

Information Sharing: Family Educational Rights and Privacy Act (FERPA)

Excerpt From: <http://rems.ed.gov/K12FERPA.aspx> , then see the “Information Sharing - FERPA” tab on the left. See full resource for more explanation.

FERPA is a federal law that protects the privacy of student **education records**. The law applies to all educational agencies and institutions 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 school beyond the high school level. The Family Policy Compliance Office at the U.S. Department of Education administers *FERPA*. *FERPA* protects the rights of parents or eligible students to:

- Inspect and review education records;
- Seek to amend education records; and
- Consent to the disclosure of personally identifiable information (PII) from education records, except as specified by law.

What Are “Education Records?”

Different types of records and information may be protected by *FERPA* if determined to be “education records.” Education records are protected by *FERPA* and are broadly defined as **records** that are directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution. This non-exhaustive chart shows several examples of what types of records generally **are** and **are not** considered to be education records.

Education Records	Not Education Records
Transcripts	Records that are kept in the sole possession of the maker and used only as personal memory aids
Disciplinary records	Law enforcement unit records
Standardized test results	Grades on peer-graded papers before they are collected and recorded by a teacher
Health (including mental health) and family history records	Records created or received by a school after an individual is no longer in attendance and that are not directly related to the individual’s attendance at the school
Records on services provided to students under the <i>Individuals with Disabilities Education Act</i> (IDEA)	Employee records that relate exclusively to an individual in that individual’s capacity as an employee
Records on services and accommodations provided to students under Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA ⁵	**Information obtained through a school official’s personal knowledge or observation and not from the student’s education records**

Who May Access FERPA-Protected Education Records?

“School officials with a legitimate educational interest” may access FERPA-protected education records. Schools determine the criteria for who is considered a school official with a legitimate educational interest under FERPA regulations, and it generally includes teachers, counselors, school administrators, and other school staff.

Balancing Safety and Privacy

School officials must balance safety interests and student privacy interests. FERPA contains exceptions to the general consent requirement, including the “health or safety emergency exception,” and exceptions to the definition of education records, including “law enforcement unit records,” which provide school officials with tools to support this goal.

The Health or Safety Emergency Exception to the Consent Requirement

FERPA generally requires written consent before disclosing PII from a student’s education records to individuals other than his or her parents. **However, the FERPA regulations permit school officials to disclose PII from education records without consent to appropriate parties only when there is an actual, impending, or imminent emergency, such as an articulable and significant threat.** Information may be disclosed only to protect the health or safety of students or other individuals. In applying the health and safety exception, note that:

- Schools have discretion to determine what constitutes a health or safety emergency.
- “Appropriate parties” typically include law enforcement officials, first responders, public health officials, trained medical personnel, and parents. This FERPA exception is temporally limited to the period of the emergency and does not allow for a blanket release of PII. It does not allow disclosures to address emergencies that *might* occur, such as would be the case in emergency preparedness activities.
- The information that may be disclosed is limited to only PII from an education record that is needed based on the type of emergency.
- Disclosures based on this exception must be documented in the student’s education records to memorialize the
 - Emergency that formed the basis for the disclosure; and
 - Parties with whom the school shared the PII.

The U.S. Department of Education would not find a school in violation of FERPA for disclosing FERPA-protected information under the health or safety exception as long as the school had a rational basis, based on the information available at the time, for making its determination that there was an articulable and significant threat to the health or safety of the student or other individuals.

For more information on the health or safety exception, see “Addressing Emergencies on Campus,” June 2011, available at <http://www2.ed.gov/policy/emergency-guidance.pdf> and 34 CFR §§ 99.31(a)(10) and 99.36.

Common FERPA Misunderstandings

School administrators and their partner organizations must understand FERPA and its implications, because misinterpretations of the law and subsequent delays in information-sharing can hinder first responders’ efforts to provide necessary assistance in a health or safety emergency.

Sharing Personal Observation or Knowledge

Misinterpreting *FERPA* can lead school administrators to miss opportunities to share crucial information that could prevent an emergency situation. For instance, ***some schools incorrectly believe that information obtained from a school official's personal observations or knowledge is protected by FERPA. In fact, personal observation or knowledge is generally not considered to be part of the student's education records (see "What Are 'Education Records'") and therefore may be disclosed. For example, if a teacher overhears a student making threatening remarks to other students, the teacher is not prohibited from sharing that information with appropriate authorities, including the parents of the students who were threatened.***

However, if a school official learns of information about a student through his or her official role in creating or maintaining an education record, then that information would be covered by *FERPA*. For instance, if a principal suspends a student, the principal would not be permitted to non-consensually disclose that information (unless the disclosure met one of the exceptions in *FERPA* to consent) because he or she gained personal knowledge of that information in making that disciplinary

Additional Situations with *FERPA* Considerations

FERPA has implications in a variety of different situations, and new questions arise as schools become more creative and innovative in developing their campus safety plans. In many cases, however, it is helpful to review the *FERPA* basics to help you clearly think through each scenario. The following are some scenarios that may arise.

