

CASE Collaborative Mandated Legal Training 2020-2021

FERPA
Family Rights and Privacy Act of 1974



Family Educational Rights and Privacy Act of 1974 (“FERPA”)

- There are 2 laws governing student records
 - Federal Law – FERPA
 - Massachusetts State Law – Student Record Regulations 603 CMR 23.00
 - 603 CMR 23.00 – “to insure parents' and students' rights of confidentiality, inspection, amendment, and destruction of student records and to assist local school systems in adhering to the law.”

FERPA

- Protects the privacy of student education records
 - Applies to schools that receive federal funds
- Provides the right to inspect and review
- Provides opportunity to challenge or amend the record
- Schools must have written permission from the parent or eligible student in order to release any information from a student's education record.

FERPA

- Parents get annual notification (part of the district parent handbook) of their FERPA rights:
 - To receive language translations of documents
 - Notification of what is published in a directory
 - Notification of what can be released to third parties without prior notification and consent (Military recruiter, College recruiters, etc...)
 - Notification that honor role, etc...will be released to public sources (i.e., newspapers) when appropriate

Purpose of FERPA: Parents/Students

- Gives **parents and students** the right to privacy, inspection, amendment and destruction of student records.
 - Student have this right upon reaching 14 years of age or upon entering the ninth grade, whichever comes first.
 - If a student is under the age of 14 and has not yet entered the ninth grade, the rights belong to the student's parent.
 - If a student is 14-17 years of age or has entered the ninth grade, both the student and his/her parent, or either one acting alone, can exercise these rights.
 - If a student is 18 years of age or older, he/she alone can exercise these rights, however, parents may continue to exercise the rights until expressly limited by such student.

Purpose of FERPA: School Systems

- Allows schools to disclose records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes (DOE);
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system.

Confidentiality

- Chapter 93H and Chapter 66A of the Massachusetts General Laws
- It is the policy of the Commonwealth of Massachusetts to “adopt and implement the maximum feasible measures reasonably needed to ensure the security, confidentiality and integrity of personal information.”
- No individual or organization other than the parent, guardian, eligible student or school personnel working directly with the student is allowed access to a student's record without specific written consent of the parent, guardian or eligible student.

FERPA: Description of Student Record

- “The term [education records] means those records that are:
 - Directly related to a student;
 - Maintained by an educational agency ...”

Massachusetts: Description of Student Record

- Includes transcript and temporary record
- Includes “all information . . . that is organized on the basis of the student’s name or in a way that such student may be individually identified and that is kept by the public schools.”
 - Note: location or physical form of records is irrelevant

Student Records

- **Student Records:**
 - information about a student recorded by any medium, including handwriting, computer media, microfilm, audio tape and video tape.
 - Contains personally identifiable information such as:
 - first and last name; the name of the individual's parent, guardian or other family member; the student's physical street address, telephone number, Social Security number or other identifying number; and a photograph or list of personal characteristics of the student.
 - May include information such as the student's health and immunization information, date of enrollment in school, attendance, grades and credits, progress reports, standardized test results, and bus route.
 - Information about a student's special education curriculum is also included.

Student Transcript

- A part of the student record and includes:
 - Minimum data necessary to reflect the student's educational progress and to operate the educational system.
 - name, address, and phone number of the student, his/her birth date, name, address and phone number of the custodial parent or guardian, course titles, grades (or the equivalent when grades are not applicable), course credit, grade level completed, and the year completed.
 - Kept for at least sixty (60) years after the student leaves the school system

Temporary Student Record

- Any other information kept by the school which identifies the student individually.
- All other student record information besides the transcript.
- Health information, disciplinary information, exemplars of student work, special education or 504 plan documents, incident reports, standardized test results, class rank, extracurricular activities, teacher, counselor evaluations, etc...
- Includes EMAIL
- Includes notes, which are shared
- Includes any document with the child's name on it

Keeping Temporary Records

- Can only be kept up to 7 years
- Includes IEPs
- Following transfer, withdrawal, graduation, school must provide a Notice of Destruction
 - Can include in a “graduation” letter or other document
- Schools can hand over records upon graduation
 - Obtain a signature of receipt
 - There are cases when retaining a copy of the record is advised.

Resumes

- Resumes
 - Are not a public record because of the personal nature
 - However, some of the information included on a resume can be public
 - If requested, the school will redact this information from the document
- Schools attended, degrees, license, certificates and professional training are public records and parents can request them (per NCLB).

