

# Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, is a federal law that protects the privacy of student education records. In accordance with regulations issued under FERPA, the Farmworkers Institute of Education & Leadership Development (FIELD) provides an annual notification to our enrolled students of their rights to: inspect, review and, if necessary, seek to amend the student's education record; consent to disclosures of personally identifiable information contained in the student's education records; opt out from the release of information designated as directory information by FIELD; and file a complaint with the U.S. Department of Education under FERPA. FIELD will not disclose information from the student's education record without consent.

## Educational Records

The term "education record" as used in FERPA is very inclusively defined. An education record is any record, file, document, or other material that (i) contains information directly related to a student, and (ii) is maintained by a faculty or staff member. The term encompasses records kept in any format - hard copy, electronic, handwritten, or other. There are only five exceptions recognized in the law. The term "education record" does **not** include:

- Personal notes that are not shown to anybody else
- Police records
- Employment records

All other records maintained by FIELD faculty and staff members, regardless of the medium used for storing, are presumed to be education records, hence subject to the privacy protections in FERPA, if they identify a student by name or contain other personally identifiable information from which the identity of a student can be derived.

## Access to Education Records

Under FERPA, FIELD must provide an eligible student with an opportunity to inspect and review his or her education records within 45 days following its receipt of a request. FIELD is required to provide an eligible student with copies of education records, or make other arrangements, if a failure to do so would effectively prevent the student from obtaining access to the records. A case in point would be a situation in which the student does not live within commuting distance of the school.

FIELD is not generally required by FERPA to provide an eligible student with access to academic calendars, course syllabi, or general notices such as announcements of specific events or extra-curricular activities. That type of information is not generally directly related to an individual student and, therefore, does not meet the definition of an education record.

Under FERPA, a school is not required to provide information that is not maintained or to create education records in response to an eligible student's request. Accordingly, FIELD is not required to provide an eligible student with updates on his or her progress in a course (including grade reports) or in school unless such information already exists in the form of an education record.

## Directory Information

FERPA defines "directory information" as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, "directory information" includes information such as:

- Name
- Address
- Telephone listing
- Date and place of birth
- Participation in officially recognized activities and sports
- Dates of attendance

A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the eligible student's right to restrict the disclosure of such information, and the period of time within which an eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information." The means of notification could include publication in various sources, including a newsletter, in a local newspaper, or in the student handbook. The school could also include the "directory information" notification as part of the general notification of rights under FERPA. The school does not have to notify an eligible student individually. (34 CFR § 99.37.)

## Disclosure of Education Records

FIELD may not disclose personally identifiable information from an eligible student's education records to a third party unless the eligible student has provided written consent. However, there are a number of exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records. Under these exceptions, schools are permitted to disclose personally identifiable information from education records without consent, though they are not required to do so. Following is general information regarding some of these exceptions.

## School Officials

One of the exceptions to the prior written consent requirement in FERPA allows "school officials," including teachers, within a school to obtain access to personally identifiable information contained in education records provided the school has determined that they have "legitimate educational interest" in the information. Although the term "school official" is not defined in the statute or regulations, this Office generally interprets the term to include parties such as: instructors; administrators; health staff; counselors; attorneys; clerical staff; trustees; members of committees and disciplinary boards; and a

contractor, volunteer or other party to whom the school has outsourced institutional services or functions.

Another exception permits a school to disclose personally identifiable information from a student's education records, without consent, to another school in which the student seeks or intends to enroll. The sending school may make the disclosure if it has included in its annual notification of rights a statement that it forwards education records in such circumstances. Otherwise, the school must make a reasonable attempt to notify the parent in advance of making the disclosure, unless the eligible student has initiated the disclosure. The school must also provide the student with a copy of the records that were released if requested by the student.

## FERPA and Parents/Guardians

FERPA permits a school to disclose personally identifiable information from education records of an "eligible student": (a student age 18 or older or enrolled in a postsecondary institution at any age) to his or her parents if the student is a "dependent student" as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent's most recent income tax statement, the school may non-consensually disclose the student's education records to both parents.

There are several other exceptions to FERPA's prohibition against non-consensual disclosure of personally identifiable information from education records, some of which are briefly mentioned below. Under certain conditions (specified in the FERPA regulations, 34 CFR Part 99), a school may non-consensually disclose personally identifiable information from education records:

- to authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the U.S. Secretary of Education, and State and local educational authorities for audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs;
- in connection with financial aid for which the student has applied or received;
- to state and local authorities pursuant to a State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are being disclosed;
- to organizations conducting studies for or on behalf of the school making the disclosure for the purposes of administering predictive tests, administering student aid programs, or improving instruction;
- to comply with a judicial order or a lawfully issued subpoena; and
- in connection with a health or safety emergency

As stated above, the conditions specified in the FERPA regulations have to be met before a school may non-consensually disclose personally identifiable information from education records in connection with any of the exceptions mentioned above.

## Faculty/Staff

All FIELD faculty and staff members are considered school officials under FERPA when in performance of the duties of their position as these relate to students. Faculty and staff members routinely handle education records as part of their responsibilities. They are expected to understand their legal obligations under FERPA and to ensure that education records are not used for inappropriate purposes or disclosed in an unauthorized manner. Further information on the legal obligations of faculty and staff can be found on the United States Department of Education's website at <https://www2.ed.gov/policy/gen/guid/fpco/pdf/ferparegs.pdf>.

FERPA is enforced by the United States Department of Education, which has the authority to audit institutions of higher education for FERPA compliance. FERPA violations may result in the loss of federal funding for FIELD.

Any breach of confidentiality by a faculty or staff member in violation of FERPA could lead to the imposition of disciplinary sanctions under FIELD's Human Resource policies.

## For More Information

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