

FERPA: A Brief Introduction for Public School Parents

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INTRODUCTION

The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives parents rights to their child’s educational record and protects the privacy of student records. Signed into law by President Gerald Ford in 1974, it applies to educational agencies and institutions that receive funding from the United States Department of Education. FERPA has changed several times due to both the addition of new sections and evolving federal case law. With the continued rise of electronic data storage in education, parents should be informed about their rights under FERPA when seeking access to their child’s educational record.

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

I. The Basics

FERPA mandates certain privacy protections for and inspection rights to the educational records of students in institutions receiving federal assistance. 20 U.S.C. § 1232g. It does so by requiring educational institutions to meet certain conditions regarding educational records in order to continue to receive federal funds. 20 U.S.C. § 1232g. The “education records” protected by FERPA are defined as those “records, files, documents and other materials which—(i) contain information directly related to a student; *and* (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A)(emphasis added). Under FERPA, parents have the right to inspect and review the

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education records of their children, and educational institutions are required to establish appropriate procedures for granting such requests in a reasonable amount of time—no later than 45 days after the date of the request. 20 U.S.C. § 1232g(a)(1)(A).

Educational institutions are also required to receive written parental consent before releasing the child’s information to third parties. 20 U.S.C. § 1232g(b)(1). Personally identifiable information about a child may not be disclosed unless written consent from parents is given or a judicial order requires the disclosure. 20 U.S.C. § 1232g(b)(2)(A) and (B). Exceptions exist, however, as discussed below. Educational institutions are required to inform parents and adult students of their rights under FERPA. 20 U.S.C. § 1232g(e).

II. Statutory Exceptions

Regarding postsecondary educational institutions, FERPA does not intend to make available to students the following records: financial records of the parents of the student or confidential letters and statements of recommendation (prior to 1975) 20 U.S.C. § 1232g(a)(1)(C). Further, once a student is eighteen or is attending an institution for postsecondary education, the permission and consent required of and rights accorded to the parents transfer to the student. 20 U.S.C. § 1232g(d).

Additionally, “education records” do not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary. 20 U.S.C. § 1232g(a)(4)(B). Equally excluded are records maintained by a law enforcement unit of the educational agency or institution that were created by law enforcement for purpose of law enforcement, records made and maintained in the normal course of business, and records on a student who is 18 or older. *Id.* Records made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or para professional acting in his capacity, or assisting in that capacity, used only in connection with the provision of treatment to the student are also not included. *Id.*

Finally, an educational institution may release information about a child without the written consent of the child's parent if it is being released to: other school officials, to officials of other schools or school systems the student intends to enroll, authorized officials of the United States or State Government of the Attorney General, those managing a student's financial aid, state and local officials granted with authority by statute, and several others. *See* 20 U.S.C. § 1232g(b)(1)(A)-(L). Information not used must be destroyed. *Id.*

III. Enforcement

a. Department of Education

Under FERPA, violations are enforced by the withholding of federal funds. 20 U.S.C. § 1232g(f). The Secretary of Education must take “appropriate actions to enforce this section and to deal with violations of this section, in accordance with this Act...” 20 U.S.C. § 1232g(f). However, there is an exception for situations where the Secretary finds a failure to comply and compliance cannot be secured by voluntary means. 20 U.S.C. § 1232g(f).

b. A Private Right of Action?

Some provisions of FERPA prohibit federal funding to educational institutions that violate the conditions of the statute. 20 U.S.C. § 1232g. Federal law generally authorizes a private civil action by any person deprived of “any rights, privileges, or immunities secured by the Constitution and the laws” of the United States. 42 U.S.C. § 1983. However, the Supreme Court of the United States has declined to find enforceable rights under 42 U.S.C. § 1983 for FERPA violations. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279 (2002). The Court based its reasoning on the fact that FERPA requires the Secretary of Education to enforce the Act and

establish an office and review board to investigate and handle violations of FERPA, and ultimately terminate funds if the institute fails to comply with the conditions of FERPA. *Gonzaga Univ.* at 273. The Court reasoned that “in legislation enacted pursuant to the spending power, the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State.” *Gonzaga Univ.* at 280 (2002) (internal quotes omitted). The Court further explained the times in which it did find enforceable rights under spending legislation. The factors weighing against a private cause of action to clear terms for conferred entitlements to those affected by the violation and/or that no procedure was developed to complain of alleged violations or noncompliance. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002) (discussing the *Wright v. Roanoke Redevelopment and Housing Authority* case and the *Wilder v. Virginia Hosp. Ass’n* case).

However, the Court also found “that whether a statutory violation may be enforced through § 1983 is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute.” *Gonzaga Univ.* at 283 (internal quotes omitted). “But the inquiries overlap in one meaningful respect—in either case [the Court] must first determine whether Congress *intended to create a federal right*.” *Id.* “[A] plaintiff suing under an implied right of action still must show that the statute manifests an intent to create not just a private *right* but also a private *remedy*.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002) (internal quotes omitted). “FERPA’s provisions speak only to the Secretary of Education,” and the court reasoned that the law does not create a private right that is enforceable under § 1983. *Id.* at 287.

Justice Stevens, in his *Gonzaga* dissent, points directly to the potential to bring a cause of action under 20 U.S.C. § 1232g(b). *Gonzaga Univ.* at 294 (Stevens, J. dissenting). That section of FERPA may formulate an individual right by its protection of, “rights of parents to withhold consent and prevent the unauthorized release of education record information by an educational institution . . . that has policy or practice of releasing such information.” *Id.* Essentially, it appears the best argument for private action under FERPA would be a section of the statute that meets the standards of establishing a federal right—it is directed to the benefit of an individual class, “couched in mandatory, rather than precatory, terms,” and not “vague and amorphous.” *Id.* at 295.

IV. Conclusion

Ultimately, FERPA is a federal statute that is primarily enforced by the United States Department of Education. It is meant to protect not only students’ right to privacy but also parents’ rights to their children’s education records. Educational institutions and agencies that receive federal funding must follow FERPA or be punished with a violation and possible loss of funding from the government. However, in certain circumstances, there may be potential for a private right of action from parents or students.

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