



FERPA Rights & Options Guide

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 C.F.R. Pt. 99, is a federal privacy law that protects the education records of students at educational institutions and agencies that receive federal funding. Pursuant to FERPA, guardians of minor students as well as eligible students at postsecondary institutions may request to review and release their education records along with the personally identifiable information (PII) contained therein.¹

On an annual basis, educational institutions must notify guardians of minor students, as well as eligible students enrolled in an institution of higher education, about their rights under FERPA,² which include the rights to:

- “inspect and review education records”;
- request amendments to education records;
- consent (or withhold consent) to records disclosures, with certain exceptions; &
- file an administrative complaint with the U.S. Department of Education.

FERPA is enforced by the U.S. Department of Education’s Family Policy Compliance Office. For more information, please review the [FAQ section](#) on the Department’s website. You may also wish to review the general information provided by the Department on FERPA for [students](#) or [guardians](#) likewise available online.

SurvJustice has developed this short packet of information to ensure guardians of minor students, as well as eligible students at postsecondary institutions, may learn about their rights and options under FERPA. The constitutes general informational provided for educational purposes only.

By reading this, you understand that there is no attorney-client relationship between you and SurvJustice. No information contained herein should be construed as legal advice from SurvJustice, nor is it intended to be a substitute for legal counsel on any subject matter. Please be aware that, while this FERPA guide is updated on a regular basis, it may not reflect the most current legal developments.

¹ See [20 U.S.C. § 1232g\(b\)](#); [34 C.F.R. § 99.30\(a\)](#).

² See [20 U.S.C. 1232g\(e\)-\(f\)](#); [34 C.F.R. § 99.7](#).

PART ONE: FERPA RIGHTS

Right to Inspect and Review Education Records

A guardian of a minor student or an eligible student at an institution of postsecondary institution has the right to “inspect and review” their respective education records within 45 days of the request’s receipt.³ This access does not include (i) “the financial records” of an eligible student’s guardian; (ii) “confidential letters and confidential statements of recommendation” that were (a) placed in the education records of the student before January 1, 1975 and “used only for the purposes they were specifically intended,” or (b) placed after January 1, 1975 and the student “waived his or her right to inspect and review those letters and statements” and those letters are related to the student’s admissions, application for employment, or an honorary recognition.⁴

“If circumstances prevent the guardian or eligible student from exercising the right to inspect and review the education records,” the educational institution shall provide the guardian or eligible student with a copy of the records requested, or “make other arrangements” for inspection and review of the requested records.⁵

Right to Request Amendment of Education Records

If an education record contain information that is “inaccurate, misleading, or in violation of the student’s rights of privacy,” the eligible student or guardian of a minor student may ask the educational institution to amend the record.⁶ Within a “reasonable time” after the agency or institution receives such a request, it shall decide whether to amend the record as requested.⁷ If it decides not to amend the record as requested, it must inform the guardian or eligible student of their subsequent right to a hearing regarding the request for amendment.⁸

Right to Consent to Disclosures

Generally, educational institutions or agencies must have written permission from the guardian of a minor student, or an eligible student, in order to release information from a student’s education record.⁹ The written consent must specify the following information:

- (1) “the record(s) that may be disclosed”;
- (2) “the purpose of the disclosure”; and
- (3) “the party or class of parties to whom the disclosure may be made.”¹⁰

Right to file a Complaint with the U.S. Department of Education

A guardian or eligible student may file a written complaint with the Family Policy Compliance Office regarding an alleged violation under FERPA,¹¹ which can be submitted using this this [Complaint Form](#), which can be sent via mail to the Family Policy Compliance Office or email to FERPA.Complaints@ed.gov.

³ See [20 U.S.C. 1232g\(a\)\(1\)\(A\)-\(B\)](#); [34 C.F.R. § 99.10](#).

⁴ See [20 U.S.C. 1232g\(a\)\(1\)\(A\)-\(D\)](#); [34 C.F.R. § 99.12](#).

⁵ See [20 U.S.C. 1232g\(a\)\(1\)\(A\)-\(B\)](#); [34 C.F.R. § 99.10](#).

⁶ See [20 U.S.C. 1232g\(a\)\(2\)](#); [34 C.F.R. § 99.20](#).

⁷ *Id.*

⁸ *Id.* See [20 U.S.C. 1232g\(a\)\(2\)](#) and [34 C.F.R. § 99.21](#) for information regarding one’s right to a hearing.

