

Law Trends

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FERPA and Student Information

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The Family Educational Rights and Privacy Act (FERPA) defines parental rights as to inspection, amendment and disclosure of student information. This article discusses FERPA's background and basic elements, the variance and overlap between Ohio law and FERPA, parental consent and adversarial contexts.

Background & Basics

Generally, FERPA provides parents with the right to inspect and review records, challenge and amend inaccurate records and prohibit disclosure in certain circumstances. FERPA makes no distinction between custodial and non-custodial parents in providing access rights, unless a court order or state law instructs otherwise. An educational institution shall not release or permit access to education records other than directory information without written parental consent. Parents must be given public notice of the coverage of directory information and may remove any or all of the information regarding their child that they do not wish to be made available to the public without their consent.

Interplay with Ohio Law

The Ohio Privacy Act (Act) is distinguishable from FERPA in several aspects. First, unlike FERPA, the Act does not allow school districts to designate other types of directory information or require the school to give public notice of its coverage. But the Act does require directory information to be given to military recruiters, businesses, industry, charitable organizations and colleges or universities, unless restrictions are all imposed uniformly. However, no restrictions can be placed upon military recruiters unless the parent requests otherwise. Second, the Act permits Board of Education employees acting in their capacities, access to student information without prior parental consent. Third, under the Act disclosure or use of personal information is not specifically restricted, but any use must be consistent with the stated purposes of the school's personal information system.

Parental Consent

Under FERPA parents must consent to disclosure of personally identifiable information in the student's record, except under certain circumstances. If an educational institution has a disclosure policy for teachers and other school officials, it must specify the criteria for determining whether those individuals have legitimate educational interests, not just that they are working in their capacity as teachers or school officials. Circumstances exist where individuals and institutions are permitted access to student

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records without prior parental consent (i.e. military recruiters, schools to which the student is applying for entry and emergencies regarding the health and safety of the student and others). However, parental consent is mandated in cases where the school or school system is participating in policy evaluations or research studies for the public interest.

Adversarial Contexts

FERPA applies in four primary adversarial contexts. First, where educational institutions are parties to the suit, FERPA permits disclosure of information to the court without a court order or subpoena. Second, educational institutions may disclose information in response to subpoenas, court orders or other law enforcement judicial orders that are directed to the educational institution and not to a particular student. For instance, if a law enforcement officer with a warrant directed to a student seeks information that would assist in locating that student, FERPA does not permit the school district to comply with the officer's request. However, the educational institution must make a reasonable effort to notify the student's parents of the subpoena, court order or other law enforcement judicial order, unless notification is otherwise barred by the document. If the educational institution does not have enough time to comply with the notification requirement, it can file a motion to quash to secure additional time or take other appropriate action. The third context in which FERPA applies pertains to the regulation of third parties. Under FERPA, third parties that inappropriately re-release personally identifiable information from the student's education record cannot have access to that record for five years. Fourth, FERPA applies to interrogatories and production requests. However, courts have not definitely answered whether interrogatories and production requests fall within the subpoena or court order exception for disclosure purposes. Courts have directed school districts to disclose information where a motion to compel has been granted against them.

Conclusion

Congress enacted FERPA to protect student educational records which are official and confidential documents. Although FERPA does not create a broad shield of protection, FERPA guards student information from disclosure to external third parties and places a burden on school teachers and officials to show that they have a legitimate need for the student's information.

For more information regarding FERPA and student records, please contact Ms. Borman by calling her at 419-241-6000. Ms. Borman is a member of the Firm's Public Law Practice Group and has significant experience in advising clients on compliance with emerging legislative and statutory issues, including strategic planning to accomplish legislative and governmental support on a wide range of business, tax and policy issues.

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