



UNITED STATES DEPARTMENT OF EDUCATION

STUDENT PRIVACY POLICY OFFICE

SPPO-23-01

An Eligible Student Guide to the Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act or FERPA (20 U.S.C. §1232g; 34 CFR Part 99) provides certain rights for parents regarding their children's education records. When a student reaches 18 years of age or attends an institution of postsecondary education at any age, the student becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. This guide discusses an eligible student's rights under FERPA. A companion document discussing parents' rights under FERPA is available on our website at <https://studentprivacy.ed.gov/resources/ferpa-general-guidance-parents>.

FERPA is a Federal law that is administered by the Student Privacy Policy Office (SPPO) in the U.S. Department of Education (Department). FERPA protects "education records," which are generally defined as records 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. An "educational agency or institution," hereinafter referred to as a "school," generally means a school district, a public elementary or secondary school, or an institution of postsecondary education, such as a college or university. There are also a few exemptions to the definition of "education records," such as law enforcement unit records and sole possession records. More information is available at <https://studentprivacy.ed.gov/faq/what-records-are-exempted-ferpa>.

FERPA applies to all schools that receive funding under any program administered by the Department. Private and faith-based schools at the elementary and secondary levels generally do not receive such funding and are, therefore, generally not subject to FERPA. Private institutions of postsecondary education, however, generally do receive such funding (e.g., student aid under title IV of the Higher Education Act of 1965, as amended) and are, therefore, generally subject to FERPA. In addition, the confidentiality of personally identifiable information (PII) in the education records of students with disabilities is further protected by Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1417(c) and 34 CFR §§ 300.610-300.626). The IDEA and its implementing regulations contain confidentiality provisions that are similar to, but broader than, FERPA, and cover students with disabilities who have turned 18 but are still eligible under IDEA. Depending on State law, the rights accorded to parents under IDEA Part B may not automatically transfer to the student when the student with a disability reaches 18 years old or attends an institution of postsecondary education at any age. The IDEA-FERPA crosswalk contains additional information comparing IDEA and FERPA and is available at <https://studentprivacy.ed.gov/resources/ferpaidea-crosswalk>.

The rights provided by FERPA to an eligible student include, but are not limited to:

- **Access to Education Records**

Under FERPA, a school or State educational agency (SEA) must provide an eligible student with an opportunity to inspect and review their education records within a reasonable period of time, but not more than 45 calendar days following the receipt of a request. A school or SEA is generally not required to provide an eligible student with *copies* of education records unless circumstances effectively prevent an eligible student from exercising their right to inspect and review the education records. For example, if an eligible student who does not live within commuting distance of the school requests access to their education records, the school would be required to make other arrangements for the eligible student to inspect and review the requested records, or to provide a copy of the requested records.

FERPA's access provisions apply to education records maintained by educational agencies or institutions, including documents such as academic transcripts. While eligible students have a right to inspect and review their education records, including academic transcripts maintained by their schools, eligible students do not necessarily have a right to obtain a copy of such records under FERPA.

- **Amendment of Education Records**

Under FERPA, an eligible student has the right to seek amendment or correction of their education records that the eligible student believes to be inaccurate, misleading, or in violation of their rights of privacy. However, while a school is not required to amend an education record in accordance with an eligible student's request, a school is required to consider the request for amendment, to inform the student of its decision, and, if the request is denied, to advise the student of their right to a hearing on the matter. If, as a result of the hearing, a school decides not to amend the education records, then the eligible student has the right to insert a statement in the record commenting on the contested information or stating why they disagree with the decision, or both. That statement must remain with the contested part of the education record for as long as the record is maintained and be included whenever the contested part is disclosed.

While an eligible student has the right to seek to amend non-substantive factual errors in the student's education records, the right is not unlimited. A school is not required by FERPA to afford an eligible student the right to seek to change substantive decisions made by school officials, such as substantive decisions made in the context of grades given to a student based on their performance, other evaluations of the student's performance, or disciplinary decisions.

- **Disclosure of Education Records**

Under FERPA, a school generally may not disclose PII from an eligible student's education records to a third party unless the eligible student has provided prior written consent. Even with the prior written consent of an eligible student, a school is not required by FERPA to disclose PII from education records to third parties. Accordingly, under FERPA, a school

may have a policy of not disclosing PII from education records to third parties if the eligible student owes money to the school. There are several exceptions to FERPA's general consent requirement, some of which are described below. Under these exceptions, schools are *permitted* to disclose PII from education records without consent to a third party, but they are not *required* to do so by FERPA.

School Official

FERPA allows "school officials," including faculty and staff within an institution of postsecondary education, to access PII from education records without consent, provided the school has determined that they have a "legitimate educational interest" in the information. The school's annual notification of rights under FERPA must specify the criteria for determining which parties are "school officials" and what the school considers to be a "legitimate educational interest." Typically, a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill their professional responsibility.

