



The Protection and Advocacy System for South Carolina

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FACT SHEET

FERPA Family Educational Rights and Privacy Act¹

FERPA (Family Educational Rights and Privacy Act) is a federal law that gives parents the right to review ALL the education records of their child—not just the special education file. FERPA also protects children’s privacy by limiting those who can obtain educational records without parental consent.

Under FERPA, "education record" is defined as any record that is directly related to a student and maintained by an educational agency or institution. It does not include personal notes kept by school staff. Example: A special education teacher’s personal notes are not considered education records if she keeps them completely private, and does not share them with any other school personnel (except with a temporary substitute). If she uses her notes in Individual Education Program (IEP) meetings, they become education records.

RIGHT TO REVIEW RECORDS:

After receiving a request from a parent, a school district has 45 days to let parents inspect and review their child’s education records. The request does not have to be in writing, but it is recommended. A sample FERPA request letter is attached to this Fact Sheet. Normally parents may review information only about their own child. Sometimes education records like discipline reports also contain information about other students. The school should separate the records or block out information about any other students. If the revised record would not be understandable, the parents must be allowed to review the full record even if it contains information about other students. The parents may not be given copies of the full record unless the other student’s parents give written consent. ²

¹ 20 United States Code Sections 1232g and h; 34 Code of Federal Regulations Part 99

² Family Policy Compliance Office letter re: Regional Multicultural Magnet School District, January 3, 2008; (108 LRP 29577)

Many school districts allow parents to review education records by simply providing copies of the records. A district may instead require parents to come to their buildings to review their child's records. However, when parents are not able to come to a school district building, the district must provide the parents with a copy of the requested records or make other arrangements for the parents to review the records. School districts can also charge a fee for copies of education records, unless the charge somehow prevents a parent or eligible student from exercising the right to review the records.

CONFIDENTIALITY OF RECORDS:

Generally, FERPA requires that school districts get written consent from parents before they release a student's personal information to outside parties. The written consent should list the records that the school wants to share, the reason they want to share the information, and the name of the outside party who is getting the records. Parents are not required to give their consent. However, FERPA contains a long list of exceptions where parental consent is not necessary. Some of these exceptions include: health and safety emergencies; disclosure to school staff and officials; disclosure to government agencies; discipline; law enforcement; and juvenile justice information.

CORRECTION OF RECORDS:

If parents feel that something in the student's education records is not correct, FERPA gives parents the right to request the record be changed. If the district refuses to honor the request, the parents have a right to request a hearing to challenge what they think is not correct. Parents have a right to place a statement in the record about why they believe the record is not correct.

COMPLAINT TO U.S. DEPARTMENT OF EDUCATION:

If parents and a district disagree about rights to education records under FERPA, the parents can file a complaint. Complaints go to: Family Policy Compliance Office ("FPCO"), U.S. Department of Education, 400 Maryland Avenue, SW Washington, D.C. 20202-5920. Phone: (800)872-5327. Complaints must be filed within 180 days of the violation. The Department of Education will review the complaint. It may then formally investigate and issue a decision detailing the specific steps the school must take to comply with the act. Instead of formally investigating a complaint, the Department may take some other action like assisting the school and parents in reaching a resolution.³ There is no specified timeline for the Department to complete investigations or resolution of complaints.

³ Policy Guidance document, US Department of Education, December 20, 2018
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA_Enforcement_Notice_2018.pdf

ANNUAL RIGHTS NOTICE:

School districts are required to notify parents annually of their right to inspect and review records, to request amendment of records, and how to file a complaint if the school district fails to follow the law.

RIGHTS OF STUDENTS WHO ARE 18 OR IN COLLEGE:

When a student either turns 18 or is in college, rights under FERPA transfer from the parents to the student. However, a school may still disclose information from a student's educational records to the parents of the student, without the student's permission, if the student is a dependent for tax purposes. The exception also includes giving student information in connection with a health or safety emergency or when the student violates a law or policy.

OTHER RESOURCES:

U.S. Department of Education website at:

<http://www.ed.gov/policy/gen/guid/fpco/index.html>

Wrightslaw, Special Education Law at:

<http://www.wrightslaw.com/info/ferpa.index.htm>

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates. This publication is funded by the US Department of Health and Human Services (Substance Abuse and Mental Health Services Administration and the Administration for Community Living) and by the US Department of Education (Rehabilitation Services Administration). It does not necessarily represent the official views of the funding authorities.

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**SAMPLE LETTER TO
REQUEST RECORDS**

[Today's date]

Dr. Jane Doe
Superintendent
ABC School District
PO Box 123
Anywhere, SC 29222

RE: [Your Student's name]

Dear Dr. Doe:

I am writing to request a complete copy of the records of [name of student], to include all documents generated by both school and district personnel and outside sources, as well as all confidential, medical, psychological, regular education, special education and other documents within the district's possession. This request is made under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232, 34 C.F.R. 99.

Please mail a complete copy of all personally identifiable records regarding my [son/daughter] as of today's date to me at [your full address]. I request that any copying fees be waived to facilitate my access to my child's records.

Thank you for your prompt attention to this matter.

Sincerely yours,

Parent