



2019  
School Law Seminar  
Student Privacy and  
FERPA  
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May 7, 2019

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Family Educational Rights and  
Privacy Act (FERPA)

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**What is FERPA?**

- FERPA is the federal law that protects the privacy of students' education records.
- FERPA applies to educational agencies and institutions that receive funds from the U.S. Department of Education.
- Under FERPA, parents and students are granted very specific and extensive rights regarding confidential information contained in their education records.

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**Importance of Confidentiality**

- If violations are found, federal funds may be withheld.
- Parents may proceed in a private civil action against the school district seeking redress for violations.
- It's the right thing to do. Students should be able to rely on their schools to protect their information.

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**Goal of FERPA**

- To prohibit the unauthorized disclosure of Personally Identifiable Information (PII) from student education records.
- This goal will apply without regard to the format of the record (written, video, or electronic).

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**Definitions**

Education Records

- Records that are directly related to a student,  
AND
- Maintained by an educational agency or institution.

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### Definitions

Education Records are not Law Enforcement Records:

- Records that are created by law enforcement and for law enforcement purposes,

AND

- Maintained by the law enforcement unit.



### Definitions

Personally Identifiable Information (PII)

- Information that is kept by a school district about a student that could make the student's identity easily traceable.
- Includes, but not limited to, social security numbers, biometric records, student ID numbers, etc.



### Definitions

Another way to think of PII is information that is linked or linkable to a specific student that would allow a reasonable person, who does not have personal knowledge of relevant circumstances, to identify the student with reasonable certainty.



### Definitions

Directory Information

- Information not generally considered harmful or an invasion of privacy if disclosed.
- Includes, but not limited to, the student's name, grade level, participation in official recognized activities and sports, etc.



### Definitions

Parent

- A natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian (ex. Grandparent).
- What about parents who have had their rights revoked under the law?



### Rights of Parents under FERPA

Educational Agencies must annually notify parents of their rights under FERPA.

This may be provided by any means likely to inform parents of their rights.

This is also generally included with the district's directory information notice.



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)  
NOTIFICATION OF RIGHTS  
ELEMENTARY AND SECONDARY SCHOOLS

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days of the day the School receives a request for access.  
Parents or eligible students should submit to the School principal a written request that identifies the record(s) they wish to inspect. The School official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.
2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.  
Parents or eligible students who wish to ask the School to amend a record should write the School principal, clearly identify the part of the record they want changed, and specify why it should be changed. If the School decides not to amend the record as requested by the parent or eligible student, the School will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.
3. The right to privacy of personally identifiable information in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement personnel), a person serving on the School Board, a parent or company with whom the School has contractual services or functions, it would otherwise use its own employees to perform such as an attorney, auditor, medical consultant, or therapist), a parent or student serving on an official committee, such as a disciplinary or grievance committee, or a parent, student, or other volunteer assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the School discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer.



### Rights of Parents under FERPA

FERPA affords parents certain rights with respect to the student's education records.

- Right to inspect and review the student's education records within 45 days of request.
- Right to seek amendment of records that are believed to be inaccurate or misleading.
- Right to consent to the disclosure of information from education records.



### Rights of Parents under FERPA

Right to inspect and review the student's education records within 45 days of request.

If circumstances prevent the exercise of this right, the district shall: (ex. Parent not in commuting distance)

- (1) Provide the parent with a copy of the records requested; OR
- (2) Make other arrangements for the parent to review the records.



### Rights of Parents under FERPA

Right to seek amendment of records that are believed to be inaccurate or misleading.

If school district does not believe the record needs to be amended, the parent has a right to a hearing.

There is no right to seek the correction of a letter grade or other marks made by a teacher. Only for inaccurate or misleading information.



### Rights of Parents under FERPA

Right to consent to the disclosure of information from education records.

The right to allow disclosure of information that would otherwise be protected. Ex. Personally Identifiable Information.



### Transfer of Rights

These rights transfer to the student once the student has:

- Reached 18 years of age, OR
- Attends a postsecondary institution and thereby becomes an "eligible student."



## Transfer of Rights

Even after a student has become an “eligible student,” FERPA allows parents to have access to their child’s records, without the student’s consent, in certain situations.



## Transfer of Rights

- The student is a dependent for federal tax purposes,
- A health or safety emergency situation,
- The student has violated any law, or any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance and the student is under the age of 21.



## Disclosure

Except for specific exceptions, a parent or eligible student shall provide a signed and dated written consent before a school may disclose PII from educational records. The consent must:

- Specify records that may be disclosed;
- State the purpose of disclosure; AND
- Identify to whom the disclosure may be made.



## Disclosure

However, there are exceptions where prior consent is not required to disclose information. The two main reasons are:

- To school officials with a “legitimate educational interest” AND
- Directory Information



## Disclosure (School Officials)

Districts may allow school officials who have a “legitimate educational interest” to have access to student records without consent.

Criteria of who is a school official and what a “legitimate educational interest” is must appear in the district’s annual FERPA notification for parents and students.



## Disclosure (School Officials)

Though not defined in statute, “school officials” are generally administrators, teachers, board members, etc.

A “legitimate educational interest” is an interest that allows an official to fulfill his or her professional responsibility.

If others are present who do not qualify, confidentiality may be violated.



