



Confidentiality of Student Records

There are two important federal laws concerning the confidentiality of students' educational records: the Family Educational Rights and Privacy Act (known as "FERPA") and the Individuals with Disabilities Education Act (known as "IDEA"). Both FERPA and IDEA apply to charter schools and district public schools. FERPA covers all education records of students enrolled in a charter school; the confidentiality provisions of IDEA mainly concern a subset of education records of students with disabilities.

In order to help your charter school comply with FERPA and the confidentiality provisions contained in IDEA, the following is a summary of their most essential requirements.

The Institute has also prepared a series of forms that you may find helpful in implementing your school's policies and procedures. **These forms are samples only.** While a school may use them as part of its policy, it should feel free to use its own, so long as those forms capture the information that the law requires you to collect. Please note that these forms are available on request from the Charter Schools Institute in electronic form.

Throughout the overview, and for your reference, citations are made to pertinent provisions of the FERPA statute or the FERPA and IDEA regulations. References to the FERPA regulations follow the format, 34 C.F.R. § 99__; references to the IDEA regulations follow the format 34 C.F.R. § 300.____; references to FERPA follow the format 20 U.S.C. § 1232g____. Please note that C.F.R. is the abbreviation for Code of Federal Regulations; U.S.C. is the abbreviation for United States Code.

The statute and regulations can be found at the following web pages:

- FERPA, 20 U.S.C. § 1232g *et seq.*, Family educational and privacy rights: <https://www.law.cornell.edu/uscode/text/20/1232g> (from the Cornell Law School, Legal Information Institute).
- FERPA Regulations, 34 C.F.R. Part 99 *et seq.*: <https://www.law.cornell.edu/cfr/text/34/part-99> (from the Cornell Law School, Legal Information Institute).
- IDEA Regulations, 34 C.F.R. Part 300 *et seq.*: <https://www.law.cornell.edu/cfr/text/34/part-300> (from the Cornell Law School, Legal Information Institute).

Overview

Important Note: The following is only a summary of FERPA and the relevant IDEA regulatory provisions. While it captures their most important provisions, it is not comprehensive and does not cover every provision. *Accordingly, in implementing your*

school's confidentiality policies and procedures, you may use this memo (and the attached forms) as a starting point; however, the Institute highly recommends that your policies and procedures be reviewed by a knowledgeable attorney to ensure that they are complete and correct in all respects. If you or your school's attorney has any questions regarding these requirements, please contact the Institute's Office of Counsel.

Family Educational Rights and Privacy Act (FERPA)

FERPA's purpose is to ensure that parents and students have meaningful access to their own education records (and that those records are accurate) while at the same time limiting access and release of such records to others. FERPA carries out its purposes by requiring all schools that receive federal funds to:

- gain prior written consent of parents before releasing the education records of their children (or any personally identifiable information contained in those records), except in certain circumstances specified in the statute.
- allow parents to inspect, review, and obtain copies of the education records of their children;
- allow parents to challenge the contents of such records on the basis that they are inaccurate, misleading or in violation of the student's privacy rights; and
- allow parents to object to the publication of directory information by requiring a school to give parents notice and a reasonable time to object to publication.

Individuals with Disabilities in Education Act (IDEA)

Though the primary thrust of IDEA is to ensure a free and appropriate public education for disabled students, IDEA also requires additional safeguards for records relating to students with disabilities. Many of these safeguards overlap and are intertwined with the more general requirements of FERPA.

Important Procedures and Records to be Established by Schools Under FERPA and the Confidentiality Provisions of IDEA

A. Procedures for granting access to records to parents/guardians or their authorized representatives.

Parents/guardians have the right to inspect and review all records relating to their child that the charter school collects, maintains, or uses regarding the identification, evaluation, and educational placement of the child. (20 U.S.C. § 1232g(a)(1)(A)). Parents of disabled children also have the explicit right to have a representative inspect and review the records. (34 C.F.R. § 300.562(b)(3)). In addition, parents of disabled children have the right to obtain explanations and interpretations of their children's education records, so long as such requests are reasonable. (34 C.F.R. § 300.562(b)(1)).

When a parent requests a record, it must be provided to him or her no later than 45 days from the date of request. If the request by a parent for a record is connected to a meeting of a committee on special education (CSE) or to an IDEA related due process hearing, a charter school must provide the requested record prior to such meeting or hearing, or within 45 days, whichever period is shorter. (34 C.F.R. § 99.10 and 34 C.F.R. § 300.562(a)).

The school may charge a reasonable fee for copying records requested, unless such fee would effectively prevent the parent from exercising his or her rights under FERPA and/or IDEA. The school may not charge a fee to search for or retrieve records. (34 C.F.R. § 99.11 and 34 C.F.R. § 300.566).

