

Family Educational Rights and Privacy Act A Guide for First Responders and Law Enforcement

What is FERPA?

The Family Educational Rights and Privacy Act (*FERPA*) is a Federal law that protects the privacy of student education records. The law applies to all educational institutions and agencies (termed “schools” below) that receive funds under any U.S. Department of Education program. *FERPA* gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a postsecondary institution. Students to whom the rights have transferred are “eligible students.”

FERPA protects the rights of parents or eligible students to:

- *inspect and review education records;*
- *seek to amend education records;*
- *consent to the disclosure of information from education records, except as specified by law.*



What information can schools provide to law enforcement?

Generally, schools may disclose personally identifiable information (PII) from students' education records to outside parties, including local law enforcement, only if the parent or the eligible student has provided prior written consent. “Education records” are defined as those records that are directly related to a student and maintained by a school or a party acting for the school, and include student records such as transcripts, disciplinary records, immunization records, and other similar records.

However, there are exceptions to the definition of “education records.” One of these exceptions is for school “law enforcement unit (LEU) records.” These records are defined as records that are (1) created by a LEU; (2) created for a law enforcement purpose; and (3) maintained by the LEU. These records are not protected under *FERPA* and can be disclosed according to school policy or as required by law. Education records that are in the possession of the LEU do not lose their status as education records and must continue to be protected under *FERPA*.



FERPA permits the non-consensual disclosure of PII from “education records” for health and safety emergencies and judicial orders.

Discussed below are some relevant exceptions to *FERPA*’s general consent rule that permit the non-consensual disclosure of PII from education records to law enforcement agencies:

Schools may non-consensually disclose designated “directory information” to law enforcement agencies.

This is permitted if the school has provided notice to parents and eligible students of PII from student education records that the school has designated as directory information and if the parents and eligible students have not opted out of directory information disclosures. Directory information is information from an education record that would not generally be considered harmful or an invasion of privacy if disclosed and may include items such as name, address, telephone listing, and participation in sports.



Schools may non-consensually disclose PII from education records in connection with a health or safety emergency.

When an articulable and significant threat exists – anything from an active shooter to a hazardous weather event to a chemical spill – school officials are permitted to disclose PII from education records to appropriate parties, such as law enforcement, in order to protect the health and safety of students or other individuals. Schools are allowed to share this information only during the period of the emergency, and they have to meet certain recordkeeping requirements.

Schools may non-consensually disclose PII from education records in order to comply with a judicial order or a lawfully issued subpoena. Prior notification to parents and students is generally required, though there are some exceptions for law enforcement subpoenas where the court or issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

Questions about *FERPA*?

Email the U.S. Department of Education’s Family Policy Compliance Office with questions about *FERPA* at FERPA.Customer@ed.gov. You may also contact your legal counsel for advice.

