

From the Family Policy Compliance Office

Citation 1:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (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.

Citation 2:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>

A school MAY disclose education records without consent when:

The disclosure is to school officials who have been determined to have legitimate educational interests as set forth in the school district's annual notification of rights to parents;

The student is seeking or intending to enroll in another school;

The disclosure is to state or local educational authorities auditing or evaluating Federal or State supported education programs or enforcing Federal laws which relate to those programs;

The disclosure is pursuant to a lawfully issued court order or subpoena; and

The information disclosed has been appropriately designated as directory information by the school.

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>

Annual Notification

A school must annually notify parents of students in attendance that they must allow parents to: The annual notice must also include:

Information for a parent to file a complaint of an alleged violation with the FPCO; *A description of who is considered to be a school official and what is considered to be a legitimate educational interest so that information may be shared with that person;*

Information about who to contact to seek access or amendment of education records.

Means of notification:

Can include local or student newspaper; calendar; student programs guide; rules handbook, or other means reasonable likely to inform parents;

Notification does not have to be made individually to parents.

Citation 3:

<http://www.ed.gov/policy/gen/guid/fpco/doc/chiefsea.doc>

From letter to Chief State School Officers, December 2006:

FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose education records to SEAs and other State educational authorities without a parent's prior consent under certain conditions. For a review of the exceptions to the general prior consent rule in FERPA, see 34 CFR § 99.31. *The most common exception* that relates to disclosure to a State educational authority is found in 34 CFR § 99.31(a)(3) and § 99.35.

- *The disclosure must be in connection with:*
 - ◆ *Audit or evaluation of Federal or State supported education programs; or*
 - ◆ *Enforcement of or compliance with Federal legal requirements relating to such programs.*
- Information collected under this provision must be:
 - ◆ Protected so that information is not disclosed to anyone other than *the authorized representatives of the State educational authority* (34 CFR § 99.35(b)(1)); and
 - ◆ Destroyed when no longer needed for the purposes listed above (34 CFR § 99.35(b)(2)).

NCLB does not preempt applicable provisions of State law that require parental notification.

Citation 4:

<http://www.ed.gov/policy/gen/guid/fpco/doc/ferparights.doc>

Model Notification of Rights under FERPA for Elementary and Secondary Schools (parent rights)

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. These rights are:

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the School has contracted as its agent to provide a service instead of using its own employees or officials (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

Citation 5:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/txago072506.html>

Definitions of officials *(in a letter which appears to find that the group in question is NOT an official, but which supports a GEAR UP third-party evaluator being one):*

On January 30, 2003, the Department issued guidance that addressed the issue of whether FERPA permits a State or local educational authority, such as the TEA or local school districts, to authorize or designate another State agency as its "authorized representative" in order to conduct data matching with the other entity. This memorandum (a copy which is enclosed) was issued to all Chief State School Officers on January 30, 2003, by former Deputy Secretary William D. Hansen and is available on this Office's website (<http://www.ed.gov/policy/gen/guid/fpco/pdf/ht031103.pdf>) The Deputy Secretary's memorandum rescinded previous Department guidance that relied on an expansive interpretation of the term "authorized representative" in §99.31(a)(3) to support data matching with state labor departments and

other non-educational agencies in order to meet Workforce Investment Act and other Federal reporting requirements. *It grew out of concern that unlimited discretion to appoint or designate an "authorized representative" for data matching purposes essentially vitiates the specific conditions for nonconsensual disclosure under §§99.31(a)(3) and 99.35 and, more generally, FERPA's prohibition on disclosure without written consent.*

As explained in our February 2004 letters to the California and Pennsylvania Departments of Education -

The memo explains that multiple references to "officials" in the statutory text for this exception reflect congressional concern that the "authorized representatives" of a State educational authority (or other official listed in §99.31(a)(3)) must be under the *direct control* of that authority, *which means an employee, appointed official, or "contractor."*

"Contracting" in this sense means outsourcing or using third-parties to provide services that the State educational authority would otherwise provide for itself, in circumstances where internal disclosure would be appropriate under §99.35 if the State educational authority were providing the service itself, and where the parties have entered into an agreement that establishes the State educational authority's direct control over the contractor with respect to the service provided by the contractor. Any contractor that obtains access to personally identifiable information from education records in these circumstances is bound by the same restrictions on redisclosure and destruction of information that apply to the State educational authority itself under §99.35, and the State educational authority is responsible for ensuring that its contractor does not redisclose or allow any other party to have access to any personally identifiable information from education records.

These letters are available at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/pacdc.html> and <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/ca21804.html>.