Request for Access to the Record

- Request by subpoena
 - Subpoena is an order of the court requiring appearance in court to give testimony and/or to produce documents.
 - Failure to comply with a subpoena could result in a finding of contempt of court.
 - In most cases, when you receive a subpoena immediately contact the Superintendent who will consult with the district attorneys.
- Public records request
 - Student records may be sought by a public records request. All public records requests must be made in writing, dated, and signed by the requestor, with the return address information of the requestor.

Court Order or Subpoena for Records

- Schools must comply with the request but first must make “reasonable effort” to notify parent or “eligible student” of the order or subpoena.
- This gives parent/student opportunity to move to quash (challenge) the order or subpoena.

Parents who are Divorced, Separated, Etc.

- Custodial & non-custodial parents have the same right of access to student information.
- A parent can lose that right, but it's **not** up to the schools to figure out who has lost their right to access to student records. Parents must supply the schools with the documents to show any loss of the right to access to student records.
- Legal Custody and Physical Custody are **not** the same thing
- Both parents have legal custody until they are told that they don't.
- Parent with legal custody should sign documents such as an IEP.

“Eligible Parent”

- Under FERPA, a parent is presumed to have full rights unless the school has evidence of court order/divorce decree specifically revoking rights

“Legal” custody

- The person with legal has the right and responsibility to make the major decisions regarding the child's welfare, including education, medical care, and emotional, moral and religious development.
- **“Sole” legal custody:**
 - one parent has the right and responsibility to make major decisions.
- **“Shared” legal custody:**
 - both parents have the right and responsibility to make major decisions.

“Non-custodial” parent

- Any parent who by court order does not have physical custody.
 - Includes parents who by court order do not reside with or supervise the student, even for short periods of time.
- “Non-custodial” does not include:
 - Either parent, when they are married to each other but separated, if there is no court order about custody.
 - In that case, neither of them is a “non-custodial” parent.

Parent's Responsibility

- If a parent has lost custody or the right of access to student records,
 - the other parent will make sure that the schools have received this information, including a copy of the court order or Settlement Agreement
 - Once the Schools get a request for student record information, the student's file should be checked to see if there is any flag stating that a particular parent has lost his/her right of access to student record information.

Release of Records to Non-custodial Parents

5 Steps to Follow

- (1) Non-custodial parent makes written request to principal to have access to records.
- (2) School determines if the individual is eligible. The non-custodial parent is eligible unless he/she has been:
 - denied legal custody based on a threat to the safety of the student or custodial parents
 - denied visitation or has been ordered to supervised visitation
 - restricted by a temporary or permanent protective order
- (3) Must immediately send written notice (certified and 1st class mail) to custodial parent that the school will provide records after 21 days unless the custodial parent provides documents showing that he/she is not eligible to have them.
- (4) Prior to providing records, you must delete from records the contact information for custodial parent (e-mail and postal address, work and home phone numbers).
- (5) Prior to providing records, you must mark records to reflect that they cannot be used to enroll the child in another school.

Changing, adding, or removing documents from record

- The parent, guardian or eligible student has the right to add relevant comments, information or other written material to the student's record.
- Parent, guardian or eligible student has the right to request that information contained in the record be amended or deleted except for information inserted in the record by a team evaluation.
- “except for information inserted in the record by a team evaluation.”
 - IEPs cannot be changed or removed

Changing, adding, or removing documents from record

- The parent, guardian or eligible student has a right to a conference with the school principal for the purpose of objecting to information contained in the record.
 - Within a week after such conference, the principal must render a decision in writing regarding the request.
 - If the parent, guardian or eligible student is not satisfied with the principal's decision, he or she may appeal such decision to the Superintendent.

The school is not required to consider requests to:

- Seek to change a grade or disciplinary decision;
- Seek to change the opinions or reflections of a school official or other person reflected in an education record;
- Seek to change a determination with respect to a child's status under special education programs.

Log of Access to Records

- All individuals sign an access Log in the cumulative folder and any other official folder on a student (special education folder, etc.)
 - Identifies who looked at the file and when
 - OK to sign “Mrs. Smith, 2020-2021 school year”

Storage procedures

- The storage of student records, including special education information and/or records, must be secured and maintained in such a manner so as to prevent disclosure of confidential information.
- Records need to be kept in locked cabinets that are fire protected, flood protected, etc.

Testing Protocols

- Considered to be raw data
- Under state law they do not have to be revealed
- Under FERPA - federal record law
 - It can be shared with another evaluator in a meeting, but not copied and given
 - If a parent has requested to view/copy a test protocol, consult with the Student Services Coordinator or the Administrator for Student Services prior to release.