

STUDENT RECORDS CONFIDENTIALITY



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Why is FERPA Compliance Important?

- Violations can damage a student/parent.
- Civil Liability
 - Damages
- It is Federal Law.
- U.S. Dept. of Education can withhold all district federal funding.
- Education Professional Standards Board can suspend/revoke a teaching certificate.
- It is insubordination under local board policy.

Damage Awards

- *M.P. v. D.P. Ind. School District*
 - A student sued his former school district, alleging violation of IDEA and Section 504 of the Rehabilitation Act.
 - The school district's nurse told others the student was schizophrenic.
 - Student alleged this resulted in verbal and physical harassment from other students.
 - The appellate court held the student had a right to pursue monetary damages under Section 504 —
 - Could file directly in court without exhausting administrative remedies — in this case alleging unlawful discrimination based on the underlying FERPA violation.

Education Records Defined

- Directly related to a student and directly maintained by the district or by a party acting for the district.
- Information that, alone or in combination, is linked or can be linked to a specific student that would allow a reasonable person in the school community to identify the student; or
- Information requested by a person who you reasonably believe knows the identity of the student to whom the record relates.

Education Records Defined, Cont'd

- Remember, education records can be in any format, such as writings, photographs, videos, etc.
- Now includes biometric record as personally identifiable information – measurable biological or behavioral characteristics that can be used for automated recognition of an individual.
- Examples include: Fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

Education Records Defined, Cont'd

- FERPA prohibits verbal, as well as written, or recorded, disclosure of the content of education records.
- FERPA does not require you to disclose education record information to any party except parents/eligible students.

Emails: Kentucky Attorney General Opinion 10-ORD 069

- If they contain FERPA protected information, like parent name, student's name, or identification number, these are FERPA records that must be:
 - Maintained by the district as required under the KY Records/Archive Schedule for Public School Districts; and
 - Disclosed to the parent upon request.

Duty to Protect Education Records

- Districts must protect personally identifiable record information from unauthorized disclosure.
- Cannot disclose verbally, in writing, or in recorded format.
- FERPA protected information may be disclosed without parent consent **only** as cited in the regulation at 34 CFR §99.31 (Copy provided – please review now).
- Note that outside police officers are **absent from the list, and thus may access protected information only under certain circumstances.** (Discussed in more detail later in this power point)

Release Records Only as Authorized by Law

- You may release personally identifiable student record information only as authorized by law, unless you have written parent/eligible student consent. (See handout from the FERPA regulations as to who may access education record information without parent/eligible student consent – 34 CFR §99.31.)
- Districts must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and others to whom you disclose personally identifiable information from education records.

De-identified Information

- This is information you have redacted so that it cannot easily be linked to a student.
- You may release information without consent after removing personally identifiable information, **provided** you have made a reasonable determination that this information will not identify the student, considering other information reasonably available to those to whom the information is released.

Who May Consent to Disclosure?

- Consent to disclose must come from the parent/eligible student.
- Eligible student has reached age 18 or is attending a postsecondary educational institution.
- Parent includes legal guardians, surrogate parents under IDEA, and those “acting as a parent” under FERPA.
- Person “acting as a parent” for FERPA purposes can be one who lives with the student in the home **on a day-to-day basis in the absence of a natural parent or legal guardian.**
- Remember, parent is defined differently under other statutes like IDEA.

Consent

- “Signed and dated written consent” under FERPA may include a record and signature in electronic form that:
 - Identifies and authenticates a particular person as the source of the electronic consent; and
 - Indicates such person’s approval of the information contained in the electronic consent.
- Consent should be on your district-approved FERPA release to third parties form.

Release Without Parent/Eligible Student Consent

- Personally identifiable student information may be released to:
 - School officials (instructional and administrative personnel) with a legitimate educational interest.
 - Legitimate educational interest means the information is needed to perform a task for the district.

