

A Student's Right of Access to Educational Records

The Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, is a federal law governing how federally funded elementary, secondary and post secondary schools supervise and protect student records.

Under FERPA, students have the right to review and access their educational records. The law guarantees that educational records can only be used for educational purposes. The law also controls release and disclosure of records. Confidentiality of and access to records that are maintained are governed, however FERPA does not mandate retention of records. The law requires that each school have policies and procedures to implement the student's right of access to educational records.

An "Educational Record" means records, files, documents and other material which contains information directly related to a student and is maintained by a school or by a person acting for the school. Examples of educational records include, but are not limited to, tests and quizzes, test protocols, video and audio recordings, electronic data / computer media, handwritten notes, film, microfilm, and microfiche. Personally identified information, including family members names, including mother's maiden name, personal characteristics, and biometric records, is also protected.

There are a number of exceptions to what constitutes an educational record. For example, teacher notes are not educational records. Also, records maintained by a law enforcement unit of the school that were created by that law enforcement unit for the purpose of law enforcement are not educational records. Schools may disclose information from law enforcement unit records to anyone, including outside law enforcement authorities, without parental consent.

FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation and not from the student's education records. Additionally, consent is not required to release records to other school officials who have been determined by the school to have legitimate educational interests, including the educational interests of the child for whom the consent would otherwise be required. Consent is not required to release records to authorized representatives of the Comptroller General of the United States, the Secretary of the State educational authorities or authorized representatives of the Attorney General for law enforcement purposes.

The school must comply with a student's request to access educational records within 45 days. There are some exceptions for elementary and secondary schools. Under FERPA, the student has the right to challenge the content of the educational record through an administrative hearing. As a practical matter, often times parents choose to place a statement in the child's record concerning the challenged educational record and skip the administrative hearing process.

If you have any questions regarding educational law issues, please contact me for a free consultation at 1-877-LAW-2555.

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