⁹ See [20 U.S.C. 1232g\(b\)\(1\)](#) and [\(b\)\(2\)\(A\)](#); [34 C.F.R. § 99.30](#).

¹⁰ *Id.*

¹¹ See [20 U.S.C. 1232g\(g\)](#); [34 C.F.R. § 99.63](#).

PART TWO: FILING A COMPLAINT

How can I enforce my rights under FERPA?

The [U.S. Department of Education](#) has primary enforcement authority for FERPA, therefore you can file an administrative complaint using this [Complaint Form](#). FERPA does not provide a private cause of action for damages, but does allow for injunctive relief.¹²

If you received notice that the school may disclose education records without your consent pursuant to a subpoena or similar records request, consider hiring a civil attorney to defend against such discovery requests and/or quash any such subpoena seeking information protected by FERPA. Please reach out to [SurvJustice](#) or other local civil counsel for such assistance.

Who can file a FERPA complaint?

Guardians of a minor student who are seeking to access their child's education record and eligible students at postsecondary institutions (i.e. college students) to access their own records.

What is required for a FERPA complaint?

The easiest way to file a FERPA complaint with the U.S. Department of Education is using their pre-made [Complaint Form](#). If you wish to communicate a complaint in another manner, your complaint must meet the following criteria:

- Be written (electronic or handwritten);
- Contain student's full legal name and date of birth;¹³
- Contain specific allegations of fact giving reasonable cause to believe that a FERPA violation has occurred;
- Be filed within 180 days of the alleged violation, or within 180 days after you knew (or should have known) about the violation; &
- Include the name and address of relevant school officials who allegedly violated FERPA.

How do I include documents to support my complaint?

If there are documents, correspondence, or other information (i.e. newspaper article or website posting) that support your complaint, please briefly describe it in your [Complaint Form](#). The U.S. Department of Education asks that you do not attach, mail, or otherwise provide additional information absent a specific request from Department official as part of any subsequent investigation. This helps ensure the privacy of the education records.

How do I file my complaint?

1. Fill out the electronic [Complaint Form](#).
2. Select the "Submit Form" button online, or save the form and email it as an attachment to:
FERPA.Complaints@ed.gov

OR

¹² See e.g., *United States v. Miami Univ.*, 294 F.3d 797 (6th Cir. 2002).

¹³ Guardians of minor students should also indicate their relationship to the student and provide their full name and contact information.

1. Print out the form, fill it out, and sign it.
2. Mail to:

**U.S. Department of Education
ATTN: Family Policy Compliance Office
400 Maryland Avenue, SW
Washington, D.C. 20202-8520**

What happens after filing a complaint?

If the U.S. Department of Education initiates an investigation, it will notify both the Complainant and the educational institution or agency. This notice will include the substance of the allegations and the school must submit a written response to the Department addressing the allegations.

Please note that the Department routinely contacts complainants by phone rather than in writing (mail or email), *so provide a good working phone number* and always seek to promptly return their phone calls.

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PART THREE: FREQUENTLY ASKED QUESTIONS

What happens when a student is a minor (under age 18)?

The parents or legal guardians of the minor student can assert their rights under FERPA.¹⁴

What happens when a student is an adult (age 18 or older)

Eligible students who 18 years or older, or attend a postsecondary institution, may access their own student records.¹⁵

Can schools disclose information to the parents of adult students (age 18 or older)?

Yes, schools may disclose education records to parents, or legal guardian, of an eligible student without that student's consent under the following circumstances:¹⁶

- The student is a “dependent” for tax purposes;
- There is a health or safety emergency involving the student; &
- There are violations of law or policy concerning the use or possession of drugs or alcohol when the student is under the age of 21.

Beyond education records, a school official may generally share knowledge or observation of the student with a parent or legal guardian without violating FERPA.

How quickly can I inspect my records?

School must comply with requests to review records under FERPA within a “reasonable time period,” which may not exceed 45 days after the receipt of such a request.¹⁷

What information is not covered under or protected by FERPA?

Police Records: created by a law enforcement unit, for a law enforcement purpose, and are maintained by that law enforcement unit.¹⁸

Treatment Records: medical and psychological treatment records of eligible students are excluded when (i) “made, maintained, and used only in connection with treatment of the student”; and (ii) “disclosed only to individuals providing the treatment.”¹⁹ But if a school discloses an eligible student's treatment records for purposes other than treatment, the records may no longer be excluded and thus may become subject to the protections of FERPA.

