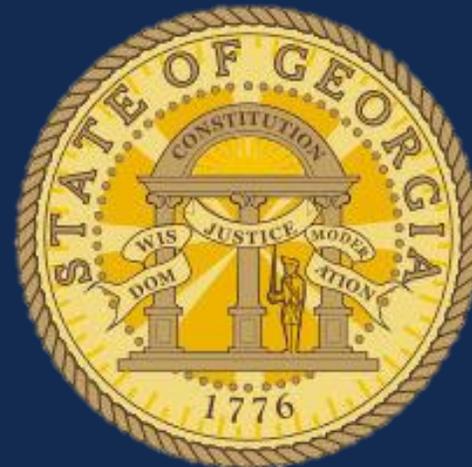


The Family Education Rights and Privacy Act

State Charter Schools
Commission of Georgia



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Be Prepared:

- Brief Overview
- Definitions
- Required Policies and Procedures
- Access for Parents
- Amending an Education Record
- Disclosing Records: Parental Consent
- Disclosing Records: Without Parental Consent
- Disclosing Records: Deidentified Data
- Disclosing Records: Georgia Open Records Act
- Common Questions
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The Basic Rules

- Adopt and Implement Required Policies
- Provide Access to Educational Records to Parents and Eligible Students
- Deny Access to Personally Identifiable Student Information to Others

Definitions

- Education Record – any record that is:
 - (1) Directly related to the student; and
 - (2) Maintained by an educational agency or someone acting on its behalf.

But NOT: Personal memory aids, law enforcement units, personnel records...
- Eligible Student – a student that is 18 years of age or older or attends a postsecondary institution.
- Parent – a natural parent, guardian, or individual acting as a parent in the absence of a parent or a guardian.
- Record – any information recorded in any way.

Required Policies and Procedures

- Annual notice of parental rights
- Notice of directory information (if applicable)
- Record of access to student records
- Using “reasonable methods” to ensure that access to information is obtained only by those with legitimate educational interest.
 - An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the requirement that the information is available only to those with a legitimate educational interest.

Access for Parents

- A parent may request access to his or her child's education records.
- The school must provide that access within a reasonable amount of time – not to exceed 45 days.
- The school does not need to provide copies of the records – unless the failure to do so would effectively deny the parent access to the records.

Access for Parents

- If the school does provide a copy of the records, the school may charge a reasonable fee for those records.
- The school may not charge an administrative fee for searching for or retrieving the records.
- If the record contains information on more than one student, the parent may only review the information about his or her student.

Amending an Education Record

- A parent may request that the school amend an education record that he or she believes is inaccurate or misleading.
- The school must decide (within a reasonable amount of time) whether to amend the record as requested.
- If the school declines to amend the record, the school must notify the parent of his or her right to a hearing.

Amending an Education Record

- If the school declines to amend the record after a hearing, the school must notify the parent of his or her right to place a statement explaining the parent's position along with the education record.
- The school must treat the parent's statement in the same manner as it does the underlying record – disclosing the statement when the record is disclosed

Disclosure: Written Parental Consent

- Unless a disclosure is otherwise authorized by FERPA, a parent must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records.
- The written consent must:
 - Specify the records that may be disclosed;
 - State the purpose of the disclosure; and
 - Identify the party or parties to whom the disclosure may be made.

Disclosure: Education Agencies

- Personally identifiable student information may be disclosed without prior parental consent to representatives of the United States Department of Education or State and local educational authorities if:
 - The disclosure relates to the audit or evaluation of Federal or State supported education programs or for the enforcement of or compliance with federal legal requirements which relate to those programs.
- State educational authorities include:
 - The Georgia Department of Education
 - The Governor's Office of Student Achievement
 - The State Charter Schools Commission (for state charter schools)

Disclosure: Contractors

- Schools may disclose personally identifiable student information to contractors if:
 - The contractor performs an institutional service or function for which the school would otherwise use employees;
 - The contractor is under the direct control of the school with respect to the use and maintenance of the information and records; and
 - The contractor is subject to the requirements of 34 C.F.R. § 99.33(a) regarding the use and redisclosure of personally identifiable information from the records.
- 34 C.F.R. § 99.33(a) provides that the individual may only use the information for the purposes for which the disclosure was made and that person may not disclose the information without parental consent.
- This applies to contractors, volunteers, or other outsourced individuals.

Disclosure: Other Common Instances

- Officials to other schools or postsecondary institutions where the student seeks to enroll. (Subject to the requirements of 34 C.F.R. § 99.34.)
- Organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. The organization must have a written agreement that contains certain provisions with the educational agency or institution.
- Accrediting agencies carrying out accrediting functions.