In order to ensure the confidentiality of records as well as a timely response to parental requests for review of records, the school must designate a member of the administrative staff to be in charge of handling all requests for education records (whether those requests come from parents or any other individual or entity). (34 C.F.R. § 300.572(b)).

A sample form (**Form 1 - Request to Review Records**) that a school might keep on hand for parents (and others) to request access to their child's education records is attached. A charter school may also wish to consider implementing the following procedures or taking the following actions.

- Grant the staff member designated to oversee compliance with FERPA and the confidentiality provisions of the IDEA exclusive authority to handle requests and to consult as needed with the school's attorney. In light of the sensitivity of student records, the designated staff member should probably be a senior member of the organization;
- require that all requests for review of student records (by parents or anyone else) be received in writing;
- establish a master calendar (with a tickler system) to track each request in order to ensure that requests from parents are handled in a timely fashion and within the 45 day period allotted to schools (or any shorter period prior to a meeting of the CSE or a due process hearing);
- check that individuals who identify themselves as parents or guardians in fact carry such status; and
- make available to staff and others a supply of forms for use in requesting education records.

B. Procedures for obtaining parental consent for the release of education records or personally identifiable information

(1) Education records and personally identifiable information

With a number of limited exceptions, parents must give their consent before any education records or personally identifiable information can be disclosed by a charter school. (34

C.F.R. § 300.571). NOTE: “Personally identifiable information” means information that includes: (a) the name of the child, parent, or other family member; (b) the address of the child; (c) a personal identifier number (such as the child's social security number or student number); or (d) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. *See*, 34 C.F.R. 300.500(b)(3).

The situations in which a school need not obtain parental consent are specified under FERPA and are quite detailed (20 U.S.C. § 1232g(b)(1)-(2); 34 C.F.R. § 99.30-31). They include, but are not limited to, the following individuals or entities:

- to state and local educational authorities, (34 C.F.R. § 99.31(a)(3)(iii)), including, but not limited to the Charter Schools Institute and State Education Department, subject to the requirements of 34 C.F.R. § 99.35;
- to officials of another school in which the student seeks or intends to enroll (34 C.F.R. § 99.31(a)(2) if certain prior conditions are met as set forth in 34 C.F.R. § 99.34);
- in response to a judicial order or subpoena (though a parent should be notified prior to disclosure in order to permit the parent to seek judicial relief) (34 C.F.R. § 99.31(a)(9)(i)); and
- to other school officials, including teachers, whom the school has determined to have legitimate educational interests. (34 C.F.R. § 99.31(a)(1)).

The school administrator in charge should review those exceptions carefully (and consult with the school's attorney as necessary) when reviewing a request for access from anyone other than a parent or before disclosing any education records or personally identifiable information.

It is important that the school's administrative staff understand that, even within the school, FERPA restricts access (absent written parental permission) to only those individuals with a legitimate need for access. Accordingly, absent special reason, a faculty member generally should not have access to education records of students to whom she is not providing instruction. A school's records confidentiality policy and procedures, if they are to be sound, should ensure limits on access to records not only to individuals or entities unassociated with the school, but to faculty and staff as well. To ensure that school personnel are aware of this requirement, the school may wish to require employees to sign annually a confidentiality agreement, through which they acknowledge their understanding. (**Form 2 – Confidentiality Agreement for School Employees**).

Where parental consent is required, the school should ensure that such consent is received in writing. Schools should also ensure that the consent is based on full information, i.e., the parent knows the specific records that are contemplated for release, the reason for the request and to whom the records would be released. (34 C.F.R. § 99.30). Copies of the records that have been requested for release should also be provided to the parents to assist them in making this evaluation if they so request.

The school should ensure that education records should be stored in a central location and that location should be secured and access limited to designated members of the administration. Exceptions to central storage include those records kept by individual teachers that are used by that teacher only, e.g., a grading book or required personal copy of an Individualized Education Program (IEP), IEPs kept by Special Education Coordinators and health records kept by the School Nurse. These may be kept in individual classrooms or other areas as long as they are secured. In addition, all records covered by FERPA and the IDEA must be stored with a record of access or log discussed in section D, below.

A sample form (**Form 3 - Consent for Release of Student Information**) which a school may use to obtain consent from a parent prior to releasing an education record or personally identifiable information, is attached. (NOTE: A school should be aware that certain of the exceptions in FERPA to obtaining parental consent are not applicable to personally identifiable information that is contained in a student's special education records. (34 C.F.R. § 300.571). When information of this type is requested to be released or accessed, your school's designated staff member should consult with the school's attorney.

(2) Directory Information

In contrast to general education records (which cannot be disclosed in most instances without the affirmative consent of a parent), FERPA permits the disclosure of certain categories of what is known as "directory information," i.e., name, age, address, etc., without specific permission from the parents having been obtained. (NOTE: The regulations to FERPA define "directory information" as that information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. (34 C.F.R. 99.3).)