Directory Information: This is information contained in a student's education record that generally would not be considered harmful or an invasion of privacy if disclosed and includes the following:

- name, address, telephone listing, electronic mail address, date and place of birth, dates of attendance, and grade level;
- participation in officially recognized activities and sports;
- weight and height of members of athletic teams;
- degrees, honors, and awards received; &

¹⁴ See [20 U.S.C. 1232g](#); [34 C.F.R. § 99.4](#).

¹⁵ See [20 U.S.C.1232g\(d\)](#); [34 C.F.R. § 99.5](#).

¹⁶ See [20 U.S.C. 1232g\(b\)\(1\)\(D\)](#); [34 C.F.R. § 99.31](#).

¹⁷ See [20 U.S.C. 1232g\(a\)\(1\)\(A\)](#); [34 C.F.R. § 99.10\(b\)](#).

¹⁸ See [20 U.S.C. 1232g\(a\)\(4\)\(B\)\(ii\)](#); [34 C.F.R. § 99.8](#).

¹⁹ See [20 U.S.C. 1232g\(a\)\(4\)](#); [34 C.F.R. § 99.3](#).

- the most recent school attended.²⁰

While schools do not need your consent to release this information, if you have any concerns about your privacy you can request the school not disclose this directory information.

When may a school disclose my information without consent?

Generally, educational institutions or agencies must have written permission from the guardian of a minor student, or from an eligible student, in order to release information from a student's education record.²¹

However, a school may disclose such information without consent in the following circumstances:

- When another employee of an educational institution has a “legitimate educational interest” to the information (i.e. school officials, coaches, teachers, etc.);²²
- When an educational agency or institution has outsourced institutional services to a contractor, consultant, volunteer, or other third party considered to have a “legitimate educational interest”;²³ &
- When there is a court order or “lawfully issued”²⁴ subpoenas (see more below).²⁵

Even with a subpoena or court order, the educational institution must still make a “reasonable effort to notify” the guardian of a minor student, or an eligible student, of the order or subpoena in advance of compliance.²⁶ This advance notice allows the guardian or eligible student to seek protective action from the court, such as limiting the scope of the subpoena.²⁷ Advance notice is not required if a court has concluded, for good cause shown, that the information “furnished in response to the subpoena” should not be disclosed.²⁸

When might a school employee have a “legitimate educational interest”?

On an annual basis, schools must inform parents of students currently in attendance or eligible students currently in attendance of how they define the term “legitimate educational interest” under FERPA.²⁹ A school official “generally has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.”³⁰ Education records therefore should be used only in the context of official business as being a school official is not in and of itself enough to justify their access to an education record.³¹

²⁰ Educational institutions may adopt a limited directory information policy. If they do, they must give guardians and eligible students notice and specify the parties who may receive directory information and/or the purposes for which directory information may be disclosed. See [20 U.S.C. 1232g \(a\)\(5\)\(A\)-\(B\)](#); [34 C.F.R. § 99.37\(d\)](#).

²¹ See [20 U.S.C. 1232g \(b\)\(1\)-\(2\)](#); [34 C.F.R. § 99.30](#).

²² See [20 U.S.C. 1232g\(b\)\(1\)\(D\)](#); [34 C.F.R. § 99.31](#).

²³ *Id.*

²⁴ “Lawfully issued” simply means that the subpoena or court order is issued in compliance with state law. See U.S. DEP’T OF EDUC., Family Policy Compliance Office, FERPA Guidance Letter (June 22, 1998), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/library/california.html>.

²⁵ See [20 U.S.C. 1232g\(b\)\(2\)\(b\)](#); [34 C.F.R. § 99.31\(a\)\(9\)\(ii\)](#).

²⁶ See [20 U.S.C. 1232g\(b\)\(2\)\(b\)](#); [34 C.F.R. § 99.31\(a\)\(9\)\(ii\)](#).

²⁷ See U.S. DEP’T OF EDUC., Family Policy Compliance Office, FERPA Guidance Letter (June 22, 1998).

²⁸ See [20 U.S.C. § 1232g\(b\)\(1\)\(J\)](#); [34 CFR § 99.31\(9\)\(ii\)\(B\)](#).

²⁹ See [20 U.S.C. 1232g\(b\)](#); [34 C.F.R. § 99.7](#).

³⁰ FERPA General Guidance for Students, Ed.gov, <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html> (last updated June 26, 2015).

³¹ See *Id.*