

9.26.23 Systemic Complaint

This is a systemic complaint against Fairfax County Public Schools (FCPS), Virginia.

1. 300.611(b) states:

“Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).”

2. 34 CFR part 99.3 states:

“Education records.

“(a) The term means those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

“(b) The term does not include: (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. (2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8. (3) (i) Records relating to an individual who is employed by an educational agency or institution, that: (A) Are made and maintained in the normal course of business; (B) Relate exclusively to the individual in that individual's capacity as an employee; and (C) Are not available for use for any other purpose. (ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition. (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are: (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (ii) Made, maintained, or used only in connection with treatment of the student; and (iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.(6) Grades on peer-graded papers before they are collected and recorded by a teacher.” (Authority: 20 U.S.C. 1232g(a)(4))”

3. Code of Virginia § 22.1-289 states:

“Scholastic record” means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. These include, but are not limited to, documentation pertinent to the educational growth and development of students as they progress through school, student disciplinary records, achievement and test data, cumulative health records, reports of assessments for eligibility for special education services, and Individualized Education Programs. Such records may be recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.”

4. FCPS Policy 2701.7 states:

“All data maintained on an individual student shall be considered official student education records and shall be referred to as the student scholastic record. The student scholastic record includes all records that are created and maintained by Fairfax County Public Schools (FCPS) in any format, including handwriting, print, audiotape, CD, DVD, videotape, film, microfilm, microfiche, and computer media including email. All student scholastic records in FCPS shall be maintained in accordance with the manual, Management of the Student Scholastic Record, which is based on applicable state and federal laws and Regulations.”

[https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BGEUWD7E06C1/\\$file/R2701.7.pdf](https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BGEUWD7E06C1/$file/R2701.7.pdf)

5. FCPS’s policy 2701.7 narrows the definition of education records to exclude an institution or party acting on behalf of FCPS, pursuant to 34 CFR part 99.3 states and § 22.1-289.

6. FCPS’s “Management of Student Record” (Chapter 2 “Definitions”) states:

“Education record – any information recorded in any way including handwriting, print, computer media, video or audiotape, film, and microfiche maintained by FCPS or an agent of the school division that contains information directly related to a student, **except: [emphasis added]** • Any electronic information, such as email, even if it contains personally identifiable information regarding a student, unless a printed copy of the electronic information is placed in the student’s file or is stored electronically under an individual student’s name on a permanent and secure basis for the purpose of being maintained as an education record. For purposes of this policy, electronic information that exists on a back-up server, a temporary archiving system, or on a temporary basis on a computer is not an education record and is not considered as being maintained.”

<https://www.fcps.edu/sites/default/files/media/forms/Management%20of%20the%20Student%20Scholastic%20Record.pdf>

7. Unlike FCPS Policy 2701.7, FCPS’ “Management of Student Record” manual includes records that are maintained by a party acting for FCPS. However, the manual — which

FCPS dictates staff follow pursuant to 2701.7 — narrows the definition of education record to exclude emails unless someone prints a copy of the email or stores it a specific way.

8. FCPS's "Management of Student Record" manual (Chapter 3 "Scholastic Record") further narrows the definition by placing constraints on the contents of the student record:

"The content of the scholastic record should be limited to data needed by the school to assist the student in his or her personal, social, educational, and career development, otherwise provide services, or comply with state or federal requirements."

<https://www.fcps.edu/sites/default/files/media/forms/Management%20of%20the%20Student%20Scholastic%20Record.pdf>

9. FCPS's "Management of Student Record" manual (Chapter 9 "Frequently Asked Questions About Student Scholastic Records") again narrows the definition of educational records:

"What are student education (scholastic) records?"

"Student education or scholastic records are those records that are directly related to a student and are maintained by FCPS or by a party acting for FCPS. The content of the education record should be limited to data needed by the school to assist the student in his or her personal, social, educational, and career development, to provide a service, or comply with state or federal requirements. Education records (which may be collected orally, in writing, or by electronic means) encompass records maintained by FCPS that contain information on a student, except those records specifically exempted by law. The term "education record" is used in FERPA whereas "scholastic record" is used in the Code of Virginia. These terms are used interchangeably in this manual. See Chapter 3 for additional information."

<https://www.fcps.edu/sites/default/files/media/forms/Management%20of%20the%20Student%20Scholastic%20Record.pdf>

10. FCPS does not have the authority to narrow definitions or scope of IDEA and implementing state regulations.
11. FCPS' policy and required manual contradict each other, in addition to being in noncompliance with IDEA and implementing state regulations, which makes the noncompliance even worse.

As a resolution, I request that FCPS be required to change its policy and manual; FCPS staff be trained and monitored quarterly until full implementation of IDEA and implementing state regulations is achieved; that FCPS identify and contact all individuals to whom it previously narrowed access to records; that FCPS apologize to the individuals impacted by its

noncompliance and provide full access to student records that it previously refused; and that FCPS issue a public apology and provide training sessions for parents and students.

Thanks,

Callie Oettinger

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