

CONFIDENTIALITY OF STUDENT EDUCATION RECORDS

This memo provides an overview of federal and state laws concerning the confidentiality student education records.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that governs access to and disclosure of student education records. *20 U.S.C. 1232g*. FERPA applies to all educational organizations that received funding under any program administered by the U.S. Department of Education, including school districts and schools.

Colorado also has several state statutes that reinforce school districts' obligation to comply with FERPA. *C.R.S. 22-1-123; 24-72-204(3)(e)*.

PERMISSIBLE DISCLOSURES

FERPA and state law generally prohibit districts and schools from disclosing students' "personally identifiable information" from student education records without prior written consent. However, there are specific exceptions to this requirement.

In accordance with applicable Colorado law and local school board policy, a district may release student education records without prior consent in the following circumstances:

1. To school officials, including teachers, whom the district has determined have a legitimate educational interest in the information.¹
2. To officials of another school, district, or institution of higher education where the student seeks or intends to enroll or where the student is already enrolled, so long as the disclosure is for purposes related to the student's enrollment or transfer.
3. To federal or state educational authorities in connection with an audit or evaluation of federal or state supported education programs or the enforcement of or compliance with federal legal requirements that relate to those programs. Such disclosures must meet specific requirements outlined in FERPA regulations.
4. In connection with financial aid for which the student has applied or which the student has received.
5. To state officials or authorities to whom this information is allowed to be reported or disclosed pursuant to state law.

¹ Each district is responsible for determining its own criteria for who is considered a "school official" and what constitutes a "legitimate educational interest." A contractor, consultant, volunteer, or other party to whom a district has outsourced services or functions may be considered a school official if that person: (1) performs a service or function that the district would otherwise use employees; (2) is under the direct control of the district with respect to the use and maintenance of education records; and (3) is subject to the certain restrictions concerning the use and re-disclosure of personally identifiable information in the education records.

6. To organizations conducting studies for, or on behalf of, the school district to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction. Parties with whom a district shares information for this purpose must enter into a written agreement with the district that complies with specific requirements outlined in FERPA regulations.
7. To accrediting organizations to carry out their accrediting functions.
8. To parents of students over 18 years of age who are dependent for federal income tax purposes.
9. To comply with a judicial order or lawfully issued subpoena, after reasonable efforts to notify the parent, unless the court has ordered non-disclosure of the subpoena or the parent is a party to a court proceeding involving child abuse and neglect or dependency matters and the court order is issued in the context of that proceeding.
10. In connection with a health or safety emergency.

To the extent that any of the activities listed above require a school district to contract with a school service provider, districts may be required to implement additional protections pursuant to Colorado's Student Data Transparency and Security Act. For more information, see CASB's *Colorado's Student Data Transparency & Security Act* memo.

PARENTS' RIGHTS

Under FERPA, a parent has the right to access his child's education records, to seek amendments to the records, to have control over the disclosure of personally identifiable information from the records (except in certain circumstances), and to file a complaint with the U.S. Department of Education regarding an alleged violation of FERPA. After a student turns 18, these rights transfer from parents to the student, which FERPA refers to as an "eligible student." However, if the parent still claims the student as a dependent for income tax purposes, BOTH the parent and the eligible student have a right to access the student's education records.

Under FERPA, the district must provide a parent the opportunity to inspect and review his child's education records within 45 days following receipt of a request. The district is required to provide the parent with copies of education records or make other arrangements, if necessary, to allow the parent access to the records (e.g., if the parent does not live within commuting distance of the school).

A parent may request that inaccurate or misleading information in a student's education records be amended. Although the district is not required to amend student education records in accordance with such a request, the district is required to consider the request. If the district does not amend the record, it must inform the parent of the right to a hearing on the matter. If, after such hearing, the district still decides not to amend the record, the parent has the right to insert a statement in the record setting forth his or her views. Such statement must remain with the student's education record for as long as the record is maintained. This amendment process may be used to challenge facts that are inaccurately recorded, but may not be used to challenge a grade, opinion, or substantive decision made by school personnel about a student.

ADDITIONAL RESOURCES

Please see the following CASB memos for additional information concerning student education records:

- *Colorado's Student Data Transparency & Security Act*;
- *Transferring Student Records* (concerning the sharing of education records between educational institutions);
- *Open Records Law for School Districts* (concerning records that must be made available to the public); and
- *Sharing of Student Records between the School District and Other State Agencies*

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