- **Threat Assessment Teams**

Some educational agencies and institutions may need assistance in determining whether a health or safety emergency exists for purposes of complying with *FERPA*. Federal agencies encourage schools to implement a threat assessment program, including the establishment of a multidisciplinary threat assessment team that utilizes the expertise of representatives from mental health service providers, persons familiar with emergency procedures, and law enforcement agencies in the community.

The threat assessment team must comply with applicable civil rights and other federal and state laws. Under a properly implemented threat assessment program, schools can respond to student behavior that raises safety concerns that are not based on assumptions, stereotypes, or myths about people with disabilities (including mental health-related disabilities) or people of a particular race, color, ethnicity, national origin, religion, or sex.

If a threat assessment team member meets the definition of a school official (as a party to whom the school has outsourced administrative functions or services) with a legitimate educational interest under *FERPA*, (see "Who May Access *FERPA*-Protected Education Records"), then he or she would be able to access students' education records in which he or she has legitimate educational interests. A threat assessment team member who is appropriately designated as a school official, however, may not disclose PII from education records to anyone without consent or unless one of the exceptions to consent under *FERPA*, such as the health or safety emergency exception, applies.

Frequently Asked Questions Pertaining to *FERPA*

FERPA applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. This includes virtually all public schools and school districts, and most private and public postsecondary institutions, including medical and other professional schools. Private and religious schools at the elementary and secondary school levels generally do not receive funds from the U.S. Department of Education and, therefore, are not subject to *FERPA*.

Q: Does an interagency agreement with partners such as the state or local health department enable a school to non-consensually disclose education records?

A: No. Interagency agreements do not supersede the consent requirements under *FERPA*. Although an interagency agreement would be a helpful tool for planning purposes, schools must comply with *FERPA*'s requirements regarding the disclosure of PII from students' education records.

Q: When would the health or safety exception apply?

A: Under *FERPA*, an emergency means a situation in which there is an articulable and significant threat to the health or safety of students or other individuals. This determination must be made by the school.

Q: Do I need to tell parents and eligible students or otherwise document when I have disclosed PII from their education records without consent under a health or safety emergency?

A: Within a reasonable period of time after a disclosure is made under the health or safety exception, a school must record in the student's education records the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed. Parents and eligible students have a right to inspect and review the record of disclosure, but do not need to be proactively informed that records have been disclosed.

Q: Can members of our threat assessment team have access to student education records?

A: School officials with legitimate educational interests may have access to a student's education records. Members of a threat assessment team who are not school employees may be designated as such if they are under the direct control of the school with respect to the maintenance and use of PII from education records; are subject to the requirements of 34 CFR § 99.33(a) governing the use and re-disclosure of PII from education records; and otherwise meet the school's criteria for being school officials with legitimate educational interests.

Members of a threat assessment team who are considered school officials with a legitimate educational interest generally cannot non-consensually re-disclose PII from a student's education records to which he or she was privy as part of the team. However, if a threat assessment team determines that a health or safety emergency exists, members may non-consensually re-disclose PII from a student's education records on behalf of the school to appropriate officials under the health or safety emergency exception.

For example, a representative from the city police who serves on a school's threat assessment team generally could not re-disclose, without consent, PII from a student's education records to the city police during the initial discussions about a particular student. However, once the threat assessment team determines that a health or safety emergency exists, as defined under *FERPA*, the

representative may re-disclose, without consent, PII from a student's education records on behalf of the school to appropriate officials. (See the discussion under "Additional Situations with *FERPA* Considerations")

***FERPA* Guidance and Resources**

The U.S. Department of Education's Family Policy Compliance Office is available to respond to any questions about *FERPA*. For quick responses to routine questions, please e-mail the Department of Education at FERPA@ed.gov. For more in-depth technical assistance or a more formal response, you may call the Family Policy Compliance Office at 202-260-3887 or write to them at

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202-8520

For more detailed information or additional guidance, please see the referenced documents and the FPCO website at www.ed.gov/fpc.

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