



FERPA Myth Busting

School Administrators of Montana

Ross Lemke

Privacy Technical Assistance Center

United States Department of Education
Student Privacy Policy Office
Privacy Technical Assistance Center



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Family Educational Rights and Privacy Act (FERPA)

A federal privacy law that affords parents and eligible students the right to:

- have **access** to their **education records**,
- seek to have the records **amended**,
- **consent** to the **disclosure** of **personally identifiable information** from education records, **except** as provided by law, and
- **file a complaint** with U.S. Department of Education regarding an alleged violation of FERPA.



Why we are here

- FERPA was enacted in 1974
 - Amended most recently in 2011
- It goes without saying that the educational landscape was far different then than it is today
- FERPA is often complex and very context specific
- What might be acceptable in one situation, may not be acceptable in another situation
- Many FERPA violations stem from misunderstandings or misconceptions about FERPA

Myth #1: FERPA Applies to All Schools.

To Whom Does FERPA Apply?

- A common misconception is that FERPA applies to all schools.
- Specifically, FERPA applies to schools that receive federal funds under programs administered by the U.S. Department of Education. Private and faith-based schools at the elementary and secondary levels generally do not receive funds from the Department and, therefore, are not generally subject to FERPA.
- Virtually all Institutes of Higher Education Participate in Federal Student Aid which would make them subject to FERPA



To Whom Does FERPA Apply?

- A private school is not made subject to FERPA by virtue of the fact that its students and teachers may receive services from a local school district or state educational agency that receives funds from the Department. Rather, the school itself must receive funds under a program administered by the Department to be subject to FERPA.
- If children are placed in a private school under IDEA their records may be subject to FERPA but not the entire school

Myth #2: FERPA Requires Schools to Provide Copies of Records to Parents or Students.

Access vs copies

- Schools **must** comply with a request **to inspect and review** education records within 45 days.
- *However*, schools are generally not required to provide copies. One exception would be if circumstances prevent access to the education records, such as when an eligible student does not live within commuting distance. Even in this case, schools may choose to provide access through technological means.
- Because copies are not required under FERPA, schools **may** withhold copies of transcripts if the eligible student owes money to the school.
- Other laws such as IDEA or state law may require copies

**Myth #3: FERPA
requires schools to
maintain education
records for a specific
duration of time.**

Records retention

- Under FERPA, an educational agency or institution shall not destroy any education records **if there is an outstanding request** to inspect and review the records.
- FERPA does not dictate any other maintenance or retention of records – the decision to keep or destroy the education records is **defined by state law**.
- The Studies and Audit or Evaluation exceptions include data destruction requirements for information disclosed after the completion of the study or audit.

**Myth #4: You can sue
a school district over
a FERPA violation.**

FERPA Enforcement

- There is no private right of action under FERPA.
- The Student Privacy Policy Office (SPPO) investigates complaints and violations under FERPA.
- Parents and eligible students may file timely complaints (180 days) with SPPO.
- SPPO will then make a case-by-case determination to determine the best mechanism for resolving the underlying situation. Sometimes the action will be a formal investigation; for other complaints, consistent with the statute and applicable regulations, the office will take other appropriate actions, such as acting as an intermediary or providing resolution assistance.



**Myth #5: FERPA
rights only apply to
the custodial parent.**

Definition of "parent"

- Under FERPA, a parent of a student includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
- This includes custodial and noncustodial parents.

Custodial vs. non-custodial parents

- Unless a school is provided with evidence of a court order, state law, or other legally binding document relating to such matters as divorce, separation, or custody that specifically provides to the contrary, FERPA gives custodial and noncustodial parents alike certain rights with respect to their children's education records.
- FERPA does not address familial decisions, such as who may enroll the student in school or who is on an emergency contact list.



Myth #6: You can share information from student records without consent to a third party as long as you have a written agreement.

Written agreements and FERPA

- While there are several exceptions to prior written consent, a few exceptions do require a written agreement.
- Saying that a disclosure can be made with a written agreement is putting the cart before the horse.
- Before disclosing data to a third party without consent, it is imperative for the school determine whether or not the disclosure falls under one of those FERPA exceptions.

Written agreements and FERPA

- If the disclosure happens under the Studies Exception or to an Authorized Representative of an Education Authority under the Audit or Evaluation Exception, a written agreement would be required.
- Many other FERPA exceptions do not have a written agreement requirement- with that said – even though they don't a written agreement could be considered to be a best practice.
 - *Even if not explicitly required by a FERPA exception, it is a best practice to have a written agreement in place when sharing data with a third party.*

Myth #7: Once a student turns 18 or enters college you can no longer share information with their parents.