Citation 6:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/clarkcty062806.html>

As noted in your email, FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers and service providers who are not employees of an educational agency or institution. However, *the statutory definition of "education records" appears to recognize the use of outside service providers in calling for the protection of records maintained by "a person acting for" the agency or institution.* Indeed, the Joint Statement in Explanation of Buckley/Pell Amendment (120 Cong. Rec. S39862, Dec. 13, 1974) refers specifically to materials that are maintained by a school "or by one of its agents" when describing the meaning of the new term "education records" in the December 1974 amendments. *Accordingly, this Office has advised that agencies and institutions subject to FERPA are not precluded from disclosing education records to parties to whom they have outsourced services so long as they do so under the same conditions applicable to school officials who are actually employed.*

Note that an educational agency or institution may not disclose education records without prior written consent merely because it has entered into a contract or agreement with an outside party. Rather, the agency or institution must be able to show that **1) the outside party provides a service for the agency or institution that it would otherwise provide for itself using employees; 2) the outside party would have "legitimate educational interests" in the information disclosed if the service were performed by employees; and 3) the outside party is under the direct control of the educational agency or institution with respect to the use and maintenance of information from education records.** Further, under §99.33(a) of the regulations, any party, including a "school official," that receives education records may use the information only for the purposes for which the disclosure was made and may not redisclose the information to any other party without prior written consent, except as authorized under §99.33(b). As noted above, education records maintained by a party providing services for an educational agency or institution, including records created by that party, are subject to all FERPA requirements. An outside party that does not meet these requirements may not be given access to personally identifiable information from education records without meeting the prior written consent requirements.

Critically, an educational agency or institution must ensure that its service provider does not use or allow anyone to obtain access to personally identifiable information from education records except in strict accordance with the requirements established by the agency or institution that discloses the information. In that vein, the agency or institution that outsources services under these requirements remains completely responsible for its service provider's compliance with applicable FERPA requirements and liable for any misuse of protected information. For that reason, we recommend that these specific protections be incorporated into any contract or agreement between an educational agency or institution and any non-employees it retains to provide institutional services.

The disclosure of education records to school officials without consent under §99.31(a)(1) is ordinarily excepted from FERPA's specific recordation requirements under §99.32(d)(2) because these disclosures are identified in the school's annual FERPA notification. An educational agency or institution that has complied with the notification requirements in §99.7(a)(3)(iii) for disclosure of education records to contractors and other outside service providers retained as "school officials" under the above conditions may exclude these disclosures from the recordation requirements in accordance with §99.32(d)(2). If the agency or institution has not listed contractors and other outside service providers as "school officials" in its annual §99.7 FERPA notification, then it is required to record each disclosure to a qualifying contractor in accordance with §99.32(a).

Citation 7:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/wku071105.html>

One of the exceptions to FERPA's prior written consent requirement allows an educational agency or institution to disclose education records to "authorized representatives" of

1. The Comptroller General of the United States;
2. The Attorney General of the United States;
3. The Secretary [of Education]; or
4. State and local educational authorities,

Citation 8:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/pacdc.html>

FERPA applies to "educational agencies and institutions" that receive funds under any program administered by the Secretary of Education. 34 CFR 99.1. Most local public schools and school districts (local educational agencies, or LEAs) are subject to FERPA because they receive Department funds and meet the description of an "educational agency" or "educational institution" provided in § 99.1 of the FERPA regulations. *While a State educational agency (SEA) may receive funds from the Department, as a practical matter, FERPA generally would not apply to the records of an SEA. This is because FERPA defines "education records" as information directly related to a "student," which itself is defined as excluding a person who has not been in attendance at the educational agency or institution. 20 U.S.C. § 1232g(a)(4) and (a)(6). Since students generally are not in attendance at an SEA, it follows that FERPA does not generally apply to the SEA's records.* (Congress amended FERPA in § 249 of the Improving America's Schools Act of 1994 so that parents have the right to inspect and review education records maintained by an SEA, including records that an SEA creates or receives from local school districts or other sources. See 34 CFR § 99.10(a)(2).)

LEAs and their constituent schools most often disclose education records to SEAs under §§ 99.31(a)(3)(iv) and 99.35 of the FERPA regulations, which permit disclosure without written consent to "authorized representatives of ... State and local educational authorities" provided the disclosure is in connection with:

*An audit or evaluation of Federal or State supported education programs; or
Enforcement of, or compliance with, Federal legal requirements relating to such programs.*

Citation 9:

http://www.ed.gov/policy/gen/reg/ferpa/rights_pg19.html#17

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

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorized representatives of-

(i) The Comptroller General of the United States;

(ii) The Attorney General of the United States;

(iii) The Secretary; or

(iv) State and local educational authorities.

http://www.ed.gov/policy/gen/reg/ferpa/rights_pg23.html#21

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must:

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if:

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))