

FPCO Decisions Regarding FERPA - 2013

The Family Policy Compliance Office (FPCO) administers the Family Educational Rights and Privacy Act (FERPA), which includes the investigation of complaints which may suggest that a school has violated FERPA.

FERPA is a federal law that gives parents a right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records.

Subject to certain statutory exceptions, the term "education records" means those 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. The phrase "information directly related to a student" is synonymous with "personally identifiable information" under 34 CFR 99.3. That phrase includes personal identifiers such as student names, social security numbers, biometric records and indirect identifies as well. The term "maintained" does not include e-mail that is not in the student's permanent file. (*S.A. v. Tulare County Office of Education*, 53 IDELR 143 (E.D. Cal. 2009).)

Note: Pupil records law in California - Education Code sections 49060-49079.7 - Important differences.

- Right to Inspect and Review within 5 business days vice 45 calendar days under FERPA
- Right to a copy of all pupil records vice merely inspecting and reviewing.

A. 114 LRP 11520 (FPCO 12/05/13) *Letter to Anonymous*

Rule: FERPA requires schools to provide a process by which parents may address information in their child's educational records and seek to correct that information which they believe to be inaccurate or misleading. FERPA does not, however, provide parents an avenue to appeal to FPCO a school's substantive decision regarding an educational record.

Rule: Information about a student that is obtained through an individual's personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA even if an educational record contains the subject information. However, where the individual who discloses information about a student, based on his/her personal knowledge or observation, had an official role in making a determination that generated a protected education record, then he/she may not disclose that information absent parental consent or some exception permitting disclosure without parental consent.

Facts: In this matter, the parent sought to have her children's names removed from specific records and e-mails. The school declined to do so.

Decision: FERPA affords parents the opportunity to seek amendment of their children's education records which they believe contain information that is inaccurate or misleading. A school is required to consider the request for amendment of an education record, to inform the parent of its decision and, if the request is denied, to advise the parent of the right to a hearing on the matter. If, as a result of a hearing, a school decides not to amend the record, then the parent has the right to insert a statement in the record setting forth his or her views. That statement must remain with the record for as long as the record is maintained.

However, FERPA does not provide parents an avenue to appeal to FPCO a substantive decision made by the school as to the requested amendment. FERPA is not designed to afford a challenge to FPCO of substantive decisions made by an educational agency unless the information has been inaccurately recorded.

Facts: The parent also complained that the school disclosed unspecific information from her son's educational record without her consent.

Decision: FERPA applies to the disclosure of tangible records and of information derived from tangible records. FERPA does not protect the confidentiality of information in general and, therefore, does not apply to the disclosure of information derived from a source other than education records, even if education records exist which contain that information.

As a general rule, information that is obtained through personal knowledge or observation, and not from an education record, is not protected from disclosure under FERPA.

However, where the individual who discloses information about a student, based on his/her personal knowledge or observation, had an official role in making a determination that generated a protected education record, then he/she may not disclose that information absent parental consent or some exception permitting disclosure without parental consent.

For example, under FERPA, a teacher may not disclose a grade that the teacher issued to a student merely because the teacher has personal knowledge of the grade. Similarly, under FERPA, a principal who took official action to suspend a student may not disclose that information absent consent or some other exception to consent permitting disclosure.

B. 114 LRP 1484 (FPCO 09/13/13) *Letter to Anonymous*

Rule: Rights under FERPA are afforded to parents and not grandparents unless the grandparents hold the educational rights afforded to parents.

Facts: A grandparent complained that the school district his granddaughter attended violated FERPA when it disclosed the grandparent's mailing address to a third party without

the grandparent's consent. Does not appear that the grandparents held the educational rights of their grandchild.

Decision: FERPA gives *parents* the right to have access to their child's education records, the right to seek to have the records amended, and the right to have control over the disclosure of information from the records. FERPA does not afford this right to persons other than the parents, for example grandparents.

C. 113 LRP 38101 (FPCO 07/17/13) *Letter to Brooks*

Rule: If a student is claimed as a dependent by either parent for tax purposes, then either parent may have non-consensual access. The school, however, is not required by FERPA to disclose the dependent student's educational records to the parents nor is the school required to have the consent of the eligible student prior to disclosure.

Facts: Student turning 18 in a couple of weeks complains that the school is allowing her non-custodial father access to her educational records.

Decision: When a student reaches the age of 18 or attends an institution of post-secondary education at any age, that student is deemed "eligible" and all of the rights afforded by FERPA transfer from the parents to the eligible student. Once a student becomes an eligible student under the act, a school must refuse to provide parents access to the education records unless the student provides his/her consent.

