

FERPA AND EDUCATIONAL RECORDS

Stephanie Langer, Esq.
Langer Law, P.A.



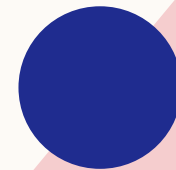
FERPA

Family Educational Rights and Privacy Act

20 U.S.C. § 1232g; 34 CFR Part 99

Ferpa is a federal law that does two things:

- (1) Protects the privacy of student education records
- (2) Gives parents certain rights related to a student's education records.





PRIVACY

Ferpa – Family Educational Rights and Privacy Act. This law keeps certain records and certain information contained therein private. Generally, schools must have written permission or consent before it can release a student's records or information contained therein. However, there are many exceptions (34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.
- Directory information*

WHAT INFORMATION IS PROTECTED

- (1) Education records; and
- (2) Personally identifiable information contained therein.

What is an education record?

- (1) A record directly related to a student; and
- (2) Maintained by the educational agency or institution or by a party acting for the agency or institute

Record is defined as: any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
(Authority: 20 U.S.C. 1232g)

WHAT IS NOT A STUDENT RECORD

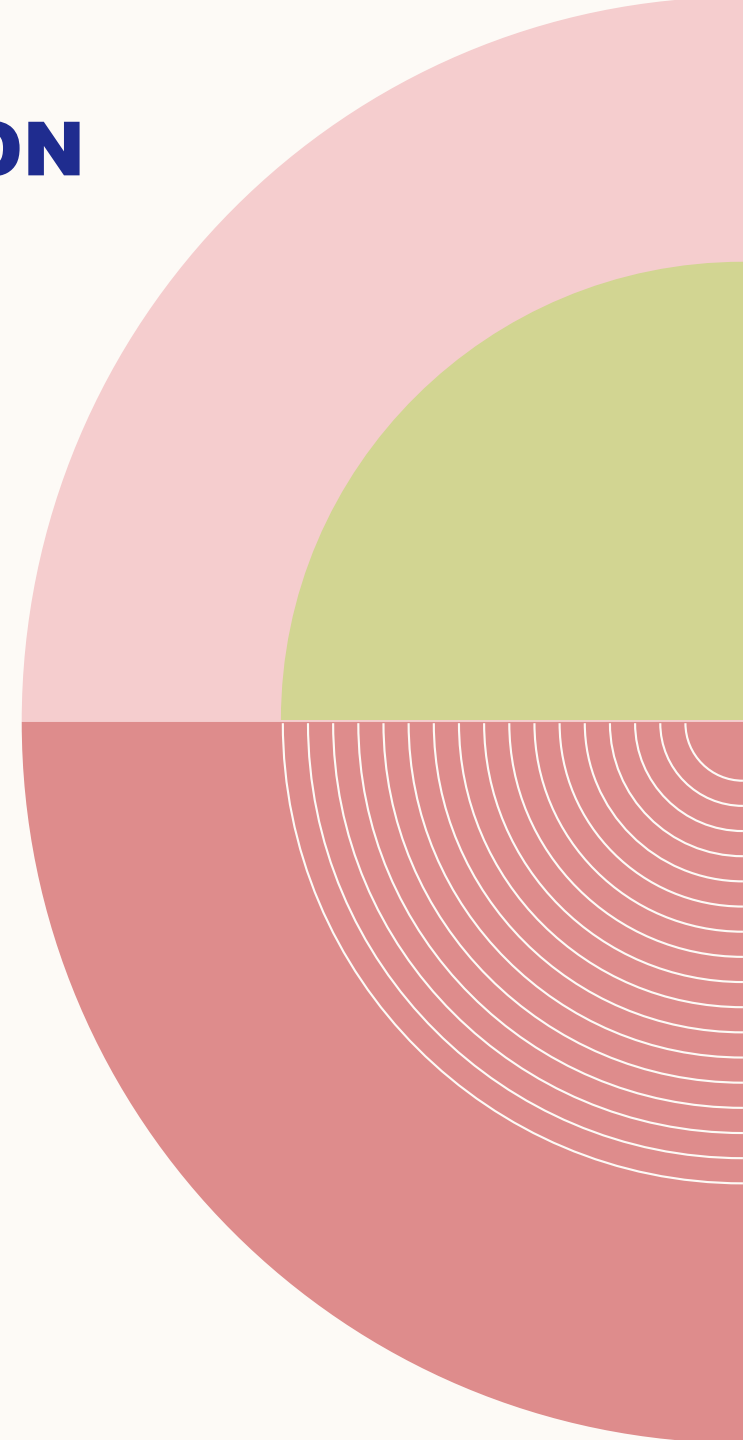
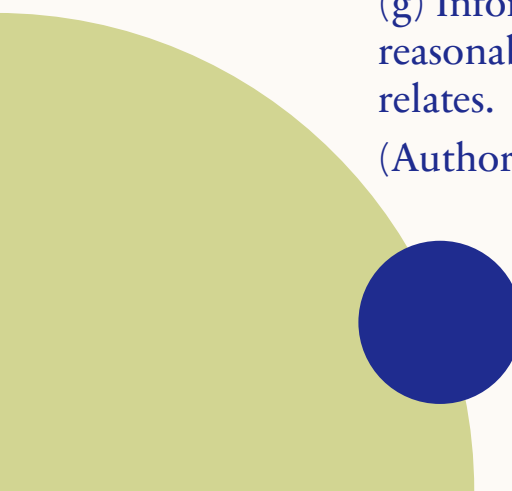
1. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person
2. Records of the law enforcement.
3. Employee records
4. Treatment Records: Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:
 - (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - (ii) Made, maintained, or used only in connection with treatment of the student; and
 - (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
5. Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
6. Grades on peer-graded papers before they are collected and recorded by a teacher.
7. Personal observations and opinions and knowledge – not obtain from a student record*

