

FEDERAL FERPA

20 U.S.C. Section 1232g and 34 C.F.R. Part 99

1. **What is the purpose of this law?** The purpose is to assure parents of access to their students' education records and to protect such individuals' rights to privacy by limiting the availability of student records without parental consent.
2. **What are the rights established by FERPA?** There are three general rights: (1) the right to inspect and review the education records relating to the student maintained by the schools the child attends or has attended; (2) the right to challenge and require the school to amend an education record concerning the student that is inaccurate, misleading or otherwise in violation of the students privacy rights; and (3) the right to require the school to obtain written consent prior to the disclosure of personally identifiable information, subject to specific exceptions.
3. **What are education records?** Usually defined as "...those records, files, documents, and other materials which...contain information directly related to a student; and...are maintained by an educational agency or institution..." If the student information is maintained by the school, it does not matter if it is maintained by the counselor, the classroom teacher, the principal in a special file at his desk or in the student's official student file. Absent unusual circumstances, student records probably **do not include** notes taken or kept in an educator's personal calendar or daytimer. 
4. **What are exceptions to student records?**
 - sole possession records
 - law enforcement records.
 - employment recordsNote: Nothing requires a school to *keep* sensitive records that it receives. If records are sensitive, return or destroy when no longer needed.
5. **What rights do non-custodial parents have regarding their students' records?** Non-custodial parents have the right to review their students' records *unless* the school is presented with a court order that precludes the noncustodial parent from accessing her student's records.
6. **Under what conditions is prior consent not required to disclose student information?**
 - if the information is directory information
 - to school officials with legitimate educational interest
 - to state and local educational authorities under certain conditions
 - to organizations conducting "...studies for or on behalf of..." the SEA/school/district for specific purposes
 - in the event of health or safety emergencies
 - in response to subpoenas/judicial orders
 - to representatives of the juvenile justice system, pursuant to state statute.
7. **What if a parent disagrees with something in her student's school record?** (1)Parent should identify portion of record believed to be inaccurate or misleading; (2) school must decide within reasonable time whether to amend as requested; (3) if school decides not to amend, must inform parent of right to a hearing; (4) after hearing, if decision is not to amend, parent has right to insert a statement into student record.
8. **What is "directory information?"** Annually, parents must receive notice of school's definition of directory information and that schools *may* release directory information unless parent objects in writing. Directory information may include: student's name, address and telephone number, date and place of birth, major field of study, official activities, dates of attendance, height and weight for sports, degrees and honors, photo(s).

9. **Can students review their own records?** Yes, students can review their own records but only under certain circumstances. Under FERPA, the right to review records transfers from the parents to the students once students turn eighteen years old or attend a postsecondary institution. As long as students are legally dependent for tax purposes, parents retain access rights to records.
10. **What if school employees violate FERPA?** There is no doubt that staff members may be disciplined for violating student federal and state privacy rights. A board would be well advised to have a written policy to deal with major or minor violations of the applicable privacy acts.
11. **Is disclosure of directory information mandatory?** Disclosure of directory information is optional. A school or district policy should list items considered directory information.
12. **Does the FERPA require a school to provide a parent copies of records?** Generally, a school is not required to provide parents copies of records. However, if the distance is great enough to make it impractical for the parent to visit the school to review the records, the school must make copies of the records and send them to the parent when that parent requests access to the records. There is another narrow exception to the no-copy generalization in that parents must receive copies of their children's IEPs.
13. **Must a school employee provide student records to parents immediately upon request?** No. It is helpful if schools have a policy. But a short or reasonable delay, especially for consultation with supervisors, that does not effectively deny access is permissible.
14. **Must the school notify the non-custodial parent of his/her FERPA rights?** No. The school would be considered in compliance with the law if it notifies only the parent who has custody of the child.
15. **Is the school required to honor a parent's "standing request" for access or copies?** No. The FERPA does not require a school to honor a standing request, but the school may do so if it wishes. If parents wish to obtain information from their child's records on a regular basis, they should submit requests periodically. The school must respond to each request within 45 days.
16. **How can a non-custodial parent get access to records?** Any parents may ask the school for the opportunity to review records, either by going to where the records are kept or by requesting copies. The school may ask the parent for some identification.
17. **What has been the effect of the recent U. S. Supreme Court decision, Falvo v. Owasso (February, 2002, on student records issues?** The Court clearly, but narrowly, stated:



“The federal statute that prohibits release of student education records without parental consent does not outlaw the practice of “peer grading,” in which students score each other’s tests and papers.”

I don't think we can assume any more flexibility than directly addressed by the Court. Teachers should not post graded work with students' names; students should not call out their scores; teachers should treat grade books and student work confidentiality.

STATE FERPA
Utah Code 53A-13-301 through 302

1. ***Where does this law come from?*** The state FERPA law is an expansion of the Hatch Act/Grassley Amendment that is found at the end of the federal FERPA law. The state law was passed by the Utah Legislature in 1994 and amended the next year.
2. ***What is the purpose of the law?*** The purpose of the law is to establish that certain issues or areas of discussion are best discussed in a private or family setting and should only be discussed in a school setting or with school personnel with parental permission. An additional purpose is to direct educators to contact parents or guardians if the educator knows that a student is in a dangerous situation.
3. ***What are the issues that require parental consent prior to discussion with students?***
 - political affiliations and philosophies
 - mental or psychological problems
 - sexual behavior, orientation, or attitudes
 - illegal, antisocial, self incriminating, or demeaning behavior
 - critical appraisals of close family members
 - religious affiliations or beliefs
 - legally recognized privileged relationships (priests, doctors)
 - income, unless required by law
4. ***Does this law apply whether the questions arise from a survey or evaluation, a classroom discussion or a more private discussion with a teacher or school counselor?*** The law would apply to all of these as well as questions presented in classroom activities or assignments.
5. ***Does the law have exceptions to prohibited topics?*** Yes. In 2014, the Legislature passed H.B. 23 (§53A-13-302(7)) which allows a school employee/agent/SRO to intervene and ask a student questions if the employee believes the student is at risk of attempting suicide, physically self harming behavior or harming others (bullying? violence? harassment?). These employee questions should be for the purpose of referring a student to appropriate services and/or notifying parents. The new legislation also allows a public school suicide prevention program to authorize employees to ask students questions related to suicide “prevention, intervention and postvention.” This provision seems to authorize student surveys that are focused on prevention.
6. ***What kind of parental notice and consent is required?*** Parent(s) must be notified at least two weeks before assignments or planned curriculum activities are scheduled about protected areas. Parents must give prior written parental consent or students may not participate in discussions or activities.
7. ***What if a student volunteers information about these protected areas (for example, “My mom’s boyfriend gets drunk and passes out every night at our house! I don’t like it! What can I do about it?”)*** This law is directed at information that is elicited from students about protected topics. In addition, educators may not provide answers to questions that would be in violation of state or federal law. Educators are trained to focus student comments and discussion on core curriculum issues; they clearly understand that discussion of protected issues, even if initiated by students, would violate the spirit of the law.
8. ***Does this law change any obligation that educators have to report suspected child abuse?*** No! All adults who “have reason to believe” (a very low standard) that a child is being abused *shall* report the belief to law enforcement or the Division of Child and Family Services.



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