

Family Educational Rights and Privacy Act (FERPA)

Training

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Family Educational Rights and Privacy Act

- FERPA is a federal law applicable to the Clark County School District which sets forth requirements designed to protect the privacy of educational records.
- FERPA applies to schools that receive funds under any program administered by the U.S. Department of Education. Most private schools at the elementary and secondary levels do not receive such funds, and are not subject to FERPA.
- (Note: A short helpful reference is CCSD PUB-778 titled Family Educational Rights and Privacy Act, Parent Information Guide.)

(20 U.S.C. § 1232g; 34 C.F.R. Part 99)



Primary Rights of Parents Under FERPA

1. Inspect and review education records.
2. Seek to amend education records.
3. Control the disclosure of information from education records.



Definitions (34 C.F.R. § 99.3)

- “**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 guardian.
- The definition of a parent may include a stepparent or grandparent if they are acting as a parent, in the absence of a parent. A stepparent or grandparent may also have rights and access if the parents give them consent or if they are given rights through a temporary guardianship.

Definitions

- **“Student”** means any individual:
 - Who is or has been in attendance at a school, and regarding whom the school maintains education records. (Once a student, always a student.)
 - FERPA rights transfer to the student at age 18. (At 18 they are called an “eligible student.”)
- **“Attendance”** includes attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom.

Definitions

- **“Education Records”**
 - Education records are records that contain personally identifiable information which are: (1) directly related to a student; and (2) are maintained by an educational agency or by a party acting for the agency.
 - As listed in CCSD Regulation 5125.1, the following are examples of education records: student academic records; achievement test results; attendance and discipline files; class record books; grade books; health inventory; and student support services folders.
 - Includes special education records.
 - Includes medical or health records.
 - Includes school disciplinary records of suspension and expulsion.

Definitions

- “Education Records” cont’d
 - With respect to former students, “education records” excludes those records that are created or received by the school after the individual is no longer in attendance and are not directly related to the individual’s attendance as a student (e.g., alumni activities).
 - The definition of education records excludes grades on peer-graded papers before they are collected and recorded by a teacher.
 - Personal observations are not “education records.”

Definitions

- **Exceptions to education records include:**
 - Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute (e.g., personal notes).
 - Records created and maintained by a law enforcement unit for a law enforcement purpose. However, if the law enforcement unit shares records with the school and those records are placed in the school file, then those records in the school file may become education records.
 - Student employment records.

Definitions

- **“Directory Information”** (34 C.F.R. § 99.3; CCSD Regulation 5125.1)
 - Directory information is information not generally considered harmful or an invasion of privacy if disclosed.
 - Parents have the right to have directory information restricted upon request. Directory information may be restricted on the Annual Release and Network Access Form (CCF-588).

Definitions

- “**Directory Information**” (34 C.F.R. § 99.3; CCSD Regulation 5125.1)
 - Under FERPA, a school district may designate certain types of information as directory information that may be disclosed without parental consent. Under CCSD Regulation 5125.1, the District has defined directory information as:
 - Name and address.
 - Date and place of birth.
 - Participation in officially recognized activities and sports.
 - Weight and height of athletes.
 - Degrees and awards received.
 - Years of attendance (but not daily attendance).
 - Most recent previous school attended.
 - Grade level.
 - Photographs when used in printed school publications including the yearbook, playbills, honor rolls or other recognition lists, graduation programs, newsletters, and sports activity programs.

Definitions

- Directory Information (cont.)
 - With regard to former students, schools must honor any valid request to opt out of disclosure made while a student was in attendance unless the parent or eligible student rescinds the opt out request.
 - The regulations prohibit designation of a student's social security number as directory information. Social security number also may not be used as an identification element when disclosing or confirming directory information.
 - Parents may not use the right to opt out of directory information disclosures in order to prevent a school from requiring a student to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that has been properly designated as directory information.
(34 C.F.R. § 99.37)

Definitions

- **“Personally identifiable information”** includes, but is not limited to:
 - The student’s name.
 - Address of the student or student’s family. [*Note:* although name and address are part of CCSD’s directory information definition, it can become PII if it is combined with other private information such as discipline information or special education status.]
 - Name of the student’s parent or other family members.
 - A personal identifier, such as a social security number, student number, or biometric record.
 - Indirect identifiers, such as date of birth, place of birth, and mother’s maiden name.
 - Other information that 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.
 - “Reasonable certainty” requires a balancing test.

