special education records?

Yes. The school must document an attempt to inform a parent/eligible student that special education records are no longer needed and that they will be destroyed following a reasonable

number of days after the date of the notice. [34 CFR §300.624(a)]

A parent has requested that a student's special education records be destroyed. Should the school comply?

Yes. The IDEA provides that the records "must" be destroyed at the request of parents. However, a permanent record of a student's name, address, and phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. [34 CFR §300.624(b)]

DISCLAIMER: *The information in this document is based on the Family Education Rights and Privacy Act (FERPA) and Individuals with Disabilities Education Act (IDEA) and may not reflect state or local law(s) in your jurisdiction. The information is provided for general information purposes and should not be construed as legal advice, nor is it intended to be a substitute for legal counsel on any subject matter.*