



# MONTGOMERY

## PREPARATORY ACADEMY

SPPO-21-04

### **A Parent Guide to the Family Educational Rights and Privacy Act (FERPA)**

*Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

The Family Educational Rights and Privacy Act or FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) provides certain rights for parents regarding their children's education records. FERPA gives these rights to custodial and noncustodial parents alike, unless there is a court order, legally binding document, or State law that specifically provides to the contrary. When a student reaches 18 years of age or attends an institution of postsecondary education at any age, he or she becomes an "eligible student," and all rights under FERPA transfer from the parent to the student. Given the target audience for this document is parents, this guide is intended to discuss parents' rights under FERPA. Under FERPA, the term "parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. A companion document discussing eligible students' rights under FERPA is available on our website at <https://studentprivacy.ed.gov/resources/ferpa-general-guidance-students>.

FERPA is a Federal law that is administered by the Student Privacy Policy Office (SPPO) in the U.S. Department of Education (Department). FERPA protects "education records," which are generally defined as 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. An "educational agency or institution," herein after referred to as a "school," generally means a school district, a public elementary or secondary school, or an institution of postsecondary education such as a college or university. There are also a few exceptions to the definition of education records, such as law enforcement unit records and sole possession records. More information is available at <https://studentprivacy.ed.gov/faq/what-records-are-exempted-ferpa>.

FERPA applies to schools that receive funding under any program administered by the Department. Private and faith-based schools at the elementary and secondary levels generally do not receive such funding and are, therefore, generally not subject to FERPA. In addition, the confidentiality of personally identifiable information (PII) in the education records of children with disabilities is further protected by Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1417(c) and 34 CFR §§ 300.610-300.626). These regulations contain confidentiality provisions that are similar to, but broader than, FERPA. The IDEA-FERPA crosswalk contains additional information comparing IDEA and FERPA and is available at <https://studentprivacy.ed.gov/resources/ferpaidea-cross-walk>.

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The rights provided by FERPA to a parent include, but are not limited to:

- **Access to Education Records**

Under FERPA, a school or State educational agency (SEA) must provide a parent with an opportunity to inspect and review their child's education records within a reasonable period of time, but not more than 45 calendar days following receipt of a request. A school or SEA is generally not required to provide *copies* of the education records unless circumstances effectively prevent the parent from exercising the right to inspect and review the education records. For example, if a parent who does not live within commuting distance of their child's school requests that the school provide access to his or her child's education records, the school would be required to make other arrangements for the parent to inspect and review the requested records, or to provide a copy of the requested records.

- **Amendment of Education Records**

Under FERPA, a parent has the right to seek amendment or correction of their child's education records that the parent believes to be inaccurate, misleading, or in violation of the child's rights of privacy. However, while a school is not required to amend an education record in accordance with a parent's request, a school is required to consider the request for amendment, to inform the parent of its decision, and, if the request is denied, to advise the parent of his or her right to a hearing on the matter. If, as a result of the hearing, a school decides not to amend the education records, then the parent has the right to insert a statement in the record commenting on the contested information or stating why the parent disagrees with the decision, or both. That statement must remain with the contested part of the education record for as long as the record is maintained and be included whenever the contested part is disclosed.

While a parent has the right to seek to amend non-substantive factual errors in the student's education records, the right is not unlimited, and a school is not required by FERPA to afford a parent the right to seek to change substantive decisions made by school officials, such as substantive decisions made in the context of grades given to a student based on their performance, other evaluations of the student's performance, or disciplinary decisions. These substantive decisions also include evaluations of whether a student has a disability and is eligible for special education and related services, disagreements about the content of a student's Individualized Education Program (IEP), or the student's educational placement under Part B of IDEA. While under FERPA a parent may seek amendment to correct a non-substantive factual error in an IEP, a parent should utilize the Part B of IDEA dispute resolution procedures (State complaints, mediation, or due process hearing procedures) to resolve disputes with a school regarding substantive matters. Each State has resources to help parents to participate effectively in their children's education and development. State contact information is available at <https://sites.ed.gov/idea/contacts/#state>.

- **Disclosure of Education Records**

Under FERPA, a school generally may not disclose PII from a student's education records to a third party unless the student's parent has provided prior written consent. However,

there are a number of exceptions to FERPA's general consent requirement, some of which are described below. Under these exceptions, schools are *permitted* to disclose PII from education records without consent, but they are not *required* to do so by FERPA.

### School Official

FERPA allows "school officials," including teachers, within the school to obtain access to PII from education records without consent, provided that the school has determined the officials have a "legitimate educational interest" in the information. The school's annual notification of rights under FERPA must specify the criteria for determining who constitutes a "school official" and what the school considers to be a "legitimate educational interest." Typically, 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.

Also, under the "school officials" exception to the consent requirement, FERPA permits a school to disclose education records to contractors (e.g., software/application vendors, lawyers), consultants (e.g., nutritional or information technology consultants), volunteers (e.g., home room parent volunteers, field trip chaperones, student volunteers), or other third parties to whom the school has outsourced institutional services or functions, provided that the outside party:

1. Performs an institutional service or function for which the school would otherwise use employees;
2. Is under the direct control of the school with respect to the use and maintenance of education records;
3. Is subject to the requirements in FERPA that PII from education records may be used only for the purposes for which the disclosure was made, and which govern the redisclosure of PII from education records; and
4. Meets the criteria specified in the school's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

More information regarding the use of school volunteers and FERPA is available at <https://studentprivacy.ed.gov/training/school-volunteers-and-ferpa>.

