

## Student Records

### Introduction

This Procedure provides general guidance about the Family Educational Rights and Privacy Act (FERPA) and student education records. Education record laws are complicated, cumbersome and sometimes conflict with or intersect public record laws. This Procedure is thus intended to provide general guidance. Specific guidance should be sought by reference to state and/or federal law.

### Definition of Education Records

The term "education records" is generally defined as those records that contain information directly related to a student and which are maintained by the district or by someone acting for the district. Examples of education records include.

Cumulative folder: The cumulative folder may contain all information about a student which is collected and maintained on a routine basis, such as:

Identifying information (name, birth date, year in school, address, telephone number, parent's name, ethnic classification, emergency information, including parent's place of employment, family doctor, babysitter, siblings).

Attendance records, including date of entry and withdrawal.

Grades and other student progress reports.

Results of tests of school achievement, aptitude, interests, hearing and vision.

Health and immunization status reports.

Records of school accomplishments and participation in school activities.

Verified reports of misconduct, including a record of disciplinary action taken.

Such other information as will enable staff to counsel with students and plan appropriate activities.

Identifying information may be limited for students who participate in the Address Confidentiality Program.

Supplementary records: Supplementary records about a student may be collected and maintained in connection with special concerns about the student, such as:

Confidential health information or reports connected with assessment and placement of a student who is formally identified as a "focus of concern." (A written request or referral for a student with suspected disability is a 'focus of concern'.)

Reports from nonschool persons and organizations such as physicians, psychologists and clinics.

Reports pertaining to specific problems associated with the student.

Current reports of psychological tests and progress reports related to a student's disabling condition.

Other records: Other records about a student may be maintained in a variety of locations, including in digital form. Whether other records are considered to be "education records" protected by FERPA is determined on a case-by-case basis.

### **General FERPA Rights for Parents**

FERPA is a Federal law administered by the Family Policy Compliance Office (Office) in the U.S. Department of Education (Department). 20 U.S.C. § 1232g; 34 CFR Part 99. FERPA gives custodial and noncustodial parents certain rights with respect to their children's education records. A court order or State law, however may specifically provide to the contrary. Custodial and noncustodial parents have general rights to: (1) access their children's education records, (2) seek to have the records amended, (3) consent to disclosure of personally identifiable information from the records (except in certain circumstances specified in the FERPA regulations, some of which are discussed below), and (4) file a complaint with the Family Policy Compliance Office.

### **General FERPA Rights for Students**

When a student reaches 18 years of age, he or she becomes an "eligible student." Rights under FERPA transfer at that point from the parent to the student.

### **Access to Education Records**

Under FERPA, the district will provide a parent with an opportunity to inspect and review his or her child's education records within 45 days following its receipt of a request. The district will also provide a parent with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the parent from obtaining access to the records. A case in point would be a situation in which the parent does not live within commuting distance of the district.

The district is not generally required by FERPA to provide a parent with access to school calendars or general notices such as announcements of parent-teacher meetings or extra-curricular activities. That type of information is not generally directly related to an individual student and, therefore, does not meet the definition of an education record.

Under FERPA, the district is not required to provide information that is not maintained or to create education records in response to a parent's request. Accordingly, the district is not required to provide a parent with updates on his or her child's progress in school unless such information already exists in the form of an education record.

### **Amendment of Education Records**

Under FERPA, a parent/eligible student has the right to request that inaccurate or misleading information in the student's education records be amended. While a district is not required to amend education records in accordance with a parent's request, the district will consider the request. If the district decides not to amend a record in accordance with a parent's request, the

district will inform the parent of his or her right to an informal hearing on the matter before the superintendent or designee. The hearing will be held within 10 school days of the receipt of such request. During the hearing the superintendent or designee will review the facts as presented and decide whether or not to order the demanded correction or deletion. The superintendent or designee will send his/her written decision to the parent or adult student within 10 school days of the hearing.

If, as a result of the hearing, the district still decides not to amend the record, the parent has the right to insert a statement in the record setting forth his or her views. That statement will remain with the contested part of the student's record for as long as the record is maintained.

However, while the FERPA amendment procedure may be used to challenge facts that are inaccurately recorded, it may not be used to challenge a grade, an opinion, or a substantive decision made by the district about a student. FERPA was intended to require only that districts conform to fair recordkeeping practices and not to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations. Additionally, if FERPA's amendment procedures are not applicable to a parent's request for amendment of education records, the districts is not required under FERPA to hold a hearing on the matter.

### **Disclosure of Education Records**

Under FERPA, the district may not generally disclose personally identifiable information from a student's education records to a third party unless the student's parent has provided written consent or unless otherwise required by law. FERPA generally prohibits the improper disclosure of personally identifiable information in education records. Thus, information learned by a district employee through personal knowledge or observation, or heard from others, may not be protected under FERPA.

There are a number of exceptions in FERPA that allow disclosure without parental consent. Under these exceptions, the districts is permitted to disclose personally identifiable information from education records without consent, though they are not required to do so by FERPA. Following is general information regarding some of these exceptions.

School Officials: One of the exceptions to the prior written consent requirement in FERPA allows "school officials" to obtain access to personally identifiable information contained in education records provided the district has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, the term is generally interpreted by the Department of Education to include parties such as: a teacher; administrator; board member; support or clerical staff; attorney; nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the district has outsourced institutional services or functions.