## Disclosure (Directory Information)

Directory information may be disclosed if:

- Parents are annually given public notice of the types of information designated as directory information.
- AND
- Given opportunity to opt-out of the release of that information



## FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

### DIRECTORY INFORMATION

The Family Educational Rights and Privacy Act (FERPA), a Federal law, requires that Jones County School District, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, Jones County School District may disclose information designated "directory information" without written consent, unless you have advised the District in the contrary in accordance with District procedures. The primary purpose of directory information is to allow the Jones County School District to include this type of information from your child's education records in certain school publications. Examples include:

- A yearbook, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as for recruiting, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, one federal law requires local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act of 1965 (ESEA) to provide military, veterans, upon request, with their directory information comprising—names, addresses and telephone listings—unless parents have advised the LEA that they do not want their student's information disclosed without their prior written consent.

If you do not want Jones County School District to disclose directory information from your child's education records without your prior written consent, you must notify the District in writing by September 17, 2018. Jones County School District has designated the following information as directory information:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Student's name</li> <li>• Address</li> <li>• Telephone listing</li> <li>• Electronic mail address</li> <li>• Photograph</li> <li>• Date and place of birth</li> <li>• Major field of study</li> <li>• Dates of attendance</li> <li>• Grade level</li> <li>• Participation in officially recognized activities and sports</li> <li>• Weight and height of members of athletic teams</li> </ul> | <ul style="list-style-type: none"> <li>• Degrees, honors, and awards received</li> <li>• The most recent educational agency or institution attended</li> <li>• Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems that cannot be used to access education records without a PIN, password, etc. (A student's PIN, in whole or in part, cannot be used for this purpose.)</li> </ul> |
|--|--|



## Disclosure (Directory Information)

Directory information is generally not considered harmful and may be disclosed by the district. This includes:

- In school functions (ex. Playbills)
- Class ring manufacturers
- Yearbook publishers
- Military recruiters



## Disclosure

Other exceptions for disclosure include:

- To schools in which a student seeks or intends to enroll or for financial aid purposes,
- A health or safety emergency,
- Subpoenas or court order,
- To comply with any other state or federal laws.



## Other Records

Records **not** covered under FERPA include:

- Records of instructional, supervisory, and administrative personnel,
- Which are in the sole possession of the maker, AND
- Are not revealed or accessible to any other person.



## Other Records

So, if a teacher keeps notes on a student, but shows them to **NO ONE**, and these notes are kept in a secure manner or location, these notes are not considered education records.



### Destruction of Information

- Records are not destroyed if there is an outstanding inspection request.
- Permanent record is always maintained.
- Board policies need to be in place regarding the destruction of information which complies with state guidelines. (ex. Policy JR “Student Records”)

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### Scenario #1

- Papers containing data regarding a special needs assessment for a 7<sup>th</sup> grader named Kevin were thrown in a dumpster behind the school.
- Wind blew the papers out of the trash, and another student read them.
- Data included Kevin’s IQ score, psychological data, behavioral information, and family history.

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### Scenario #1

- The information was passed around the school and Kevin was bullied.
- The parents sued the school district and a jury found the district liable for damages.
- What about the damage to Kevin?

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### Scenario #2

- A group of male students were involved in a fight on school grounds.
- A surveillance camera from the school recorded the incident.
- Parents of one of the students requested to view the video.

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### Scenario #2

- The record being sought by the parent is an education record of both boys who were fighting because it contained personally identifiable information of the students.
- The parent would be able to view any part of the video in which their child was the focus.
- What if it was a camera from a shop across the street?

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### Scenario #3

- A teacher is tired of her students asking about their grades, so she decides to post them on a wall in the classroom.
- She doesn’t post the grades under the students names, but decides to use only the last four digits of the student’s social security numbers.

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### Scenario #3

- Student's social security numbers or any portion of the social security number is considered an educational record and is protected by FERPA.
- Social security numbers are PII and are considered easily traceable.
- These numbers cannot be disclosed as directory information because they can easily lead to sensitive information.



### Scenario #4

- A parent wants to throw a birthday party for her daughter and invite her daughter's class.
- She asks her daughter's teacher for a list of names of each student in the class in order to send out invitations and make personalized treat bags.
- This parent is well known and very trustworthy.



### Scenario #4

- The names of students are usually considered directory information by the district and can be given out.
- As long as the school district has given annual notice, this information can be disclosed without securing prior written consent.



### Remember to Ask

Are the records directly related to a student?

AND

Maintained by an educational agency or institution?



## **Policies Involving FERPA**



### Policy Code **JR - Student Records**

- Goes over the Annual Notification requirement.
- Discusses the disposal of certain records, how long certain records must be kept, and certain records which cannot be destroyed.



Policy Code  
**JRA - Student Directory Information**

- Discusses directory information and the requirement to notify parents.
- Gives a list of possible directory information while allowing the district to customize.
- Also lists the exceptions to prior consent.



Policy Code  
**JRAA - Student Recruitment and Student Directory Information**

- Discusses directory information in relation to information given to military recruiters.
- Provides parents or students age 18 and over to opt out.



Policy Code  
**JRAB - Compliance with FERPA**

- General district compliance standards for school districts.
- Discusses definitions, parental rights, location of records within the district, procedure to inspect education records, directory information, etc.



Policy Code  
**BCADA - Taping of Conferences and Hearings**

- Discusses how boards must be careful regarding student information in board meetings. For example student disciplinary hearings.
- That information must stay within the executive session.



Policy Code

- **JR - Student Records**
- **JRA - Student Directory Information**
- **JRAA - Student Recruitment and Student Directory Information**
- **JRAB - Compliance with FERPA**
- **BCADA - Taping of Conferences and Hearings**



**Questions?**



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### mission:

“ To ensure quality school board performance through Advocacy, Technical Assistance, Leadership Training, and Information Dissemination ”