### Seeks or Intends to Enroll

Another exception to FERPA's general consent requirement permits a school to disclose PII from a student's education records, without consent, to another school in which the student seeks or intends to enroll, or where the student is already enrolled, as long as the purpose of the disclosure is related to the student's enrollment or transfer. A school that discloses education records under this exception must make a reasonable attempt to notify the parent of the disclosure, unless the disclosure is initiated by the parent, or the school's annual notification of rights under FERPA includes a notice that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll or is already enrolled, as long as the disclosure is for purposes related to the student's enrollment or transfer. A school that discloses education records under this exception also must provide the parent, upon request, a copy of the records that were

disclosed or, upon request, an opportunity for a hearing to amend the records that were disclosed. Under this exception, a school has the discretion to disclose academic, disciplinary, or any other PII from the student's education records to the new school. Further, a parent does not, under FERPA, have the right to prevent a school from disclosing such PII from the student's education records, or from communicating information about a student more generally, to the school in which the student seeks or intends to enroll.

### Directory Information

FERPA also permits a school to disclose PII from a student's education records, without consent, when such information has been appropriately designated as "directory information" and the parent has not opted out of the disclosure of such designated information. The FERPA regulations define directory information as information in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may include information such as the student's name, address, telephone number, email address, photograph, date and place of birth, major field of study, grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), dates of attendance (i.e., the period of time during which the student attends or attended the school), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent school attended. FERPA provides that a school may disclose, without consent, directory information if the school has given public notice to parents of the types of PII that it has designated as directory information and the process, including period of time, for parents to opt out of certain directory information disclosures. This notice is often included in the annual notification discussed below. For more information regarding directory information, visit <https://studentprivacy.ed.gov/training/b-cs-student-directory-information>.

### Dependent Student

FERPA provides ways in which a school may share education records on an eligible student with their parents. Schools may, but are not required to, disclose any and all education records to parents, without the consent of the eligible student, if the student is a "dependent student," as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent's most recent income tax return, a school may disclose the student's education records to either parent, without the eligible student's consent.

This exception to FERPA's general consent rule also permits institutions of postsecondary education to share information with parents of students who are enrolled in both a high school and a college or university (dually enrolled). In this situation, the parents retain the rights over the student's education records maintained by the high school, if the student is under the age of 18 years, and the student retains the rights over the education records maintained by the college or university.

### Other Exceptions

Provided certain conditions are met that are not included in the summary below, other exceptions to FERPA's general consent requirement that would permit the disclosure of PII from education records include, but are not limited to, the following:

- To authorized representatives of, among others, State and local educational authorities, such as a State department of education, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs
- To a representative of a State or local child welfare agency or Tribal organization regarding a child in foster care
- To State and local officials or authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed
- To organizations conducting studies for, or on behalf of, the school for specified purposes including improving instruction
- To comply with a judicial order or a lawfully issued subpoena
- In connection with a health or safety emergency

### **Annual Notification of FERPA Rights**

Under FERPA, a school must annually notify parents of their rights under FERPA. There are separate annual notifications and other rights under IDEA. The FERPA annual notification must include information regarding a parent's right to inspect and review his or her child's education records, the right to seek to amend the records, the right to consent to disclosure of PII from the records (except in certain circumstances), and the right to file a complaint with SPPO regarding an alleged failure by a school to comply with FERPA. The notification must also inform parents of the school's criteria for the terms "school official" and "legitimate educational interest" in certain instances. A school is not required to notify parents individually, but rather is required to provide the notice by any means that are reasonably likely to inform parents of their rights. These means could include publication in a school activities calendar, newsletter, student handbook, or on a school's website.

### **Complaints of Alleged Violations with FERPA**

Parents who believe that their FERPA rights may have been violated may file a complaint with SPPO at <https://studentprivacy.ed.gov/file-a-complaint>. SPPO will review the complaint to ensure the complaint:

- Is filed, in writing, by a parent who maintains FERPA rights over the education records that are the subject of the complaint;
- Is submitted to SPPO within 180 days of the date of the alleged violation or of the date that the parent knew or reasonably should have known of the alleged violation; and
- Contains specific allegations of fact giving reasonable cause to believe that a violation of FERPA has occurred.

SPPO will then make a case-by-case determination to determine the best mechanism for resolving the underlying situation. Sometimes the action will be a formal investigation; for other complaints, consistent with the statute and applicable regulations, we will take other appropriate actions, such as acting as an intermediary or providing resolution assistance. More information regarding our complaint process is available at <https://studentprivacy.ed.gov/file-a-complaint>.

### **Additional Information**

For more information regarding FERPA and other student privacy issues, please visit our website at <https://studentprivacy.ed.gov>.

If you have questions about FERPA that are not addressed here, you may also submit a question through our website at <https://studentprivacy.ed.gov/contact> or write to SPPO for additional guidance at the following address:

Student Privacy Policy Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-8520