Definitions

- **Personally identifiable information (cont.)**
 - Information requested by a person who the school reasonably believes knows the identity of the student to whom the education record relates (also known as a targeted request).
 - Redaction would be useless because the identity is already known.
 - The school must use information that is obvious on the face of the request or provided by the requestor.
 - For example, when a requestor asks for the redacted transcripts or a redacted discipline report of a particular student this would be a targeted request.
 - For example, if there was a rumor published in the local paper that a public official was disciplined for cheating during his senior year in high school, a request to the high school for the disciplinary records of students who were caught cheating during the year the public official was a senior would be considered a targeted request.
 - “Reasonable methods” must be used to authenticate the identity of the person to whom personally identifiable information is disclosed (e.g., PINs, passwords, personal security questions known only by the authorized recipient).

Definitions

- “**Disclosure**” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means to any party except the party that provided or created the record.
 - However, a school may return a questionable document (e.g., potentially falsified transcripts) to the purported sender for verification.
- “**Record**” means any information maintained in any way, including, but not limited to: handwriting; video or audio tape; computer media (e-mail); film; and print.

What are the rights of custodial and noncustodial parents?

(34 C.F.R. § 99.4)

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, state statute, or legally binding document that specifically revokes the FERPA rights.
- FERPA rights are separate and distinct from legal custody and physical custody. This is a common question from the schools.
- A helpful document on this topic is CCSD PUB-779 titled “Rights of the Noncustodial Parent.”

What rights exist for a parent or eligible student to inspect and review education records?

(CCSD Regulation 5125.1; 34 C.F.R. § 99.10)

- Under CCSD Regulation 5125.1, parents have the right to “access and review” student education records within 10 business days after the school receives the parents’ request.
- Generally, the school is only required to provide “copies” of the records if failure to do so would effectively deny access (e.g., a student who does not live within driving distance). If copies are provided, they must be provided within 45 days under FERPA.
- A school may not destroy records if a request for access is pending.



May an education agency or school charge a fee for copies of education records?

(CCSD Regulation 1211; 34 C.F.R. § 99.11)

- Although FERPA allows schools to charge a fee for copies, CCSD allows the first 100 pages to be provided free of charge.



What limitations exist on the right to inspect and review education records?

(34 C.F.R. § 99.12)

- If the records contain information on more than one student, the requesting parent may inspect, review, or be informed of only the specific information about his or her child's records.
- Personally identifiable information regarding other students must be redacted (blocked out).
- For example, if Student A and Student B are involved in a fight that is witnessed by Students C and D. Student A's parents request all witness statements. They can be produced only if all personally identifiable information about Students B, C, and D are redacted from the documents.

What are the procedures for amending education records?

(CCSD Regulation 5125.1(I)(D); 34 C.F.R. § 99.20, § 99.21, and § 99.22)

- The parent should identify in writing the portion of the record believed to contain inaccurate or misleading information, and submit a request to the principal or designee. The District does not need to amend a record when the information is accurate (e.g., an accurate grade or accurate discipline event).
- The principal must decide and notify the parent in writing within 10 school days whether to amend as requested, and of the right to a hearing if the parent disagrees with the decision.
- The parent may request in writing a hearing by the Academic Unit within 10 school days of receipt of the principal's letter.

What are the procedures for amending education records?

(CCSD Regulation 5125.1(I)(D); 34 C.F.R. § 99.20, § 99.21, and § 99.22)

- The Academic Unit shall hold a hearing within 15 working days of receipt of the appeal.
- The Academic Unit shall issue a written decision within 5 working days after conclusion of the hearing.
- After the hearing, if the decision is still not to amend, the parent has a right to insert a statement in the record.

May an educational agency disclose information over the telephone, via email, or via facsimile?

(34 C.F.R. § 99.31(c))

- FERPA does not specifically prohibit a school from disclosing personally identifiable information from a student's education records over the telephone, via email, or via facsimile. However, it does require that the school use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the school discloses personally identifiable information from education records.
- For example, reasonable methods for telephone calls may include having office staff screen the calls and gather basic information from the caller (e.g., name, phone number, address, student ID #, school). Confirm this information before calling the person back (e.g., Infinite Campus and/or calling the school). Other options include asking the person to fax a copy of their photo ID card.



What are the elements of a proper consent?

(34 C.F.R. § 99.31)

- A parent shall provide a signed and dated written consent before a school may disclose education records. The consent must:
 - Specify records that may be disclosed;
 - State the purpose of disclosure; and
 - Identify the party or class of parties to whom disclosure may be made.
- The District may either use a standard consent form (CCF-503 which authorizes the release of confidential information) or may draft a specific consent form for a particular issue.
- Oral consent is not authorized under FERPA.

Under what conditions is prior consent not required to disclose information?

(34 C.F.R. § 99.31)

- To school officials with legitimate education interests, which may include:
 - Board of School Trustees;
 - Administrators;
 - Licensed employees;
 - Support staff; and
 - Contractors, consultants, volunteers, and other parties to whom the school district has outsourced institutional services or functions for which the district would otherwise use employees to perform. (If the outside service provider provision is being relied upon, please contact the Office of the General Counsel for guidance.)
 - “Legitimate educational interest” is defined as any activity having a direct effect on advancing a student’s educational level, coupled with a concern for the student’s social, emotional, and/or physical welfare.