School officials could nevertheless disclose education records so long as the disclosure met one of the exceptions to consent listed in the law and regulations. One of those exceptions, permitting the non-consensual disclosure of information derived from education records to that student's parent, is if the student is a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986.

D. 113 LRP 35726 (FPCO 6/19/13) *Letter to Anonymous*

Rule: If the educational records of a student contain information on another student, the parent of the other student may review or be informed of the specific information about his/her child only. If the educational record contains information that directly relates to another student and the information cannot be separated easily and remain understandable, the school may permit each parent to review or be informed of such information.

Facts: A high school student was assaulted in a locker room and the district took disciplinary action against the perpetrator. The victim's mother requested that the district provide her with the final results of a disciplinary hearing. The school refused the request, and the parent filed a complaint.

Decision: Generally, a school may not disclose personally identifiable information from a student's education record to a third party unless the student's parent has provided written consent. If, however, the education records of a student contain information on another student, the parent of the other student may be informed of only the specific information in the record about the student who is his or her child. If such information cannot be separated easily and remain understandable, then the school is required to permit each parent to review or be informed of such information.

In this case, if a sanction in the final outcome of a disciplinary proceeding is that the perpetrator stay at least 25 feet from the victim, such information would be directly related to both students and the school could let both parents inspect and review or be informed of such a sanction. However, if the other sanction in the case is that the perpetrator will be suspended from school for three days, that information would be directly related only to the perpetrator. The school would be prohibited from disclosing such information to the victim's parent.

E. 113 LRP 35724 (FPCO 6/19/13) *Letter to Anonymous*

Rule: A school may make a non-consensual disclosure of personally identifiable information from a student's education record to a third party (such as another school) in conjunction with making or recommending an educational placement under Part B of the Individuals with Disabilities Education Act .

Facts: In preparing for an IEP meeting at which the school intended to recommend a non-district placement for a severely disabled student, the special education director had discussed the student's disability and needs with administrators of a couple potential placement sites. The parents learned of this and complained that the school disclosed personally identifiable information from the student's educational records with a third party and did so without parental consent.

Decision: Generally, a school may not disclose personally identifiable information from a student's education record to a third party without the parent's written consent. There are exceptions to FERPA's general written consent requirement. One such exception permits a school to non-consensually disclose information from a student's education record to another school where the student seeks or intends to enroll. (34 CFR § 99.31(a)(2).) The FPCO interprets this exception to permit a school to disclose student information, without parental consent, in conjunction with making or recommending an educational placement under Part B of the Individuals with Disabilities Education Act, so long as the school has either: (i) advised in its annual notice that it discloses education records for enrollment purposes, or (ii) made a reasonable attempt to notify the parent in advance of the disclosure.

F. 113 LRP 35722 (FPCO 6/19/14) *Letter to Anonymous*

Rule: It is not uncommon that there may be information in an education record that relates to two or more students and which cannot be separated easily and remain understandable to a parent. In that case, FERPA gives each parent the right to inspect and review, or be informed of the information in the student's education records; but, FERPA would not permit a school to provide one of the parents with a copy of information in an education record that is directly related to the two students unless the other parent gave written consent for the school to do so.

Facts: The school investigated the misconduct of three students and prepared a single incident report. Each set of parents were provided a copy of the incident report. The report showed up in a court case (TRO) between the parents and one complained.

Decision: FERPA provides that if the education records of a minor student contains information on more than one student, the parent may inspect and review or be informed of only the specific information in the record about the student who is his or her child. When there is information in an education record that is directly related to two or more students and which cannot be separated easily and remain understandable to a parent, FERPA gives each parent (for whom there is information directly related to his or her child) the right to inspect and review, or be informed of the information in the student's education records. However, FERPA does not permit a school to provide one of the parents with a copy of information in an education record that is directly related to the two students unless the other parent gave written consent for the school to do so.

G. 113 LRP 35720 (FPCO 6/19/13) *Letter to Anonymous*

Rule: The federal FERPA only requires schools provide parents with an opportunity to inspect and review their child's records. Under federal FERPA, the deadline is 45 calendar days.

Facts: Parent complained that school did not email the requested student records per an email request.

Decision: Review of education records is generally limited to an in-person review except in exceptional circumstances. Under FERPA, a school must provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request. A school is not required by FERPA to provide a parent with copies of education records unless a failure to do so would effectively prevent the parent from obtaining access to the records.