Also, under the "school official" exception to the consent requirement, FERPA permits a school to disclose PII from education records to contractors (e.g., software/application vendors or lawyers), consultants (e.g., nutritional or information technology consultants), volunteers (e.g., student volunteers or tutors) or other third parties to whom the school has outsourced institutional services or functions, provided that the outside party:

1. Performs an institutional service or function for which the school would otherwise use employees;
2. Is under the direct control of the school with respect to the use and maintenance of education records;
3. Is subject to the requirements in FERPA that PII from education records may be used only for the purposes for which the disclosure was made, and which govern the redisclosure of PII from education records; and
4. Meets the criteria specified in the school's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Seeks or Intends to Enroll

Another exception to FERPA's general consent requirement permits a school to disclose PII from an eligible student's education records, without consent, to another school in which the student seeks or intends to enroll, or where the student is already enrolled, as long as the purpose of the disclosure is related to the student's enrollment or transfer. A school that discloses education records under this exception must make a reasonable attempt to notify the eligible student of the disclosure, unless the disclosure is initiated by the student, or the school's annual notification of rights under FERPA includes a notice that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. A school that discloses education records under this exception also must provide the student, upon request, a copy of the records that were disclosed and, upon request, an opportunity for a

hearing to amend the records that were disclosed. Under this exception, a school has the discretion to disclose academic, disciplinary, or any other PII from the student's education records to the new school. Further, an eligible student does not, under FERPA, have the right to prevent a school from disclosing such PII from the student's education records, or from communicating information about a student more generally, to the school in which the student seeks or intends to enroll.

Directory Information

FERPA also permits a school to disclose PII from an eligible student's education records, without consent, when such information has been appropriately designated as "directory information," and the eligible student has not opted out of the disclosure of such designated information. The FERPA regulations define "directory information" as information in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include information such as the student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), dates of attendance (i.e., the period of time during which the student attends or attended the school), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent school attended. FERPA provides that a school may disclose, without consent, directory information if the school has given public notice to eligible students of the types of PII that it has designated as directory information and the process, including period of time, for eligible students to opt out of certain directory information disclosures. This notice is often included in the annual notification discussed below. For more information regarding directory information, visit <https://studentprivacy.ed.gov/training/b-cs-student-directory-information>.

Dependent Student

FERPA provides ways in which a school may share, without the consent of an eligible student, education records of the eligible student with their parents. Schools may, but are not required to, disclose any and all PII from education records to parents, without the consent of the eligible student, if the student is a "dependent student," as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent's most recent income tax return, a school may disclose the student's education records to either parent, without the eligible student's consent.

This exception to FERPA's general consent rule, where applicable, also permits institutions of postsecondary education to share, without the prior written consent of an eligible student, PII from education records of students who are enrolled in both a high school and the college or university (dually enrolled) with the parents of such dually enrolled students. In this situation, the parents retain the rights over the student's education records maintained by the high school, if the student is under the age of 18

years, but the student retains the rights over the education records maintained by the college or university.

Other Exceptions

Provided certain conditions are met that are not included in the summary below, other exceptions to FERPA's general consent requirement that permit the disclosure of PII from education records include, but are not limited to:

- To authorized representatives of, among others, the U.S. Secretary of Education, as well as State and local educational authorities, for audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs;
- In connection with financial aid for which the student has applied or received;
- To organizations conducting studies for, or on behalf of, the school for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- To the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the final results of a disciplinary hearing conducted by an institution of postsecondary education against the alleged perpetrator of such crime or offense with respect to the alleged crime or offense;
- To any third party the final results, as described in FERPA regulations, of a disciplinary proceeding conducted by an institution of postsecondary education against a student who is the alleged perpetrator of a crime of violence or non-forcible sex offense if the student is found by the institution to have violated its rules or policies as a result of the disciplinary proceeding, as long as the disclosure does not include the name of any other student, including a victim or witness, without the written consent of that other student;
- To comply with a judicial order or a lawfully issued subpoena;
- In connection with a health or safety emergency; and
- To a parent of a student at an institution of postsecondary education regarding the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, where the institution determines that the student has committed a disciplinary violation with respect to that use or possession, and the student is under 21 years of age at the time of the disclosure to the parent.

Annual Notification of FERPA Rights

Under FERPA, a school must annually notify eligible students of their rights under FERPA. The annual notification must include information regarding an eligible student's right to inspect and review their education records, the right to seek to amend their records, the right to consent to disclosure of PII from their records (except in certain circumstances), and the right to file a complaint with SPPO regarding an alleged failure by a school to comply with FERPA. The notification must also inform eligible students of the school's criteria for the terms "school official" and "legitimate educational interest" in certain instances. A school is not required to notify eligible students individually, but rather is required to provide the

notice by any means that are reasonably likely to inform eligible students of their rights. These means could include publication in a school activities calendar, newsletter, student handbook, or on a school's website.

Complaints of Alleged Violations of FERPA

Eligible students who believe that their FERPA rights may have been violated may file a complaint with SPPO at <https://studentprivacy.ed.gov/file-a-complaint>. SPPO will review the complaint to ensure that the complaint:

- Is filed, in writing, by an eligible student who maintains FERPA rights over the education records that are the subject of the complaint;
- Is submitted to SPPO within 180 days of the date of the alleged violation or of the date that the eligible student knew or reasonably should have known of the alleged violation; and
- Contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

SPPO will then make a case-by-case determination of the best mechanism for resolving the complaint. Sometimes the action will be an investigation, while for other complaints, consistent with the statute and applicable regulations, we will take other appropriate actions, such as acting as an intermediary or providing resolution assistance. More information regarding our complaint process is available at <https://studentprivacy.ed.gov/file-a-complaint>.

Additional Information

For more information regarding FERPA and other student privacy issues, please visit our website at <https://studentprivacy.ed.gov>.

If you have questions about FERPA that are not addressed here, you may also submit a question through our website at <https://studentprivacy.ed.gov/contact>, or write to SPPO for additional guidance at the following address:

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