Under what conditions is prior consent not required to disclose information?

(34 C.F.R. § 99.31)

- To schools in which a student seeks or intends to enroll, or has already enrolled or transferred if the disclosure is for purposes related to the student's enrollment or transfer.
- Directory information (unless the parent has opted-out of the disclosure – **see CCF-588**).
- To parents if the eligible student is a dependent for federal income tax purposes. As long as at least one parent claims the student as a dependent, then either parent can still have access to the student's records.

Under what conditions is prior consent not required to disclose information? (cont.)

(34 C.F.R. § 99.31)

- To comply with a judicial order or subpoena.
 - The school must make a reasonable effort to notify via the “parent letter.” When the District receives a subpoena/order, we give the parents notice, a copy of the subpoena/order, and typically allow 10 days before producing the records to allow the parents time to object. (20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31(a)(9); CCSD Regulation 5125.1(I)(H))
- In cases where there is an articulable and significant threat to the health or safety of a student or other individuals, considering the totality of the circumstances. If so, a school may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 - Articulable is defined as “capable of being articulated.”
 - Significant is defined as “of a noticeably or measurably large amount.”
 - When information is disclosed, the school must record the articulable and significant threat and the name of the parties receiving information.
 - When this exception applies, the parties receiving information are typically law enforcement officials, public health officials, medical personnel, or parents.

Under what conditions is prior consent not required to disclose information? (cont.)

(34 C.F.R. § 99.31)

- In connection with financial aid, such as a college loan.
- Information from education records that has been de-identified through removal of all personally identifiable information.
- To federal, state, and local education authorities conducting an audit, evaluation, or enforcement of education programs.
- To organizations conducting studies on behalf of schools.

What limitations apply to the re-disclosure of information?

(34 C.F.R. § 99.33)

- When disclosing information from education records to one of the parties listed under § 99.31, a school should inform the receiving party that the information may not be further disclosed, except when:
 - The disclosure is to the parent or eligible student.
 - The disclosure is to the parents of a dependent student (claimed on federal tax forms).
 - The receiving party discloses information on behalf of the school under § 99.31.
 - The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and the student.
 - The information disclosed is directory information.

What conditions apply to disclosing directory information?

(34 C.F.R. § 99.37)

- A school may disclose directory information if it has given public notice to parents of students in attendance of:
 - What items the school has designated as directory information.
 - A parent's right to refuse to let the school designate any or all of the information as directory information. (See CCF-588.)
 - The time within which a parent must notify the school in writing that they do not want information designated as directory information.
- CCSD's "Back To School Reporter" contains the required notification of rights.

May directory information be released for commercial purposes?

- Student directory information may not be released to commercial businesses for the purpose of advertising or marketing. (CCSD Regulation 5125.1(I)(G))
- However, if it is deemed to be for educational benefit, organizations providing a contracted service/product to a school may receive directory information (e.g., school photos and student ID cards).

Special Handling for Releasing Directory Information

- Requests for directory information from (1) post-secondary institutions and (2) military recruiters shall be referred to the Director of Counseling Services for consideration.
- Federal law requires the release of a student's name, address, and telephone listing to military recruiters or an institution of higher education unless the parent opts out. (20 USC § 7908 and 10 USC § 503) The parent may opt out on CCF-588.
- NCLB also requires that military recruiters receive the same access to secondary school students as provided to post-secondary institutions or to prospective employers.

Are there special rules regarding the transfer of disciplinary records?

- Under federal law, disciplinary records regarding suspension (CCF 806) and expulsions (ESD-Expulsion Parent Notification) must be transferred to any private or public elementary or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school. (20 U.S.C. § 7917)
- It is permissible, but not mandatory, under FERPA to disclose other general discipline records as part of the educational records transferred to another school where the child seeks or intends to enroll. (34 C.F.R. § 99.31(a)(2); 34 C.F.R. § 99.36(b))

Does FERPA or HIPAA apply to student education records?

- At the elementary and secondary level, the records that a school nurse maintains that are directly related to a student are considered education records subject to FERPA – not the HIPAA privacy rule.



What about public records requests?

- In general, education records are confidential under FERPA and are not produced in response to a public records request.

What conditions apply to disclosure of information for audit or evaluation purposes?

(34 C.F.R. § 99.31(a)(3) and § 99.35)

- Federal, state, and local officials listed under § 99.31(a)(3) may have access to records only:
 - In connection with an audit or evaluation of federal or state supported education programs; or
 - The enforcement of or compliance with the federal legal requirements which relate to those programs.
- The information must be:
 - Protected in a manner that does not permit disclosure of personally identifiable information to anyone else.
 - Destroyed when no longer needed for the purposes listed above.

