

[REDACTED]

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**From:** Miles, Regina [REDACTED]  
**Sent:** Wednesday, June 02, 2021 9:20 AM  
**To:** [REDACTED]  
**Subject:** FERPA Complaint 19-0752 Final Response

Ms. Oettinger –

This is in response to your complaint dated November 9, 2019, with the Student Privacy Policy Office. As you are aware, FERPA is a Federal law that affords parents and eligible students the right to have access to their children's or their education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. Specifically, you alleged that Fairfax County Public Schools (District) violated your rights when it improperly disclosed education records to a third party in response to another parents records request. . In addition you alleged that the District failed to provide you access to all your child's education records, this will be addressed at the end of this correspondence. FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records, to third parties only after the parents of a minor student, or of a student who has reached the age of 18 or is attending an institution of postsecondary education, has provided prior written consent.

“Education records” means those records that are:

- (a) Directly related to a student; and
- (b) Maintained by an educational agency or institution or by a party acting for the agency or institution.

This office's enforcement process is intended to work cooperatively with Districts to achieve their voluntary compliance under FERPA. Following a review of the evidence and allegations submitted by a complainant, we reserve the right to initiate an intermediation administrative process by contacting the District and the complainant to request relative information regarding the allegation set forth. If this Office determines that an University has not complied with FERPA, or failure to comply was based on a policy or practice of the District, the District is advised on corrective actions to be taken, as it relates to the case within a reasonable period of time. If the District voluntarily complies, such measures taken may include, but not limited to training of school officials or a memorandum advising school officials of the specific requirements as it relates the specifics of the case. There is no basis under FERPA to require that a school take punitive or disciplinary action against an individual school official as the result of a FERPA violation. However, if the District does not comply within a reasonable amount of time set by this Office there may be further legal enforcement action. This Office has been in contact with the District to request information regarding the disclosure. This Office spoke with the District's attorney.

34 CFR § 99.3 “Education records.” FERPA requires that a consent for disclosure of education records must be signed and dated and must specify the records that may be disclosed; state the purpose of the disclosure; and identify the party or class of parties to whom the disclosure may be made. 34 CFR § 99.30. As such, oral consent for disclosure of information from education records would not meet FERPA's consent requirements. Under FERPA, educational agencies and institutions must annually notify eligible students of their rights. In this regard, schools are required to notify eligible students of the right to inspect and review their education records and the procedure to do so; the right to seek amendment of records the eligible student believes are inaccurate and the procedure to do so; and the right to consent to disclosures of education records

except to the extent FERPA authorizes disclosure without consent. The notification must also inform eligible students of their right to file a complaint with this Office and it must include a specification of criteria for determining who are school officials and what constitutes a legitimate educational interest in education records. A school is not required to notify eligible students individually, but rather is required to provide the notice by any means that are reasonably likely to inform eligible students of their rights. These means could include publication in the school activities calendar, newsletter, or student handbook. However, should not be only available online, as all Eligible Students may not have web access.

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 an exception to FERPA's prior written consent requirement.

One of the exceptions to the prior written consent requirement in FERPA allows "school officials, including teachers, within the agency or institution" to obtain access to education records provided the educational agency or institution has determined that they have "legitimate educational interests" in the information. 34 CFR § 99.31(a)(1). Although "school official" is not defined in the statute or regulations, this office has interpreted the term broadly to include a teacher; school principal; president; chancellor; board member; trustee; registrar; counselor; admissions officer; attorney; accountant; human resources professional; information systems specialist; and support or clerical personnel. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Section 99.7(a)(3)(iii) of the FERPA regulations requires an educational agency or institution to include in its annual notification of rights under FERPA a statement indicating whether it has a policy of disclosing personally identifiable information under § 99.31(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest.

Based on the information reviewed by this Office, as it relates to this case none of the exceptions would apply. We therefore find that the District take specific actions, these actions include training staff. Specifically, the District failed to obtain prior written consent before disclosing education records to another parent. We also have evidence that the District does not have a policy that would violate FERPA on a regular basis. The District has required school officials complete a FERPA training to ensure that the scope and limitations of FERPA are adhered to. The District completed such training on November 12, 2019, which satisfies the requirements of this Office. Concluding, this Office has received assurance from the District, therefore, we are closing the investigation as the District has completed the required corrective actions. With respect to your access request, the District confirmed that all education records were provided to you. However, records that may not be related to your child were withheld. FERPA requires that schools comply with a parent's request for access to his or her children's education records within 45 days of receipt of the request. While a district would be required to conduct a reasonable search for education records, it is the responsibility of the parent to clearly specify the records to which he or she is seeking access. If a parent makes a "blanket" request for a large portion of her child's education records and the parent believes that she has not been provided certain records which were encompassed by that request, she should submit a follow-up request clarifying the additional records she believes exist.

FERPA does not address the destruction or maintenance of education records (i.e. there is no length of time that FERPA requires records be kept) except to the extent that a school may not destroy education records as long as there is a standing request to inspect and review them. There might be state law or guidelines that apply beyond FERPA. FERPA does not require schools to create or maintain education records, or to re-create lost or destroyed education records. Additionally, FERPA does not require a school to keep education records in any particular file or location, and a school official would not be prohibited by FERPA from taking education records home, so long as the records are treated consistent with FERPA.

FERPA would not require a school district to honor a request that education records not be destroyed. However, a school may not destroy education records if there is an outstanding request to inspect and review the records. FERPA does not otherwise address the destruction of education records by a school.

While a school is required to comply within 45 days with each individual request for access, a school is not required by FERPA to honor standing requests, to provide immediate access to records, or to send out grades to parents at the end of marking periods. Additionally, FERPA would not require a school to provide parents documents such as school calendars, updates, or notices of parent/teacher conferences because such documents do not generally contain information that is directly related to individual students. Likewise, a school would not be required to notify parents about school plays, spelling bees, or sporting events in which their children may be participating. Also, schools are not required by FERPA to permit parents to attend parent/teacher conferences -- such decisions are made at the discretion of local and State officials. This office recommend that you make a new request to inspect and review your child's education records.

Please note, the District will receive a copy of this correspondence.

Thank you, have a wonderful day.

*Regina Miles*

*Caseworker, Student Privacy Rights Advisor*

*U.S. Department of Education*

*Student Privacy Policy Office (SPPO)*

*202.260.3887 Main*

*202.510.5675 Offsite*

*202.260.3968 Direct*

<https://studentprivacy.ed.gov/>

"We must be willing to let go of the life we planned so as to have the life that is waiting for us."

— Joseph Campbell