



Fairfax County
PUBLIC SCHOOLS

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**Family Educational
Rights and Privacy Act
(FERPA)**

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Due Process and Eligibility

Objectives



- 1) Understand what FERPA is and our obligation as a school system to appropriately respond to FERPA requests.
- 2) Understand the FERPA process.
- 3) Understand your responsibilities regarding FERPA.

FERPA

FERPA is a federal law that protects the confidentiality of student records by giving parents/students certain rights concerning their own records.

Parents or eligible students* have the right to:

1. Inspect and review the student's education records maintained by the school.
2. Prevent the disclosure of personally identifiable information from their records without their consent
3. Request that a school correct records which they believe to be inaccurate or misleading.

*eligible student is 18 years or older, or those who have obtained certain rights

Additional rights under FERPA

- Receive annual notice of rights/directory information
- Opt out of release of directory information
- File a complaint

FERPA does not give rights to stepparents or third parties, such as other family members, tutors, parent advocates, or parent attorneys to access student information without parent consent.

Who is a parent?

- Biological or adoptive
- Guardian
- Individual acting in the place of a biological or adoptive parent (such as grandparent or stepparent with whom the child lives or a person legally responsible for the child's welfare)
- Surrogate parent, appointed by Due Process and Eligibility
- Foster parent, under specific circumstances
- Either parent, unless there is evidence of a legally binding instrument, state law, or court order that has terminated a parent's parental rights
- An emancipated minor or validly married minor may also assume the responsibilities of a parent

34 CFR 99.4 and 34 CFR 300.30

See § 20-124.6 and § 22.1-213.1 of the Code of Virginia

Virginia special education regulations, p. 8

http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf

FCPS Regulation 2240 (Parent Participation and Decision Making)

What are educational records?

- Cumulative information recorded in any form that is “directly related to a student” and maintained by FCPS and by those acting for FCPS.
- Examples:
 - Transcript
 - Attendance records
 - Health records
 - Therapy notes (Speech, counseling, PT, etc.)
 - Disciplinary records
 - Standardized testing results
 - Special education or Section 504 records
 - Electronic records (including emails, Google App data, BHMS, etc.)

What is not an educational record?

Sole possession notes, often referred to as personal notes or memory aids, are not considered to be educational records if:

- The records are kept in the sole possession of the maker
- The records are used only as a personal memory aid
- The records are not accessible or revealed to any other person



- Brainstorm the educational records you create in your building.
- Discuss how you can keep that data confidential.

FERPA – Who can have access?

- Parents and eligible students
- School officials with legitimate educational interest
- Person/entity authorized by written consent of parent or eligible student
- Other entities that meet certain requirements
- Refer to the [Management of the Student Scholastic Record manual](#) for more information

Written consent

Parents or eligible students may provide written consent to allow anyone they want to access their records.

Consent must be signed and in writing and must specify:

- the records to be disclosed (if not specified, we assume all)
- the purpose of the disclosure
- the identity of the person to whom the information will be disclosed

May use FCPS form SS/SE-79A, but parents can provide a different format so long as it meets the above criteria.

Written consents should be maintained in student's cumulative file.

Directory information (examples)

- Name
- Participation in officially recognized activities and sports
- Height and weight, if a member of an athletic team
- Dates of attendance
- Awards and honors
- School and grade
- Photographs and other images
- ~~Address and phone number (for limited purposes only)~~

Court orders, subpoenas, & search warrants

If you or a staff member receive a subpoena to appear, please refer to Division Counsel's FAQ:

http://fcpsnet.fcps.edu/supt/divcounsel/docs/subpoenas_faq.doc

Send subpoena and copies of requested documents to Department of Special Services' Office of Operations and Strategic Planning

- telephone: 571-423-4103
- fax: 571-423-4017

This office will notify parents (required by law) and send applicable records.



What do you do when you get a FERPA request?

- Contact your Procedural Support Liaison (PSL)
- Call Due Process and Eligibility at 571-423-4470
 - Beth Cantu, Region 1 + Chantilly pyramid
 - Lourrie Duddridge, Region 2 + Woodson pyramid
 - Cameron Hibshman, Region 3 + Fairfax pyramid
 - Jen Krempasky, Region 4 + Westfield pyramid
- Follow the FERPA Guidance Document for Schools, found on the Due Process and Eligibility intranet site: http://fcpsnet.fcps.edu/ssse/Mont_Comp/
 - Also available on the intranet site:
 - Template for Letter to Parents
 - Template for Email to Staff
 - Template for Receipt of Records

What do you do when you get a FERPA request?

