

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

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Rodney Freeman, Jr.

Churchill, Manolis, Freeman & Burns

Law Office, Huron, SD

E-mail:

rfreeman.huronlaw@midconetwork.com

Phone: (605) 352-8624

DISCLAIMER

The legal information presented is for training purposes only and is a general service to ASBSD member school boards and board members. The information provided is for general information purposes only, does not constitute legal advice, does not establish an attorney-client relationship, and should not be interpreted or used as a substitute for a legal opinion from your school attorney. Before making legal decisions, school boards, school board members and administrators should consult with their school attorney.

Purpose:

The purpose of FERPA is the protection of privacy of parents and students, by preventing the unauthorized disclosure of educational reports.

Definitions:

Attendance: Attendance is either in person or by paper correspondence, video conference, satellite, internet and telecommunications technologies for students who are not physically in the classroom.

Directory Information: Is information contained in the educational record of student that would not generally be considered harmful or an invasion of privacy if disclosed.

Directory information includes, but is not limited to the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, grade level, enrollment status, dates of attendance, participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received.

Directory information does not include a student's social security number or a student ID number.

Disclosure: To permit access to or to release, transfer or other communication of personally identifiable information contained in education records by any means, including oral, written or electronic, to any party except the party identified as the party that provided or created the record.

Educational Records: Records that are directly related to a student and are maintained by an educational agency or institution or by party acting for the agency or institution.

Educational records do not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.

Educational records do not include records of the law enforcement unit of an educational agency such as a school resource officer.

Educational records also do not include grades-
on peer-graded papers before they are collected
and reported by a teacher.

Parent: 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 guardian.

What are the rights of parents

The school shall give full rights to either parent, including divorced parents, unless the school has been provided with evidence that there is a court Order, state statute or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

What are the rights of students:

When a student is 18 years old, the rights accorded to and consent required of parents transfer from the parents to the student.

However, FERPA does not prevent the school from disclosing educational records or personally identifiable information from the records to parents without the prior written consent of the student if the student is a dependent of the parents for tax purposes and for the health and safety of the student.

ANNUAL NOTIFICATION

Each school must annually notify parents or 18 year old students of their rights under FERPA.

The notice must inform parents of their right to inspect and review the students records, seek amendment to the student's records, consent to disclosures of personally identifiable information and file with the department a complaint concerning alleged failures of the school to comply with the requirements of the act.

The notice must also include the procedure for exercising the rights to inspect and review documents and the procedure for requesting amendments.

Schools may provide this notice by any means that are reasonably likely to inform the parents and the student of their rights.

The notice must effectively notify parents of students who are disabled, such as hearing or vision impaired or in their native language if their home language is other than English.

If parents or eligible student requests review of the records, the school shall comply with the request within a reasonable period of time, but not more than 45 days after the request has been received. The request should be in writing.

The school must respond to reasonable requests for explanation and interpretation of the records and if circumstances effectively prevent parents from exercising the rights to inspect, the school shall provide a copy of the records requested or make arrangements for the parents to inspect and review the records.

No records may be destroyed if there is an outstanding request to inspect or review.

Unless the imposition of a fee effectively prevents a parent from exercising the right to inspect, the school may charge a fee for a copy of the records which is made for the parent, but may not charge a fee to search for or retrieve the records. If the education records of a student contain information on more than one student, the parent or student may inspect and review or be informed of only the specific information about that student.

VIDEOS

Generally speaking, if a video of an incident is utilized for discipline, the parents can only view the video if other students can be redacted from view in the video.

If students cannot be redacted from the video, the parents have a right to be informed of the content of the video, but not allowed to view the video.

AMENDMENT OF RECORDS

If the parents believe the records relating to the student contain information that is inaccurate, misleading, or in violation of the student's right to privacy, the parent may ask the school to amend the record.

The school shall then decide to amend the record as requested within a reasonable time and if the school decides not to amend the record as requested, they shall inform the parents of their right to a hearing.

If the parents request a hearing, the hearing must be conducted by a disinterested party. If the school determines as a result of the hearing not to amend the record, the parents have a right to place a statement in the records which shall be maintained with the record so long as the record is maintained and disclose the statement whenever it discloses that portion of the record.

Release of Personally Identifiable Information

Parents may consent for the school to release information from the student records.

The consent must be in writing and specify the records to be disclosed and the purpose for the disclosure and identify the party or group of parties to whom the disclosure may be made.

The school may also disclose information from the records without consent if the disclosure meets one of the following conditions:

- The disclosure is to other school officials, including teachers within the school that have a legitimate educational interest.

- Information can also be disclosed to a consultant or a volunteer which the school has outsourced institutional services or functions.

- An educational agency to another educational agency or post-secondary education institution where the student seeks to intend or enroll or where the student is already enrolled.

- State and local educational authorities if the disclosure is in connection with financial aid for which the student has applied,

- The disclosure is in connection with a health or safety emergency or directory information as defined earlier. Remember that parents can opt-out of directory information.

Violation of FERPA can lead to complaints filed with the US Department of Education, Office of Student Privacy and lead to enforcement sanctions.

QUESTIONS