The district may thus disclose personally identifiable information from education records without consent to a "school official" under this exception when the district has determined that the official has a "legitimate educational interest" in obtaining access to the information. The district shall include in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a "school official" and what constitutes "legitimate educational interests." A school official generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Other Districts: Another exception permits a district to disclose personally identifiable information from a student's education records, without consent, to another district in which the student seeks or intends to enroll. The district has included in its annual notification of rights a statement that it forwards education records in such circumstances. The district will provide a parent with a copy of the records that were released if requested by the parent.

Directory Information: FERPA permits a district to disclose personally identifiable information from a student's education records when such information has been appropriately designated as directory information. "Directory information" is defined as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information could include information such as the student's name, address, e-mail address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended, photograph, grade level (such as 11th grade or junior year), and enrollment status (full-time or part-time).

The district may disclose directory information without consent because it has given public notice of (1) the types of information it has designated as directory information, (2) the parent's right to restrict the disclosure of such information, and (3) the period of time within which a parent has to notify the district that he or she does not want any or all of those types of information designated as directory information.

Eligible Student: FERPA also permits the district to disclose personally identifiable information from education records of an "eligible student" (a student age 18 or older or enrolled in a postsecondary institution at any age) to his or her parents 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 statement, the district may disclose the student's education records to both parents without consent from the student.

Misc. Exceptions: There are several other exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records, some of which are briefly mentioned below. Under certain conditions (specified in the FERPA regulations, 34 CFR Part 99), the district may non-consensually disclose personally identifiable information from education records:

- to authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and 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 state and local authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed;
- to organizations conducting studies for or on behalf of the districts making the disclosure for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- to comply with a judicial order or a lawfully issued subpoena; and
- in connection with a health or safety emergency.

As stated above, the conditions specified in the FERPA regulations have to be met before the district may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned above.

### **Annual Notification of FERPA Rights**

Under FERPA, the district will annually notify parents of students in attendance of their rights under FERPA. The annual notification will include information regarding a parent's right to inspect and review his or her child's education records, the right to seek to amend the records, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances), and the right to file a complaint with the Family Policy Compliance Office regarding an alleged failure to comply with FERPA. The district will also inform parents of its definitions of the terms "school official" and "legitimate educational interest."

FERPA does not require the district to notify parents individually of their rights under FERPA. Rather, the district may provide the annual notification by other means likely to inform parents of their rights. Thus, the annual notification may be published by various means, including any of the following: in a student handbook; in a notice to parents; in a calendar of events; on the district's website (though this should not be the exclusive means of notification); in the local newspaper; or posted in a central location at the school or various locations throughout the school. Additionally, some schools include their directory information notice as part of an annual notice of other rights.

### **Law Enforcement Unit Records**

A "law enforcement unit" means any individual, office, department, division or other component of the district, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by the district to: enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization; or to maintain the physical security and safety of the school. The law enforcement unit does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the district, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceeding against a student.

"Law enforcement unit records" (i.e., records created by the law enforcement unit, created for a law enforcement purpose, and maintained by the law enforcement unit) are not "education records" subject to the privacy protections of FERPA. As such, the law enforcement unit may refuse to provide a parent with an opportunity to inspect and review law enforcement unit records, and it may disclose law enforcement unit records to third parties without the parent's prior written consent. However, education records, or personally identifiable information from

education records, which the district shares with the law enforcement unit do not lose their protected status as education records because they are shared with the law enforcement unit.

### **Complaints of Alleged Violation of FERPA**

FERPA vests the rights it affords in the parent of a student. The statute does not provide for these rights to be vested in a third party who has not suffered an alleged violation of their rights under FERPA. Thus, we require that a parent have "standing," i.e., have suffered an alleged violation of his or her rights under FERPA, in order to file a complaint.

The Department of Education Family Policy Compliance Office may investigate timely complaints that contain specific allegations of fact giving reasonable cause to believe that a district has violated FERPA. A timely complaint is defined as one that is submitted to the Family Policy Compliance Office within 180 days of the date that the complainant knew or reasonably should have known of the alleged violation.

### **Electronic Records**

Electronic records (including e-mail and web content) may be considered public records and thus subject to laws and regulations governing public record disclosure and retention. The district will manage electronic records in a manner similar to how paper documents are managed.

### **Disposition of Student Records**

Education records will be retained according to the Washington State Records Retention Schedule and Policy/Procedure 6802. Unless there is an outstanding request by a parent to inspect and review education records, FERPA permits the district to destroy such records without notice to the parent.

Within ten days after receiving a request, the district will furnish a set of unofficial educational records to the parent of a student transferring out of state who meets the definition of a child of a military family in transition. When a student transfers to another school in the district, all records including the permanent student record will be transmitted to the other school. When a student transfers to a school outside of the district, the senior custodian will purge the cumulative folder of all nonofficial, extraneous information. A copy of all records will be sent to the requesting school, unless the student has an outstanding fee or fine. In those instances the enrolling school will be provided with information regarding the student's academic, special placement, immunization history and discipline records within two school days, and the records will be sent as soon as possible. The official transcript will be withheld until the fee or fine is discharged. The enrolling school district will be notified that the transcript is being withheld due to an outstanding fee or fine. The cumulative folder for an elementary or middle school student who leaves the district will be maintained for two years after discontinuance of enrollment in the district.

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