

Communicating with Your Student's College under Family Educational Rights and Privacy Act (FERPA)

PACER's National Parent Center on Transition and Employment

All youth, to be competitive in today's careers, benefit from some additional training after high school. This is just as true for youth with disabilities. Families are encouraging their young adults with disabilities to attend postsecondary education after high school at a consistently increasing rate. As traditional four-year universities, community colleges, and trade and technical schools enroll more youth with disabilities, they are also hearing from more parents who expect to provide additional guidance and support to their youth during this transition. Parents accustomed to the Individualized Education Program (IEP) and transition team are often surprised to find there are no such supports at the college or university level. In fact, postsecondary institutions sometimes discourage parent involvement and do not make it a common practice to communicate with families. Parents may be told that the postsecondary institution cannot communicate education or health information to families due to FERPA.

The purpose of FERPA is to ensure the privacy of educational records and access to those records for parents.

WHAT IS FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives parents of students in elementary and secondary schools (excluding those schools who do not receive federal funding) certain rights pertaining to their child's education records. Among other things, FERPA gives parents the right to have access to their child's school records, the right to amend records if needed, and the right to consent to who else can see information contained in the records. The purpose of FERPA is to ensure the privacy of educational records and access to those records for parents.

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The aspect of FERPA that tends to take families by surprise is that "ownership" of the educational data switches from the parent to the student once a student turns 18, or younger than 18 upon enrollment in a postsecondary institution (regardless of who is paying the tuition or the presence of a disability). This means that once a student attends college, the parent no longer has an automatic right to see data such as grades. Permission for that access needs to be granted in writing by the student and still may not be honored by the college or university.

HOW DOES FERPA DEFINE "PARENT" ?

The term "parent" is defined in FERPA as "including natural parents, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." There may be some unique factors involved when the parent is the legal guardian of an adult college student with a disability. In the absence of any definitive language in the law, this publication does not address the issue of Guardianship.

STUDENTS' RIGHTS AT AGE 18

Students have a right to know about the purpose, content, and location of information kept as a part of their education records. They also have a right to expect that information in their educational records will be kept confidential unless they give permission to the college or university to disclose such information.

WHAT ARE EDUCATION RECORDS?

Education records are those records that are directly related to a student and maintained by the educational institution.

WHAT ARE NOT EDUCATION RECORDS?

Student records do not include medical records, law enforcement records, university employment records, or alumni records. They also do not include observations when not recorded in the educational records. FERPA applies only to “records” and information from “records,” not general information. Personal knowledge is not subject to FERPA, and its disclosure is not prohibited by FERPA, but the college or university may have a policy not to do so.

DISCLOSURE OF INFORMATION

Colleges or universities can disclose information to parents (but are not required to do so) under the following circumstances, even if the student has requested this information not to be released:

- The parent claims the student as a federal tax dependent. The institution may, with confirmation of that status, disclose any and all information it has about the student to both parents, regardless of the student's age or whether there is an emergency.
- The student is younger than 21. The institution may inform the student's parents of any violations of its alcohol or drug policies, regardless of whether the student is a tax dependent or whether there is an emergency.
- Information is based on a school official's personal knowledge or observation of the student.
- The institution reasonably believes that there is a health or safety emergency involving the student. The institution may alert the student's parents and seek their assistance, regardless of the student's age or whether the student is a tax dependent.

There are many exceptions to this federal law and sometimes it is difficult to determine what information is restricted because of FERPA or restricted because of college or university policy.

People tend to expect the laws to specifically allow or restrict certain things. However, FERPA gives postsecondary institutions quite a bit of discretion. For example, if parents claim the student as a dependent for Internal Revenue Service (IRS) purposes, the postsecondary institution may release education information to parents, but it does not have to. FERPA doesn't require the provision of this information. Rather, it gives the college or university discretion to do so. If the college or university chooses not to disclose information, it is because of institutional policy or discretion, but not FERPA.

COMPLAINT PROCESS

A complaint can be submitted if a parent believes that a college or university has violated FERPA. A parent should include the date of the request for the student's records, the specific nature of the information requested, the name and position of the official to whom the request was made, and a copy of any response.

For more information, see:

www.ed.gov/policy/gen/guid/fpco/index.html.

DISCLOSURE OF MEDICAL RECORDS

Medical records that involve treatment are protected under the Health Insurance Portability and Accountability Act (HIPAA). Records that do not involve “treatment,” such as disability accommodation records or immunization verifications, are subject to FERPA and its general restrictions, and not to HIPAA.

For more information on health privacy, see

www.hhs.gov/hipaa.

It is recommended that parents have an open and honest conversation with their son or daughter about expectations when it comes to sharing information such as grades. Just because FERPA may not allow colleges to share this information does not mean that families can't instill this expectation and ask youth to sign a form giving permission for the college to share.

ESTABLISHING COMMUNICATION EXPECTATIONS AMONG COLLEGE, YOUTH, AND FAMILY

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Most parents want to know if their youth is failing or at risk of dropping out of school. Parents of youth with disabilities — due to their potential vulnerability frequently associated with mental health needs, or intellectual or physical disabilities — may want to know additional details about their youth's life. This may seem intrusive to the college professor unfamiliar with the youth's disability or critical accommodations. It is important for parents to

- 1) define the type of information that will be helpful to report,
- 2) discuss this with trusted people in the young person's life at the postsecondary institution, and
- 3) include the youth in these conversations.

FERPA does not prevent a resident assistant, tutor, disability service advisor, college or university official, or others who

notice unusual behaviors, such as outbursts, confusion, or withdrawal, from raising concerns with others, but they may need to be encouraged to do so in a timely and appropriate manner. The parent may include their son or daughter in the discussions regarding disability-related concerns. This can help the young person take responsibility for his or her needs, and may increase the comfort level of those in the college or university community to provide additional or natural supports, and to report potential issues.

Students with disabilities may pose a unique challenge to postsecondary institutions and FERPA requirements. Families provide many vital direct and indirect supports that contribute to a youth's success in college. Youth with disabilities benefit from this family involvement and it should be encouraged and supported by postsecondary institutions. The intent of FERPA is not to put up unnecessary barriers to parent engagement. Establishing communication among the college, youth, and families can help support young adults with disabilities and their academic success.

RESOURCES

U.S. Department of Education video: Student Privacy 101: FERPA for Parents and Students
www.youtube.com/watch?v=nhIDkS8hvMU

The Family Educational Rights and Privacy Act: Guidance for Parents
www2.ed.gov/policy/gen/guid/fpcol/ferpa/parents.html

Addressing Emergencies on Campus
rems.ed.gov/docs/ED_AddressEmergenciesOnCampus.pdf

Disclosure of Information from Education Records to Parents of Students Attending Postsecondary Institutions
familypolicy.ed.gov/

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PACER's National Parent Center on Transition and Employment is a partner of Think College. We work together to develop materials to help families and others better understand opportunities in postsecondary education for students with intellectual disabilities. This brief was created by PACER's National Parent Center on Transition and Employment and is based on a review of existing guidance documents and discussions with experts in the field. NOTE: Guardianship is another aspect that should be considered when discussing FERPA, however there has been no definitive legal opinion on the ramifications of guardianship on FERPA requirements. As a result, this publication does not address guardianship issues.

FOR MORE INFORMATION

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