“School Officials” Who Are Not District Employees

- Contractors, consultants, volunteers, other parties to whom district has outsourced institutional services or functions may access education records if they –
 - Perform an institutional service/function for the district;
 - Are under district’s direct control with respect to the use and maintenance of education records; and
 - Are subject to the requirement they will not disclose the information to any other party without the prior written consent of the parent/eligible student, or as otherwise authorized by law.

School Officials Access to Student Records

- Staff members, as well as contractors, etc., accessing confidential student record information must have a legitimate educational interest.
- Officials of the district **may not access** student information they do not need to do their job for the district. The district must have physical, technological, or **effective** policy controls to implement this provision.
- Staff with access to personally identifiable student record information must receive training in student records confidentiality.

Volunteers

- You cannot allow volunteers to see student FERPA protected records unless the district Board of Education has approved a policy saying you can.

Common FERPA Disclosure Mistakes

- Release of the following info without parent consent, subpoena, or court order:
 - The fact the student receives special education (IDEA) or Section 504 services;
 - Info about the student's health condition obtained from education records;
 - Release of education record info to **outside** police officers **before** a juvenile justice system complaint has been filed;
 - Allowing access to education record info by PTA members, or other volunteers without school district Board of Education approval;

Common FERPA Disclosure Mistakes, Cont'd

- Discussing education record info with school district staff who **do not** have a “legitimate educational interest” as defined in a previous slide.
- Release of education record info to a student’s doctor
- Release of education record info to a parent’s or student’s attorney; and
- Release of education record info to workers at a day care center run by the district.

More Rare FERPA Mistakes

- Announcing student grades over the building intercom;
- Discussing a student's protected education record info in public where others can hear;
- Discussing protected education record info with relatives of the student who are not parents, nor “acting as parents” under FERPA;
- Discussing protected education record info with SBDM Council members; and
- Discussing protected education record info with a school trip chaperone who is not a district staff member.

Disclosing Directory Information

- Your local school board may designate certain student record information that is **not highly personal** as Directory Information, which can be provided to anyone without consent **unless** the parent/eligible student has opted-out of release of that information.
- You may disclose Directory Information about former students, **unless they have opted out**. You must continue to honor any opt-out of Directory Information after the student leaves the district.

Student Information and Law Enforcement Agencies

- FERPA allows public school employees to freely provide information to outside law enforcement agencies **only if it is information employees observed, i.e., they saw, heard, felt, etc., or is an opinion.**
- FERPA **does not** allow you to give education record information to outside law enforcement officials unless it fits under one of the exceptions on the next slide.

When Can You Release Ed Records to Outside Police Officers?

- Pursuant to parent or eligible student consent;
- Pursuant to a subpoena or court order;
- Pursuant to an articulable, imminent health or safety emergency (See later slide.);
- If the information has been approved by your local school board as Directory Information; or
- **Once a complaint is filed with a court-designated worker (CDW) alleging that the student has committed a status offense or public offense.**

Agencies that are a Part of the Kentucky Juvenile Justice System

- All sheriff's offices, police departments, and any other law enforcement agency;
- All Commonwealth's attorneys and county attorneys;
- The Attorney General;
- All jails and juvenile detention facilities, public and private;
- All courts and clerks of courts;
- The Administrative Office of the Courts (AOC);
- All departments within the Justice and Public Safety Cabinet;

Agencies that are a Part of the Kentucky Juvenile Justice System, Cont'd.

- All departments within the Cabinet for Health and Family Services; and
- All family accountability, intervention, and response teams.

New Juvenile Justice System Enabling Language

- All public/private elementary/secondary schools, vocational or business schools, or institutions of higher education shall provide all records **specifically requested in writing**, and pertaining to that child to agencies that are part of Kentucky's Juvenile Justice System as listed in the previous two slides.
- The purpose of the release shall be limited to providing the juvenile justice system with the ability to effectively serve, prior to adjudication, the needs of the student whose records are sought.

New Juvenile Justice System Enabling Language, Cont'd.

- **The juvenile justice agency must certify**, that any educational records obtained pursuant to this section shall only be released to persons authorized by statute and shall not be released to any other person without the written consent of the parent of the child.
- **The request, certification, and a record of the release shall be maintained in the student's records.**

When Can Education Records be Released to the Kentucky Juvenile Justice System?

