

## LEGAL EXPLAINER #7

# UNDERSTANDING THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

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As a parent, you have the right to be involved in your child's education. The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives you access to your child's education records and protects your family's privacy. This guide provides a brief overview of your rights under FERPA and how to take action if they are violated.

## What is FERPA?

FERPA is a federal law that applies to schools receiving federal funds. It gives parents access to their children's educational records and control over the disclosure of their personally identifiable information.\*

## Key FERPA Definitions

- Educational agency/institution means any public or private school receiving federal funding.†
- "Education records" means records directly related to a student and maintained by the school.‡ This does not include personal notes that are not shared with others, law enforcement records, employee records, or medical records kept for treatment purposes.§
- Personally identifiable information includes the student's:
  - Name, address, and date/place of birth;

\* 20 U.S.C. § 1232g. See also 34 C.F.R. § 99.3.

† 20 U.S.C. § 1232g(a)(3).

‡ 20 U.S.C. § 1232g(a)(4)(A)(i-ii).

§ 20 U.S.C. § 1232g(a)(4)(B)(i-iv).

- Student's family's names;
- Other information that could reasonably identify the student.\*

## What Does FERPA Say and What Does it Mean?

There are five main provisions of FERPA that parents should know about:

### Right to Access Records

FERPA says that educational institutions or agencies, shall not have "a policy of denying, or which effectively prevents, the parents of students ... the right to inspect and review the education records of their children."†

FERPA also lays out several rules for schools to follow when parents request to inspect and review the educational records of their children:

1. If a record contains information of another student, the parents must still have the right to inspect and review the information about their child;‡
2. Once a parent requests to review and inspect their child's educational record, the school cannot destroy the educational records;§
3. When a parent requests to inspect and review their children's educational records, the request must be fulfilled by the school within 45 days of the school receiving the request;¶
4. While the school can charge a fee for copying the educational records, it may not charge a location or retrieval fee, nor may the school impose a copying fee that would effectively prevent a parent from exercising the right to inspect the educational records.\*\*

Unfortunately, many schools and states across the country have cited FERPA as a reason to deny parents the right to inspect and review their children's educational records. This is an incorrect interpretation of the law since these records belong to the parents until the child turns 18 years old.

\* 34 C.F.R. § 99.3.

† 20 U.S.C. § 1232g(a)(1)(A).

‡ 20 U.S.C. § 1232g(a)(1)(A).

§ 34 C.F.R. § 99.10(e).

¶ 34 C.F.R. § 99.10(b).

\*\* 34 C.F.R. § 99.11(a-b).

## Right to Consent to Disclosures

In general, either a parent or a student who has turned 18 must give consent in order for educational records to be disclosed.\* Consent must be made in writing and include which records may be disclosed, the purpose of the disclosure, and the identity of the party or class of parties to whom the disclosure may be made.†

However, there are certain individuals and entities that are allowed access to your child's educational records without your consent and without such disclosure being a FERPA violation.‡ These include officials of other schools in which the student intends to enroll, state and local officials under certain circumstances, and other individuals and entities as defined in the law.

**"Directory information" may be disclosed by the school without explicit parental consent, so long as it is noticed properly.**

The school does not need explicit parental consent to disclose the "directory information," even though most of the information falls under the definition of personally identifiable information.

Directory information includes the students':

- a. Name;
- b. Address;
- c. Phone number;
- d. Date and place of birth;
- e. Major field of study;
- f. Participation in officially recognized activities and sports;
- g. Weight and height of members of athletic teams;
- h. Dates of attendance;
- i. Degrees and awards received; and
- j. Most recent previous school attended by the student.§

However, "directory information" may *only* be disclosed if the school gives proper public notice that it intends to do so and gives parents a chance to opt out of this disclosure. This public notice must include:

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\* 20 U.S.C. § 1232g(d).

† 20 U.S.C. § 1232g(b)(2)(A) and 34 C.F.R. § 99.30(b)(1-3).

‡ 20 U.S.C. § 1232g(b)(1)(A-L).

§ 20 U.S.C. § 1232g(a)(5)(A).

- a. the types of personally identifiable information that the agency or institution has designated as directory information;
- b. A parent's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and
- c. The period of time within which a parent to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.\*

**In order to receive federal funds, schools must inform parents about FERPA annually.**

Schools *must* effectively inform parents of FERPA annually.<sup>†</sup> This required notice must include who is considered a "school official" and the right of parents to:

- a. Inspect and review their students' educational records and how to do it;
- b. Seek an amendment to their students' educational records if the parent believes something is inaccurate and how to do it;
- c. Consent to disclosure of personally identifiable information contained in their students' educational records; and
- d. File a complaint with the Department of Education alleging failures by the school to comply with FERPA.<sup>‡</sup>

## Enforcement of FERPA

If a school is not following FERPA laws, the U.S. Department of Education (ED) has created a portal for parents with information on how to submit FERPA and PPRA (Protection of Pupil Rights Amendment) complaints with the Student Privacy Policy Office (SPPO).<sup>§</sup>

The written complaint must contain the specific allegations giving reasonable cause to belief that a violation of FERPA has occurred.<sup>¶</sup> The parents must file this written complaint within 180 days from the date of the alleged violation for the SPPO to investigate.<sup>\*\*</sup> If a parent does not want to draft their own complaint, the U.S. Department of Education has a FERPA complaint form on their website.<sup>††</sup>

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\* 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. § 99.37.

† 20 U.S.C. § 1232g(e), 34 C.F.R. § 99.7(a)(1).

‡ 34 C.F.R. § 99.7(a)(2)(i-iv); 34 C.F.R. § 99.7(a)(3)(i-iii).

§ U.S. Department of Education: Protection Student Privacy: File a Complaint (available at: <https://studentprivacy.ed.gov/file-a-complaint#:~:text=FERPA%20Complaint%20Form,En%20Espa%C3%B1ol:%20PPRA%20Complaint%20Form>); See also 34 C.F.R. § 99.64(b).

¶ 34 C.F.R. § 99.64(a).

\*\* 34 C.F.R. §§ 99.64(b-d).

†† U.S. Department of Education: Protection Student Privacy: File a Complaint (available at: [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/EComplaint%20form%20FERPA\\_Updated\\_508\\_013123.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/EComplaint%20form%20FERPA_Updated_508_013123.pdf)).

The Supreme Court of the United States has ruled that there is no private right of action under FERPA.\* A private right of action allows individuals to sue for violations of the law and seek relief for said violations. Because there is no private right of action, parents cannot bring lawsuits in court alleging that a school has violated FERPA.

FERPA empowers you to stay informed, involved, and in control of your child's education. While schools are legally required to honor your rights under FERPA, it is often up to parents to assert those rights and hold schools accountable.

*WILL is a legal resource for parents, students, and school districts. If you believe your rights have been violated, you can contact us at [www.will-law.org/contact-a-lawyer](http://www.will-law.org/contact-a-lawyer). Depending on your situation, we may be able to help further.*

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\* *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002).

This document is part of the WILL Parental Rights Toolkit. Explore the full toolkit at: [www.will-law.org/parenttoolkit](http://www.will-law.org/parenttoolkit)