Transfer of Rights Under FERPA

- When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”).
- Disclosure to a parent of that eligible student would require either written consent or an appropriate FERPA Exception.

Disclosure of an eligible student's information

- Schools *may*, but are not required to, disclose an eligible student's education record to a third party as long as the student has given their prior written consent authorizing the disclosure or unless an exception exists in FERPA that allows for nonconsensual disclosure.
- Consent under FERPA *permits* **disclosure** to a third party, it does not grant full FERPA rights to a third party.

Exceptions relevant to eligible students

- Parents of a dependent student exception: If a student is declared as a dependent on either parent's tax forms a school is permitted to disclose information to them.
- Health or Safety emergency exception: If a disclosure to a parent is necessary to protect the health or safety of the student a disclosure is permitted, pursuant to that emergency.
- At the postsecondary level, a disclosure is permitted to parents regarding a student's violation of any law or policy governing the use of alcohol or a controlled substance, provided the student is under 21 and has committed a violation connected to that use.

Eligible students

- The exceptions to consent *permit* a disclosure to the parents – they do not *compel* a disclosure.
- Even though an exception may apply, many postsecondary institutions require consent before disclosing information to a parent.
- Conversely, nothing in FERPA prevents an educational agency or institution from disclosing education records, or PII from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the requirements for those exceptions.

Myth #8: School employees are permitted to access any student record at any time.

School Official Exception

- Schools **may** disclose PII from education records without consent if the disclosure is to other school officials within the school, including teachers, whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

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 his or her professional responsibility.

School Official Example

- Paula is employed as a database administrator by the school or university and in this case, is considered to be a school official in the agency's annual notice.
- If Paula accesses 100 student records in order to resolve a database error, this access would be part of her job function.
- If Paula accesses the record of a student she suspected of vandalizing her house – this would not be a part of her job or function.

Myth #9: Schools must forward records to a student's new school, even if they owe money to their old school.

Disclosure to Officials of Another School

- Consent is not required to disclose personally identifiable information from education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for the purposes related to the student's enrollment or transfer and:
 - The school makes a reasonable attempt to notify the parent or eligible student of the disclosure unless
 - The disclosure is initiated by the parent or eligible student or;
 - The annual notice of the institution states that they forward education records to other institutions that have requested the records and in which the student seeks or intends to enroll or is already enrolled so long as the disclosure is for purposes related to the student enrollment or transfer

Disclosure to Officials of Another School

- Nothing in FERPA would compel such a disclosure. If a student or family owes money to the old school they are within their rights to not transfer the records
- Other laws such as the Elementary and Secondary Education Act or a state law may require the disclosure

Myth #10: Directory information is information contained in a student directory, such as a contact catalog.

Directory information

- Under FERPA, directory information is information in a student's education record that would not be considered harmful or an invasion of privacy if disclosed.
- This is confusing to some since the name "directory information" implies contact information such as name and address.
- A school's directory policy may include these elements – or it may not.



Directory information

- May include:
 - ✓ name, address, phone number, and e-mail address
 - ✓ photograph
 - ✓ date and place of birth
 - ✓ most recent school attended
 - ✓ grade level and major field of study
 - ✓ dates of attendance (e.g., year or semester)
 - ✓ participation in officially recognized sports and activities
 - ✓ height and weight of athletes
 - ✓ degrees, honors, and awards received
- Can **never** include Social Security Number.
- The school or district cannot disclose non-directory information with directory information.

Directory information

- Annual notice must be given to parents of students in attendance and eligible students in attendance.
- Parents or eligible students may choose to “opt-out” of the disclosure of directory information.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.

Resources

- [FERPA/IDEA Crosswalk](#)
- [Guidance for Reasonable Methods and Written Agreements](#)
- [A Parent Guide to the Family Educational Rights and Privacy Act \(FERPA\)](#)
- [An Eligible Student Guide to the Family Educational Rights and Privacy Act \(FERPA\)](#)
- [PPRA General Guidance](#)
- [Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices](#)
- [FAQs on Photos and Videos under FERPA](#)



Contact Information

United States Department of Education,
Privacy Technical Assistance Center



(855) 249-3072
(202) 260-3887



privacyTA@ed.gov



<http://studentprivacy.ed.gov>



(855) 249-3073