However, while permission is not required, the school must give a parent the opportunity to object or opt out. A sample form (**Form 4 - Notice of Intent to Disclose Directory Information**), which a school might use to give parents the required opportunity to object to disclosure, is attached.

C. Annual FERPA notification

Each charter school is required to notify annually parents/guardians of their legal rights under FERPA, as well as the right to file a complaint for failure to comply with FERPA. (34 C.F.R. § 99.7). The notice must include the following:

- notice that the parent has the right to inspect and review his or her child's education records and the procedures for so doing, including the name, address and work location of the school's contact person, whether or not copies of records will be made available (as opposed to access), and, if so, the cost per copy;
- notice that the parent has the right to request an amendment of a misleading or incorrect record (or a record that otherwise violates the child's privacy rights) and the procedures for so doing;

- notice that the parent must consent to disclosures of personally identifiable information contained in a student's education records (except where, under FERPA, prior permission is not required);
- if the school has a policy of disclosing personally identifiable information to other school officials, the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest; and
- information regarding the right to file a complaint against the school for failure to comply with FERPA.

A sample form (**Form 5 - Annual Notification**) for providing the required information to parents/guardians is attached. *Please note that this form may be required to be modified depending on the school's policies and procedures and thus cannot be simply copied verbatim.* Before sending notification, the school may wish to review the form with its attorney to ensure consistency with school policies and procedures. In order to ensure that the notification is made annually, the school should include this notice in its mailings to all enrolled students prior to or at the start of the school year.

D. Records of access (Logs)

Under FERPA and IDEA, each charter school must maintain a record indicating all individuals and organizations (other than school officials) that have requested and/or obtained access to a student's education records and indicating the legitimate interest each had in obtaining access to the records ("record of access"). The only exceptions to this are for school officials who the school has determined have a legitimate educational interest, parents requesting records of their children and a party seeking access pursuant to a secret order/subpoena of a grand jury or other law enforcement subpoena. The record of access must be maintained with the education records of each student.

This record of access is itself confidential and is only available to parents, the school's custodian of records and assistants thereto, school officials, and authorized representatives of certain designated governmental officials who are charged with auditing the record keeping system. (34 C.F.R. § 99.32 and 34 C.F.R. § 300.563).

A sample form (**Form 6 -- Record of Access**) for recording individuals who have had access to a student's education records is attached.

E. Requests for Amendments to Records

If a parent believes the information in their child's records is inaccurate or misleading or that information in the records violates the child's right to privacy or other rights, the parent may request that the charter school amend it. The charter school must then decide, within a reasonable period of time, whether to amend the information. If the charter school decides to not to amend the information as requested, it must inform the parent of this decision, and advise the parent of the parent's right to a hearing. (34 C.F.R. § 99.20 and 34 C.F.R. § 300.567).

F. Other Record Keeping Requirements

There are two additional record keeping requirements that a school should ensure are covered by its policy and procedures.

- A school has the obligation to provide to parents upon request a list of types and locations of education records collected, maintained, or used by the school. (34 C.F.R. § 300.565). A form (**Form 7 - Records Maintained**), through which a school can meet this requirement, is attached.
- A school has the obligation to maintain a list, available for public inspection, which contains the names and positions of those employees within the school who may have access to personally identifiable information of any student in the school. (34 C.F.R. 300.572(d)). In compiling this list, it is important to note that the individuals on this list need not have actual access; rather the list should contain the names of those individuals who might reasonably be expected to have access to any student records at some point during the school year. As such, a school should err on the side of being comprehensive.

It is important to remember that this list will differ appreciably from a list of individuals who actually do have access to an individual student's record. As noted above, the individuals who have access to any one student's record should only include those with a legitimate educational need.

G. Notice and Other Requirements of the Protection of Pupil Rights Amendment

The Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h (available at <https://www.law.cornell.edu/uscode/text/20/1232h>, and its regulations, 34 C.F.R. Part 98 *et seq.* (available at <https://www.law.cornell.edu/cfr/text/34/part-98>) apply to charter schools receiving federal funds from the U.S. Department of Education. The statute is concerned with student research, experimental programs and testing, and, among other things, regulates student surveys or evaluations related to one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or 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; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program);

by requiring notice and the prior written consent of parents for student participation in any such survey, etc. Annual notice regarding parents' rights under PPRA is mandatory at the

beginning of each school year, including notice of written consent, and specific notice is required whenever, for example, a survey regarding one of the identified categories will be administered so that parents may opt out. Schools are also supposed to develop policies regarding surveys and other subjects in conjunction with parents as part of the PPRA.

The PPRA also addresses marketing surveys, parental access to school information, and certain physical examinations of minors. Please consult (**Form 8 – USDOE September 2005 Memo**), which provides further information on this and related topics. Please note that parents are entitled to inspect instructional materials associated with any experimental teaching, survey or analysis regulated by the PPRA.