

SmartStart: FERPA Essentials for Paraprofessionals -- Education Records

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This SmartStart is updated with references to the IDEA 2004 statute; the 2006 IDEA Part B regulations; the 2008, 2016, and 2017 amendments to the Part B regulations; the regulations implementing FERPA; and the Uninterrupted Scholars Act of 2013.

Overview

The Family Educational Rights and Privacy Act restricts the disclosure of personally identifiable information from students' education records. Because this federal law requires all public school employees, including paraprofessionals, to safeguard student privacy, paraprofessionals must be able to determine which records fall within the scope of FERPA. This SmartStart focuses on the criteria that records must meet to qualify as "education records" under FERPA and receive protection from unauthorized disclosures.

Key Points

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source.

FERPA -- GENERALLY

- FERPA is a federal law that protects student privacy by:
 1. Granting the parents of students under age 18 certain rights with respect to their children's personal information; and
 2. Requiring school districts to safeguard the confidentiality and privacy of students' education records.

See [34 CFR 99.10](#) ; and [34 CFR 99.20](#).
- FERPA applies to all educational agencies, including public schools, that receive funding from a program operated by the U.S. Education Department. [34 CFR 99.1](#). Paraprofessionals employed by public school districts often access, review, and document student data as part of their jobs. This means that like other educators, paraprofessionals must comply with FERPA by taking measures to protect the confidentiality of information in students' education records.

EDUCATION RECORDS -- DEFINITION

- FERPA protects the privacy of sensitive information contained in "education records." It does not protect the privacy of information in noneducational records or information in general. See *Letter to Anonymous*, [119 LRP 1622](#) , 22 FAB 38 (FPCO 2018). Accordingly, paraprofessionals and other support staff must be able to distinguish education records from other types of records that aren't protected under FERPA.
- An education record is defined as a "record" that is:
 1. Directly related to the student; and
 2. Maintained, or saved, by a school district or by a person acting for the district.

[34 CFR 99.3](#).
- Education records can come in any format; the term is not limited to physical, printed documents. Digital files, video, and audio recordings on a computer, laptop, or tablet can also qualify as education records if they contain a student's personal information and are stored by the district. See [34 CFR 99.3](#) ; and *Frequently Asked Questions on Photos and Videos under FERPA*, [118 LRP 16524](#) (FPCO 04/19/18).
- The following are common examples of education records that paraprofessionals may access and use on a regular basis:
 - Report cards
 - Disciplinary records

- o Progress reports
- o IEPs and Section 504 plans
- o Behavioral intervention plans, medical emergency plans, and other plans that are specific to the student
- o Evaluation reports
- o School health records, such as medication instructions and vaccination records

These records qualify as "education records" because they contain information directly related to a particular student and are stored by the district in a physical file or in an electronic database. See *Burnett v. San Mateo-Foster City Sch. Dist.*, [72 IDELR 147](#) (9th Cir. 2018, *unpublished*) (noting that unprinted, unsaved emails did not qualify as education records).

PERSONALLY IDENTIFIABLE INFORMATION

- To receive protection under FERPA, an education record must be directly related to the student. This means that the information in the record must be considered "personally identifiable information," or linkable to the specific student. Examples of PII include:
 - o The student's name;
 - o The name of the student's parent or other family members;
 - o The address of the student or his family;
 - o Disability status and medical information;
 - o The student's social security number, student ID number, fingerprints, handwriting, DNA, and facial characteristics;
 - o The student's race and ethnicity;
 - o The student's date of birth, place of birth, and mother's maiden name; and
 - o Other information that, alone or in combination, is linked or linkable to a specific student.

See [34 CFR 99.3](#).

MAINTAINED BY THE DISTRICT

- If a record is not "maintained" by the district, it will not qualify as an education record under FERPA. The record must be saved or stored by a district employee or agent, such as a teacher, administrator, or school psychologist. For example, the graded assignments that a teacher stores in her desk drawer qualify as education records. Similarly, the electronic IEPs of the special education students saved on the school's computer server also constitute education records. See *S.A. v. Tulare County Office of Educ.*, [53 IDELR 143](#) (E.D. Cal. 2009); and *Burnett v. San Mateo-Foster City Sch. Dist.*, [72 IDELR 147](#) (9th Cir. 2018, *unpublished*).
- Neither FERPA nor the IDEA require a district to maintain certain education records. Instead, a state may establish rules that outline a district's recordkeeping requirements. For example, service logs indicating that a student with a disability received specific supports may qualify as education records if the district saves them in a file or electronic database. Paraprofessionals should check with their supervisors for training on state rules and district policies on storing PII during the ordinary course of business. See *Washington Union Sch. Dist.*, [81 IDELR 86](#) (SEA CA 2022).

RECORDS THAT DON'T QUALIFY AS EDUCATION RECORDS

- There are some student-related records that are excluded from the definition of "education records" under FERPA, even when they contain PII and are stored by the district. Because these records do not qualify as "education records," they are not subject to FERPA privacy protections or requirements. See [34 CFR 99.3](#). See also *Family Educ. Rights and Privacy Act: Guidance for Sch. Officials on Student Health Records*, [123 LRP 13132](#) (SPPO 04/12/23).
- The most common exceptions that paraprofessionals will encounter are:
 - o **Sole possession records.** These are records that are used only as a personal memory aid and are not accessible to any person except a temporary substitute for the creator of the record. For example, if a paraprofessional takes notes to jog her memory while she is filling out progress reports for a student with a disability, those notes likely qualify as "sole possession" records. This is true as long as the paraprofessional does not share them with others.

- **Peer-graded papers.** Grades on peer-graded papers or tests before they are collected and recorded by a teacher. For example, when a teacher instructs students to grade the assignment of the classmate sitting next to them, the grade on the assignment does not qualify as an education record. An education record is not created until the teacher collects the assignment and records the grade in her files or the school's system.

See [34 CFR 99.3](#).

Links

- [SmartStart: FERPA -- Defining Education Records](#)
- [SmartStart: FERPA -- Right to Nondisclosure](#)
- [SmartStart: FERPA -- Exceptions to the Parental Consent Rule](#)
- [SmartStart: FERPA -- Interface with HIPAA](#)
- [SmartStart: Confidentiality -- Student Record Safeguards \(IDEA\)](#)
- [SmartStart: Confidentiality -- Destruction of Records \(IDEA\)](#)
- [District disclosures under FERPA](#)

Additional Resources

Additional resources on this topic are available for purchase from LRP Publications:

- [What Do I Do When... The Answer Book on the Family Educational Rights and Privacy Act](#), by Amy K. Onaga, Esq.
- [From the FERPA File: Quick Tips on Student Education Record - Second Edition](#), by Amy K. Onaga, Esq.

Please share your experience and expertise. Forward any suggested additions or changes to this or other SmartStarts to SmartStarteditor@lrp.com.

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