

A large, stylized graphic of an eagle's head in profile, facing left. The eagle is white with a grey shadow behind it, set against a light grey background. The graphic is partially obscured by the text.

# **Confidentiality Of Student Records**

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**Lisa O. Stump  
Attorney at Law**



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## Student Records

### A. Family Educational Rights and Privacy Act of 1974 (“FERPA”) (20 U.S.C. § 1232g)

#### 1. Dual Purpose of FERPA

- To create a right of access to student records for parents and students; and
- To protect the privacy of those records by preventing unauthorized access by third parties.



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## Student Records

### 2. Practical General Rule

- FERPA prohibits a school district from releasing to a third party any information related to a student
- The new FERPA regulations went into effect on January 8, 2009

### 3. Court Decisions and Family Policy Compliance Office (FPCO) Opinions

- Owasso Indep. School Dist. V. Falvo, 534 U.S. 426 (2001) – First FERPA question to court 27 years after Act was passed; upheld peer grading



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## Student Records

### B. Education Record

1. Includes a range of information that is directly related to a student that is collected and maintained by schools in any format
2. “Maintained by”



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## Student Records

### 3. Examples Include:

- Grades, test scores, courses taken, academic specializations and activities, and official letters regarding a student's status in school
- Special education records
- Disciplinary records
- Medical and health records that the school creates or collects and maintains
- Documentation of attendance, schools attended, courses taken, awards conferred, and degrees earned
- Personally identifiable information



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## Student Records

### 4. Personally Identifiable Information - includes but is not limited to:

- Student's name and name of the student's parent(s) or guardian
- Address of student or student's family
- Personal identifier:
  - Social security number
  - Student number
  - Biometric record
- Student's date of birth, place of birth, and mother's maiden name
- Other information that would make it easy to identify or locate a student
- Information requested by a person who the educational agency believes knows the identity of the student to whom the education record relates (targeted request)



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## Student Records

### C. Disclosure to Third Parties

1. Prior written consent from parents
  - Specify records to be disclosed
  - Name and address of party to whom information is to be disclosed
  - The purpose of disclosure
  - Signature of parent and date on which consent was signed
  - Place copy of consent in student file
  - When records sent to third party, must include a notice that the information may not be released to any other party



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## Student Records

### 2. Without parental consent

- School officials with legitimate educational interests
- Officials of other schools or school systems in which student seeks to enroll (parents must be notified of transfer)
- Authorized representatives of Comptroller General of the United States, the Secretary of Education, state educational authorities, Attorney General of United States
- In connection with a student's application for or receipt of financial aid



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## Student Records

### 2. Without parental consent (cont.)

- Juvenile justice authorities – if disclosure relates to system's ability to effectively serve the student whose records are being released;
- Organizations conducting studies on behalf of district for purposes related to testing, student financial aid, or improving instruction
- To comply with a judicial order or lawfully issued subpoena
- Accrediting organizations
- Appropriate officials in cases of health and safety emergencies
- Directory information



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## Student Records

### 3. Disclosure to school personnel

- Only school officials with a “legitimate educational interest”
  - Use reasonable methods to ensure they access only those records
  - New regulations – physical or technological access controls
- New regulations – “may include contractors, consultants and other outside parties to whom a school has outsourced institutional services or functions that it would otherwise use employees to perform”
  - Outside party must be under direct control of District and District responsible for violations



## Student Records

### 4. Directory Information. May be released as long as you notify students/parents in advance.

- Name, Address, Telephone Listing
- Electronic mail address
- Photograph
- Date and place of birth
- Grade level
- Enrollment status and dates of attendance
- Participation in officially recognized activities and sports; weight and height of members of athletic teams
- Major field of study
- Degrees, honors and awards received; and
- Most recent educational institution attended



## Student Records

### 5. Annual Notification

- District must annually notify parents of students in attendance that they have the right to:
  - Inspect and review their children's education records;
  - Seek amendment of misleading information in their children's education records; and
  - Request that the school not disclose directory information about their children (opt out)



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## Student Records

### 5. Annual Notification (cont.)

- The annual notice must include:
  - Information for a parent to file a complaint of an alleged violation with the FERPA Family Policy Compliance Office;
  - A description of who is considered to be a school official and what is considered to be a legitimate educational interest so that information may be shared with that person
- Means of notification:
  - Notification does not have to be made individually to parents
  - Can include local or student newspaper; calendar, student programs guide, student handbook, or other means reasonably likely to inform parents



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## Parent Access to Records

### A. Access – District is required by FERPA to:

1. Provide a parent with an opportunity to inspect and review his or her child's "education records" within 45 days of the receipt of a request
2. Make the records available to the parent to inspect and review or provide copies of records if it is impossible for parent to review the records (schools may charge a fee for making copies)
3. Redact the names and other personally identifiable information about other students that may be included in their child's education records
4. What if "eligible student"?
  - May still disclose in many circumstances
  - Health and safety emergency (document)
  - If dependent, parents still can view



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## Parent Access to Records

### B. Amendment – Under FERPA, District must:

1. Consider a request from a parent to amend inaccurate or misleading information in the child's education record
2. Offer the parent a hearing on the matter if the school decides not to amend the records in accordance with the request
3. Offer the parent a right to place a statement to be kept and disclosed with the education record if, as a result of the hearing, the school still decides not to amend the record
4. Disclose the statement whenever it discloses the portion of the record to which the statement relates



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## Current Issues

### A. Student Photographs and Videos

- 2010 Michigan Attorney General Opinion (7245 Op. Atty Gen. (2010))
  - Photo/videos of students in school activities are education records

### B. Bus Video Surveillance

- FPCO Opinion – Letter re: Berkeley School District (October 31, 2003) – Parent may only inspect a school videotape showing his or her child engaged in misbehavior if no other students are pictured
- FPCO – “Informal Advice” – Video is education record only for the students “directly related” to the focus or subject of the video (i.e. fight)
- State Court Opinions – Rome City School Dist. v. Grifasi, 806 N.Y.S.2d 381 (N.Y. Sup. Ct. 2005) – Video surveillance tape not an education record under FERPA, and therefore subject to disclosure; Lindeyan v. Kelso School Dist., 172 P.3d 329 (Wash. 2007) – Video subject to disclosure under state law



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## Current Issues

### C. FERPA and the Internet

- Commercial broadcast of high school athletic events

### D. College Recommendation Letters

- Minor student can waive right to access letters of recommendation written on student's behalf to prospective college



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## Other Relevant Documents

### A. Missouri Sunshine Law

1. Section 610.021(6) – District may close records to the extent they relate to:
  - A. Scholastic probation, expulsion, or graduation of identifiable individuals including records of individual test or examination scores; however, may be reviewed by parent or guardian
2. Section 610.021(14) – Records which are protected from disclosure by law

### B. Pupil Protection Rights Amendment (PPRA)

1. Designed to prevent overly intrusive student surveys and evaluations.
2. Requires District to have policy describe when District will engage in collection, disclosure, or use of personal information collected from students for marketing or selling, or providing information to others for that purpose.



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## Other Relevant Documents

### C. Health Insurance Portability and Accountability Act (HIPAA)

### D. Board Policy, Regulations and Procedures



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**Thank You**

## **Questions**

**Lisa O. Stump**  
**Lashly & Baer, P.C.**  
**Attorney at Law**

714 Locust Street  
St. Louis, MO 63101  
314.621.2939

E-Mail: [lostump@lashlybaer.com](mailto:lostump@lashlybaer.com)  
[www.lashlybaer.com](http://www.lashlybaer.com)



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