- Refer to the *FCPS Management of the Student Scholastic Record Manual* for detailed information
- Timelines:
 - FCPS will attempt to comply with requests by parents or eligible students within five working days.
 - A final response shall be provided no later than the FERPA mandated 45 calendar days from the date the request was received.
- Collect all requested records:
 - A student's education record is not limited to the student's cumulative file.
 - These records may include e-mails or documents kept in working or other files.

What do you do when you get a FERPA request?

- Review the requested records
 - Records, or portions thereof, may be withheld if it contains:
 - Legal advice from FCPS attorneys
 - References to other students
 - Anything beyond the scope of the request or written consent
 - Opt outs (if basis for disclosure is directory information exception)
- Redact (remove) records, or parts of records, when necessary. Maintain an original copy (prior to redaction) for school records.
- Keep a school copy of all the documents provided to the parent.

Redaction

Personally identifiable information includes, but is not limited to:

- A student's name
- The name of a student's parent or other family member
- The address of a student or student's family
- A personal identifier, such as the student ID number
- A list of personal characteristics that would make a student's identity easily traceable
- Any other information that would make a student's identity easily traceable

Personnel information

- Staff phone numbers, home address, etc.

- All information to be withheld should be redacted ("blacked out") from the copy using a black marker. To ensure that the withheld information is completely obscured, the redacted document should be recopied.

Redaction Activity

- Review the FERPA Redaction Reference Guide and as a table group redact the email provided.
- Determine what needs to be redacted and be prepared to explain why.



What if...

- The attorney requests records through the letter of retainment?

ANSWER: This is a FERPA request. Proceed accordingly.

- The parent comes to the main office and asks for all the IEPs in the last 3 years.

ANSWER: This is a FERPA request. Proceed accordingly.

- The parent writes a letter requesting records, but doesn't specify the type of records or dates.

ANSWER: This is still a FERPA request. Clarify the request with the parent and proceed accordingly.

What if...

- The parents/attorney submits multiple requests for the same records/time period?

ANSWER: Parents can be charged for duplicate requests if you have documentation of previous provision of those records.

- The parent/attorney has submitted multiple requests over the years?

ANSWER: You need only provide records from the date of the last request IF you have documentation of previous provision.

What if there is a disclosure?

- Don't try to hide it! Address the issue head on as soon as you become aware.
- You must send the parents a letter indicating that information was disclosed without parental authorization.
- Contact Due Process and Eligibility at 571-423-4470 to discuss the disclosure and template for the letter to parents.

Amendment of records

Management of the Student Scholastic Record manual

- Parents or eligible students must provide a written request for amendment of the scholastic record to the principal where the student is currently (or was most recently) enrolled.
- The principal shall provide the parent or eligible student with a written decision within ten business days after the request is received.
- If the principal decides that the scholastic record should not be amended, the principal or designee will provide the parent the decision in writing setting forth the reasons for the decision and an explanation of the parent's right to appeal the decision.

What about FOIA?

The Virginia Freedom of Information Act (VFOIA) is the state law governing access to public records and entry into meetings of public bodies for citizens of the Commonwealth. ([FCPS FOIA Guidelines](#))

Contact FCPS's FOIA officer at 571-423-1223

Your Professional Responsibility

- All FCPS employees have an obligation to keep student information confidential.
- Share/disclose only when authorized by FCPS policy and the law.
- Respond appropriately if student information has been released inadvertently.
- Treat all student information as protected under FERPA even if you didn't get it from an official student record. This minimizes disputes from parents about whether you improperly disclosed records.
- Be careful what you say in e-mails or notes. These are likely student records regardless of whether they are maintained in official files.

Reflection

What can you do to build capacity within your building to address these requests?



References

- **VDOE FERPA**

http://www.doe.virginia.gov/federal_programs/ferpa/

- **FCPS Management of The Student Scholastic Record manual**

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

- **USED FERPA**

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

- **FCPS Due Process & Eligibility**

http://fcpsnet.fcps.edu/ssse/Mont_Comp/

- **FCPS Division Counsel**

<http://fcpsnet.fcps.edu/supt/divcounsel/>

- **FCPS FOIA**

<http://fcpsnet.fcps.edu/cco/medcri/foia/>

- **FCPS Policies, Bylaws, and Regulations**

https://insys.fcps.edu/schoolboardapps/report_policy/cache/alpha-A.htm



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