- Court Order;
- Subpoena;
- Parent or eligible student consent;
- A complaint has been filed with a CDW alleging the student whose records have been requested committed a status offense or public offense; or
- After a student's adjudication if student is committed to the Department of Juvenile Justice (DJJ). DJJ becomes the student's education agency at that time.

When Can You Release Ed Records to Outside Social Workers?

- If you need to reveal protected information **to report** child abuse, neglect, or dependency. **Note this does not open** the entire file to the social service agency.
- **If local Board approved policy/procedure allows release** to a state or local social service agency, may release to those employees who can access that agency's case plan for the student **once the district receives an official court order that the student has been committed to that agency.**

Law Enforcement Records FERPA Exception

- KSBA legal staff recommend school administrators and police officers make and maintain separate reports of an investigation even when you conduct the investigation together.
- **Law enforcement records created, and used for, a law enforcement purpose and maintained separately from education records are not subject to FERPA nondisclosure requirements.**

Law Enforcement Records FERPA Exception, Cont'd

- When law enforcement obtains information **verbally** from witnesses and makes and maintains a separate report, that report may be shared with CDWs and judges without parent consent or court order, if the law enforcement record is kept separate from education records, **and is not** used for an education purpose such as a disciplinary proceeding.

Recordkeeping Requirements

- A disclosure log must be kept of all disclosures, including disclosures to State and local education and other authorities & Federal officials and agencies, except —
 - **Disclosure to parents and district employees.**
- Parents can review their child's records release log.

Health and Safety Emergency Disclosures

- You may disclose personally identifiable information to **appropriate parties, including parents of an eligible student in an imminent emergency situation.**
- You may disclose personally identifiable information to teachers and school officials in other schools in your district who have a legitimate educational need to know.
- Appropriate parties are those who can address the emergency, or have information that can assist in addressing the emergency, such as a police officer or physician/psychiatrist.

Emergency Disclosure Defined

- To be “in connection with an emergency” means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic such as e-coli.
- You may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individual.

Emergency Disclosure Log

- You must record the following information when you disclose personally identifiable data from education records under the health or safety emergency exception.
 - The articulable and significant threat to the health or safety of a student or other individual; and
 - To whom the information was disclosed.
- As the child's parent can inspect his/her disclosure log, the district must record a disclosure within a reasonable time after making the disclosure, not just when a parent/student asks to inspect the student's record/log of disclosures.

Parent Custody Situations

- In a legal separation/divorce situation, both parents are allowed access to their child's educational records, regardless of who has legal custody of the child.
- Remember: FERPA rights are different than educational decision-making rights, such as who makes special education decisions, etc.
- Record access must be denied if a court order specifically revokes parental rights.

Juvenile Court Records

- Kentucky law requires courts to release certain juvenile court records to districts.
- These records must be kept in a locked file and the principal is permitted to release this information to staff only in certain situations. See local Board policies and procedures for specifics.

Juvenile Court Records, Cont'd.

- Juvenile court records **are not** education records, and thus FERPA **is not** applicable to such records.
- The confidentiality of juvenile court records is protected under Kentucky law.
- Kentucky law prohibits school district staff from revealing information concerning juvenile court proceedings, including the fact a juvenile court record exists, to any person not authorized to receive it pursuant to law or a court order.

Juvenile Court Records, Cont'd

- The law provides for both criminal and civil legal actions/penalties against individuals who reveal juvenile court information to any person not authorized to receive it pursuant to law or a court order.
- Legal action may also be brought against the school district for violation of juvenile court confidentiality laws.

District Policies and Procedures

- Staff should refer to the most recent District policies and procedures regarding FERPA found in your District Policy Manual for detailed information about your use of FERPA information.
- Failure to comply with local district policies and procedures is insubordination that can trigger disciplinary action.
- Requests for student record information should be referred to your supervisor, unless you are served with a subpoena that says you are not to disclose that you received the subpoena.