PERSONALLY IDENTIFIABLE INFORMATION

The term includes, but is not limited to -

- (a) The student's name;
- (b) The name of the student's parent or other family members;
- (c) The address of the student or student's family;
- (d) A personal identifier, such as the student's social security number, student number, or biometric record;
- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

(Authority: [20 U.S.C. 1232g](#))





HEALTH AND SAFETY EXCEPTION

Ferpa gives schools and districts great flexibility to disclose a student's personally identifiable information contained within a student's records in order to "maintain school safety" or "when responding to circumstances that threaten the health and safety of individuals in their school community"

Flexibility means information can be disclosed without first getting consent.

Exception is however limited to the period of the emergency and is not a blanket release – must be an articulable and significant threat

Threat assessment teams

Law enforcement / Juvenile Justice System/ Child Welfare system

Mental health teams

Public health officials

Discipline/student behavior (significant risk to safety or well being)

Schools should record disclosures.



PARENTAL RIGHTS

(1) Right to inspect and review the student's education records maintained by the school

(2) Right to request that a school correct records which the parent believes to be inaccurate or misleading.

(3) some control over disclosure of the records
(ie: consent)

- These rights transfer to the student when they turn 18 or attend a school beyond the high school level. Students to whom the rights have transferred are called “eligible students”



APPLICATION

FERPA applies to all schools or educational programs that received funds under any applicable program of the U.S. Department of Education.

- Public schools, charter schools, universities, colleges, vocational programs

Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification is left to the discretion of each school.

Schools must keep a record of requests to access information and disclosures of student information (who accessed the information and why they were given access)

The State Department of Education must notify each state educational agency (SEA) and each local educational agency (LEA) of its obligations under FERPA.

Federal department of Education provides on line training opportunities and helpline for states and schools. Also have the Privacy Technical Assistance Center (PTAC) as a one stop resource for education stakeholders

FERPA VS. PUBLIC RECORDS REQUEST

FERPA	PUBLIC RECORDS
NOT REQUIRED TO PROVIDE COPIES	MUST PROVIDE COPIES
CAN CHARGE A FEE FOR COPIES	CAN CHARGE A FEE FOR COPIES
CANNOT CHARGE FOR LABOR	CAN CHARGE FOR LABOR
PRIVATE CAUSE OF ACTION Complaint with FL DOE	PRIVATE CAUSE OF ACTION



FERPA V. HIPAA

HIPAA does not apply to educational records or treatment records even if these records are held by an institution's clinic or other health care provider that is a HIPAA covered entity.

The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA by excluding such records from the definition of “protected health information.”

FERPA VS. IDEA

Broader definition:

Includes: List of personal characteristics or other information that would make it possible to identify the child with reasonable certainty

- Access rights
- Consent
- Procedural Safeguards
- State complaint and due process



• Consent

FLORIDA SPECIFIC



PARENTAL ACCESS

If the student is a dependent for tax purposes parent will have access to records without consent



SCHOLARSHIP FUNDS

Are state funds not federal dollars so FERPA does not apply



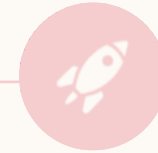
TIMELINE

30 days to comply with a FERPA records request



OTHER STUDENTS

Can be informed of only their specific information rather than shown document



COPY FEE

Yes, unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review records

POST SECONDARY INSTITUTIONS

- Dual enrollment students - schools can exchange information without consent
- Annual FERPA notification required

Exceptions:

- Directory information
- School officials
- Another educational institution the student is seeking enrollment in (if given student notice)
- Financial aid
- Organizations conducting studies
- Accrediting agencies
- Results of a disciplinary proceedings against a student who is an alleged perpetrator of a violent crime or
- Nonforcible sex offense.
- Violation of rules/law use or possession of alcohol or controlled substance
- Registered sex offenders

Private cause of action in state circuit court with fee provision for a prevailing party

QUESTIONS??