What conditions apply to disclosure of information for audit or evaluation purposes?

(34 C.F.R. § 99.31(a)(3) and § 99.35)

- The audit exception requires that the parties enter a written agreement when disclosing personally identifiable information without consent. Work with the Office of the General Counsel on drafting the agreement.
- A party that receives personally identifiable information from an educational agency or institution may make further disclosures on behalf of the agency or institution if the disclosures meet the requirements of § 99.31 and the recordation requirements of § 99.32(b). (34 C.F.R. § 99.33(b))

What conditions apply to disclosure to organizations conducting studies on behalf of schools?

(34 C.F.R. § 99.31(a)(6))

- A school may disclose personally identifiable information from an education record to organizations conducting studies on its behalf.
 - The studies may be only for the purpose of: (1) developing, validating, or administering predictive tests; (2) administering student aid programs; or (3) improving instruction.
 - The school is not required to initiate the study or endorse the conclusions of the study, however the school must “agree” with the purposes of the study and retain control over the information from the education records it discloses.
 - The school must have a written agreement with the organization that contains certain required elements. Work with the Office of the General Counsel on drafting the agreement.
 - When possible, schools should only release de-identified information or remove students’ names and social security numbers to reduce the risk of unauthorized disclosure of personally identifiable information.
- The disclosure must be recorded in the student’s education record (unless the information has been properly de-identified). The record must include the parties who received the information and their legitimate interest in the information.

What recordkeeping requirements exist concerning requests and disclosure?

(34 C.F.R. § 99.32)

- As a general rule, a school must maintain a record of each request for access to and each disclosure from an education record. This record of access must:
 - Be maintained in Infinite Campus on the FERPA tab as long as the record is maintained.
 - Include the parties who have requested or received information from education records.
 - Include the legitimate interest the parties had in receiving the information.
 - A confidential access list must be posted near or in the area where student confidential records are kept and secured. This list contains names of all CCSD employees who have permission to access student records without written parental consent.
- The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:
 - The parent or eligible student.
 - A properly designated school official for a legitimate educational interest.
 - A party with written consent from the parent or eligible student.
 - A party seeking directory information.
 - A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order are not to be disclosed.



In the event that disclosure is authorized, it is “best practice” to use this warning on the cover sheet of each disclosure--

“This document contains personal information from a student’s education records. It is protected by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and may not be re-released without consent of the parent or eligible student.”

What are the annual notification requirements?

(34 C.F.R. § 99.7)

- FERPA requires an annual notification to parents regarding FERPA rights.
- CCSD's "Back To School Reporter" contains the required notification of rights:
 - To inspect and review education records.
 - To amend records.
 - To consent to disclosures.
 - To file a complaint with U.S. Department of Education.
- Parents who enroll a child after the beginning of the school year shall be provided with a copy of the "Back To School Reporter."

How can a parent file a formal complaint?

(34 C.F.R. § 99.60 to § 99.67)

- CCSD staff should attempt to amicably resolve disputes, including using the appeal process to amend records and contacting the designated FERPA liaisons. The FERPA liaisons are as follows:
 - Education Services Division (702) 855-9775.
 - Student Services Division (702) 799-1020.
- The Federal Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Parents and eligible students may file complaints with the U.S. Department of Education.
- Timely complaint is 180 days.

Protection of Pupil Rights Amendment (PPRA)

(20 U.S.C. § 1232h; 34 CFR Part 98)

- The PPRA applies to programs that receive funding from the U.S. Department of Education. State law considerations may apply to other programs. If there are questions, contact the Office of the General Counsel.
- Under the PPRA, parents must be notified in writing of their right to inspect and consent or opt out of the administration of **surveys** that contain questions from one or more of 8 protected areas.
- The eight protected areas are:
 1. Political affiliations or beliefs of the student or the student's parent.
 2. Mental and psychological problems of the student or the student's family.
 3. Sex behavior or attitudes.
 4. Illegal, anti-social, self-incriminating, or demeaning behavior.
 5. Critical appraisals of other individuals with whom respondents have close family relationships.
 6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.
 7. Religious practices, affiliations, or beliefs of the student or student's parent.
 8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Protection of Pupil Rights Amendment (PPRA) (cont.)

- Under the PPRA, parents may opt out of any non-emergency, invasive physical examination or screening that is:
 1. Required as a condition of attendance;
 2. Administered by the school and scheduled by the school in advance; and
 3. Not necessary to protect the immediate health and safety of the student, or of other students.
- Parents also have the right to opt their children out of activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
- The PPPR annual notification is contained in “Back to School Reporter.”
- District must notify parents at the start of the school year of the dates of surveys and the ability to opt out.
- After the school year starts, the District must provide parents (prior to the survey) notification and an opportunity to opt out.