



STUDENT CONFIDENTIALITY QUICK-REFERENCE GUIDE

Education records.

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.**

A Few Notable Exceptions to the Definition of “Education Records”:

- Sole Possession Records (Personal Notes)
- Law Enforcement Records
- Employment Records
- Treatment Records (Postsecondary Only)

34 CFR § 99.3

Parent means a parent of a student and includes

- a natural parent,
- a guardian, *or*
- an individual acting as a parent in the absence of a parent or a guardian.

34 CFR § 99.3

FERPA Legal Standard for Disclosure within a School

(No Consent Required)

A school official may disclose personally-identifiable information without consent if “[t]he disclosure is **to other school officials**, including teachers, within the agency or institution whom the agency or institution has determined to have **legitimate educational interests.**”

34 CFR § 99.31

Written Consent Requirement:

- (a) The parent or eligible student shall provide a **signed** and **dated** written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.
- (b) The written consent must:
 - (1) **Specify the records** that may be disclosed;
 - (2) **State the purpose** of the disclosure; and
 - (3) **Identify the party or class of parties** to whom the disclosure may be made.
- (d) “Signed and dated written consent” under this part may include a record and signature in electronic form that—
 - (1) Identifies and authenticates a particular person as the source of the electronic consent; and
 - (2) Indicates such person's approval of the information contained in the electronic consent.

34 CFR § 99.31(a)(1)(i)(B)

Non-Employee “School Officials”

A **contractor, consultant, volunteer**, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official if he/she:

1. Performs an institutional service or function **for which the agency or institution would otherwise use employees;**
2. Is under the **direct control** of the agency or institution with respect to the use and maintenance of education records; and
3. Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

34 CFR § 99.31(a)(1)(i)(B)



STUDENT CONFIDENTIALITY QUICK-REFERENCE GUIDE

Confidential Communications to School Personnel

(a) **General rule.--No guidance counselor, school nurse, school psychologist, or home and school visitor** in the public schools or in private or parochial schools or other educational institutions providing elementary or secondary education, including any clerical worker of such schools and institutions, **who**, while in the course of his professional or clerical duties for a guidance counselor, home and school visitor, school nurse or school psychologist, **has acquired information from a student in confidence shall be compelled or allowed:**

(1) without the consent of the student, if the student is 18 years of age or over; or

(2) without the consent of his parent or guardian, if the student is under the age of 18 years;

to disclose such information in any legal proceeding, trial, or investigation before any government unit.

42 PaCS §5945

Health and Safety Emergencies

[A]n educational agency or institution may take into account **the totality of the circumstances** pertaining to a threat to the health or safety of a student or other individuals.

If the educational agency or institution determines that there is **an articulable and significant threat** to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

If, based on the information available at the time of the determination, there is a rational basis for the determination, **the Department will not substitute its judgment for that of the educational agency** or institution in evaluating the circumstances and making its determination.

34 CFR § 99.31(a)(1)(i)(B)

HIPAA vs. FERPA:

Public School Student Privacy Rights

GENERAL RULE:

If FERPA _____ apply,

then FERPA _____ apply.