Disclosure: Other Common Instances

- Parents of a dependent student as defined by the Internal Revenue Service.
- Comply with a judicial order or lawfully issued subpoena.
- Prevent, respond, or mitigate a health and safety emergency. (Subject to the requirements of 34 C.F.R. § 99.36.)

Disclosure: Deidentified Data

- Schools may release information from education records after the removal of all personally identifiable information from the data.
- In determining if all personally identifiable information is removed from the data, the school must take into account other reasonably available information and the possibility of multiple data releases.
- Establish and follow a “cell size” rule. Most educational institutions will not publish data if the information returns fewer than 10 or 5 students.

Disclosure: Deidentified Data

- Personally identifiable information that must be removed includes:
 - Student name and contact information
 - ID numbers like SSN and GTID
 - Date of Birth
 - Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; and
 - Information requested by a person who the school reasonably believes knows the identity of the student to whom the education record relates.

Interplay with the Open Records Act

- State law, specifically O.C.G.A. § 50-18-72(a)(37), exempts from public disclosure any education record that is subject to FERPA.
- Accordingly, if FERPA applies to a record, it is not subject to the Open Records Act – though the parent still has a right to review the record under FERPA.
- If FERPA does not apply to a record, then the Open Records Act will apply unless there is an applicable exception to the Open Records Act.

Common Questions: HIPAA

- Schools, particularly for students with disabilities, often maintain health-related information for its students.
- Generally, we are all aware that there are confidentiality requirements regarding health information, but the specific requirements are not common knowledge.
- To what extent do schools need to apply the requirements of HIPAA?
- **None.**
- The HIPAA Privacy Rule applies to certain health care providers and governs how those “covered entities” share information. Schools generally are not health care providers, and even if they were, the information they maintain is expressly exempted from HIPAA.
- <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

Common Questions: Personal Inquiry

- Ms. Sharpe-Currier, Neighborhood Charter School's principal, gets a call from Andrea's mom complaining that Andrea's English teacher asked Andrea about how things were at home.
- Andrea's mom is livid about that invasion of privacy and threatens to sue for the violation of FERPA.
- Ms. Sharpe-Currier calmly explains that FERPA applies to the treatment of education records and has absolutely nothing to do with general privacy concerns of students and families. Ms. Sharpe-Currier went on to describe that the teacher noticed Andrea's dropping grades and withdrawn demeanor and it was out of sincere concern for Andrea's well-being that she asked about home.

Common Questions: Liability

- Andrea's mom is even more outraged and says that her lawyer is "drawing up the papers" for the coming lawsuit.
- Ms. Sharpe-Currier said that was fine – knowing that even had there been a FERPA violation, there is no private right of action, thus there is no civil liability for the disclosure. She is confident that the school will be safe from USDOE's enforcement mechanism of withholding federal funds.

Common Questions: Observation

- Timothy's English teacher notices that he is isolating himself from his peers, refuses to speak in class unless called upon, and his creative writing assignments have a noticeably melancholy tone with an oppressive step-father as a reoccurring character.
- Timothy's Math teacher frequently disciplines him because he is sleeping in class and has yet to turn in a homework assignment on time. She once overheard his comments about harming his family but dismissed them as hyperbole.
- Timothy's Science teacher is pleased with his performance in class but noted unusual interest in exothermic reactions - particularly those that could be created from household products.

Common Questions: Observation

- None of Timothy's teacher's talk about their observations because they mistakenly believe that FERPA prevents them from talking about students with others. They forgot that FERPA is a law that governs education records and not what they see and hear in class.
- Further, if there is a health and safety emergency, they are permitted to disclose education records without parental consent.

Common Questions: Non-Custodial Parents

- Janet is Danielle's single mom.
- The school is contacted by Arthur, Danielle's estranged father, who wants to come in and see her education records.
- Janet hates Arthur and directs the school not to let him near those records. She provides the school a copy of the divorce decree that states that Janet has sole custody of Danielle.
- The school knows that noncustodial parents have the same rights under FERPA as custodial parents unless the school is provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

Takeaways

- Ensure your student handbooks have a notice of FERPA rights and, if appropriate, designation of directory information.
- Always, always, always, use reasonable methods to safeguard student data and records to ensure that only individuals within your organization who have a legitimate educational interest are able to access that information.
- Be sure that contractors and volunteers understand the confidentiality requirements of FERPA and the need to maintain that confidentiality.
- You can never be too careful when releasing deidentified data– take out all personally identifiable information and be aware that even innocuous demographics will eventually identify a student over time.

Competitors

- United States Department of Education – Family Policy and Compliance Office
 - <http://www2.ed.gov/policy/gen/guid/fpc/index.html>
- United States Department of Education – Privacy Technical Assistance Center
 - <http://ptac.ed.gov/>
- FERPA Regulations
 - http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=3a8eb549fc750afc9003e727c89286f6&tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl