

**FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA):  
KEY PROVISIONS AND CONCEPTS**

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*The information provided in this paper is for informational purposes only and  
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**Statutory Language**

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, provides that:

No funds shall be made available...to any educational...institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information...) of students without the written consent of their parents to any individual, agency, or organization, [other than as provided by statutory exception].

20 U.S.C. § 1232g(b)(1)(A). The regulations implementing FERPA appear at 34 C.F.R. Part 99.

**General FERPA Principles**

1. Protects the privacy of student education records.
2. Gives students (and parents of students under 18 years of age) the right to inspect and review their own education records.
3. Educational institutions may not disclose education records without consent except in specific situations.

**Who “Owns” the Right of Confidentiality?**

1. Parent(s) or guardian(s), for students under 18 years of age.
2. Students, upon 18<sup>th</sup> birthday or beginning attendance at a college-level institution.
3. Parents of a student 18 years of age or older generally may not access the student's education records without the student's consent, unless the parents declare the student as a dependent for tax purposes. [See 20 U.S.C. § 1232g(b)(1)(H).] Educational institutions may require proof of dependent status.
4. In general, a student’s FERPA rights cease to exist upon the student’s death. However,

an educational institution may continue to assert the confidentiality of certain information otherwise required to be maintained as confidential, such as treatment records maintained by counseling and medical professionals.

### **What Does Consent Look Like?**

1. In writing.
2. Specifies records to be disclosed.
3. States the purpose of the disclosure.
4. Identifies the parties to whom disclosure may be made.
5. Signed and dated.
6. Educational institutions may have policies or protocols to further guide consent.

34 C.F.R. § 99.30(b)(1)-(3).

### **What is an Education Record?**

1. Very broad statutory definition – includes virtually all information the educational institution maintains related to a student.
2. Some things that are *not* education records (20 U.S.C. § 1232g(a)(4)(B)):
  - a. “Sole possession” notes (generally, in possession *only* of the maker) (think: personal notes intended only to refresh one’s memory).
  - b. Records maintained by a law enforcement unit of the educational agency or institution created by that law enforcement unit *for the purpose of law enforcement*.
  - c. Records on a student who is eighteen years of age or older, or is attending postsecondary education, which are:
    - i. made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity; and
    - ii. made, maintained, or used *only* in connection with the provision of treatment to the student; and
    - iii. are not available to *anyone* other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.
3. Even documents that are not “education records” could still be confidential under some other statute or authority. For example, law enforcement records, employment records and medical and mental health records all are subject to additional laws and privileges apart from FERPA.

### **What is Directory Information?**

1. FERPA allows educational institutions to designate certain information as “directory information.”
2. The educational institution must give public notice of the categories of information it designates as directory information.
3. The educational institution may disclose directory information for any purpose, without the student’s written consent.
4. The student may designate directory information to be non-public.

20 U.S.C. § 1232g(a)(5)(A)-(B).

Appalachian’s designations of directory information (see policy link listed below under General Resources):

Student name

Permanent address

Local and permanent telephone listing

University post office box number

University e-mail address

Academic classification (i.e., senior, junior, sophomore, freshman)

Enrollment status (i.e., part-time or full-time)

Field(s) of study

Dates of attendance

Degrees, honors and awards received

Participation in officially recognized activities and sports

Weight, height, athletic statistics and photographic representation of members of athletic teams

### **When Is Release of Education Records Permitted Without Consent?**

1. To school officials with a legitimate educational interest (e.g., student conduct, safety and security, etc.).
2. Requests from another educational institution in which the student seeks to enroll.
3. To comply with legal requirements of certain state or federally supported programs.
4. In connection with financial aid.
5. Pursuant to a lawfully issued subpoena or court order.
  - a. Generally, school must notify student (or parent) in advance so that student may seek protective order if they wish.
  - b. Notice need not be given to the student if the subpoena or court order directs the school not to do so (e.g., police investigation would be compromised).
6. Results of Certain Disciplinary Proceedings
  - a. Crimes of Violence and Non-Forcible Sex Offenses – based on FERPA and other relevant federal law, schools disclose final results of disciplinary proceedings to the alleged victim.
  - b. Alcohol or Controlled Substance – FERPA allows disclosure of violations to parents of student under 21.

7. Emergency “Health or Safety” Exception – narrower than it might seem!
  - a. Significant and articulable threat.
  - b. Actual, impending, or imminent emergency.
  - c. Disclosure “necessary” to provide “immediate” protection of health or safety.
  - d. Disclosure only to people who can provide immediate protection (alleviate the emergency).
  - e. Disclosure only during the period of actual emergency.

### **General Resources**

U.S. Department of Education – Family Policy Compliance Office

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

(Includes links to federal law and regulations, as well as Frequently Asked Questions)

Policy Statement on FERPA, Appalachian State University Policy Manual 105.3, Section 4.9.1

[http://policy.appstate.edu/Policy\\_Statement\\_on\\_the\\_Family\\_Educational\\_Rights\\_and\\_Privacy\\_Act\\_of\\_1974,\\_as\\_Amended](http://policy.appstate.edu/Policy_Statement_on_the_Family_Educational_Rights_and_Privacy_Act_of_1974,_as_Amended)