

Inside the School

Five Things Teachers Should Know about Student Privacy

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Special Report

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Five Things Teachers Should Know about Student Privacy

The federal law that addresses student privacy and records is the Family Educational Rights and Privacy Act, or FERPA (pronounced FUR- pah).

“You’ve probably heard of it referred or referenced in your day-to-day operations in a school setting,” Attorney Thomas Shorter said at his seminar *School Law: Pupil Records, Responsibilities and Requirements*.

In the United States, education records at public schools or schools that receive public funding fall under FERPA’s jurisdiction. FERPA ensures the privacy of education records. The law also gives parents and students certain rights to make decisions about when records can be released and what districts can and cannot do with education records.

“This provision has been on the books since 1974,” Shorter said. “So this isn’t new.”

Teachers work with student records every day, but many don’t know the finer points of the law. Here are five things teachers should know about student records and privacy.

DEFINITIONS

Directory information, disclosure, personally identifiable information and educational records are all terms for which FERPA has official definitions.

“One of the best things to have an understanding of the requirements of FERPA is to understand some of the key definitional components of the law,” Shorter said.

DIRECTORY INFORMATION

According to Shorter, directory information is information that would not be harmful if it were disclosed. This includes names, addresses and telephone numbers.

“Many of your schools may have a student directory...just plain old student directory that gets circulated to families,” Shorter said.

DISCLOSURE

“Disclosure is very, very broad,” he said. “So it includes release, transfer, other communication, personally identifiable by any means, whether it is disclosing a record or whether it’s by oral means.”

PERSONALLY IDENTIFIABLE INFORMATION

This can include students’ names, names of students’ family members, address and anything else that can identify the student.

“If you reference the learning disabled child in Mr. Smith’s class and everyone knows that there is only one learning disabled child in Mr. Smith’s class, you’ve given out enough information to make that personally identifiable,” Shorter said.

EDUCATION RECORDS

According to Shorter, to be classified as an education record, a document must meet two requirements. First, the record must be directly related to the student. Second, the record must be maintained by an educational agency or institution or other party acting for the educational agency or institution. A teacher’s quick note that she jots down on a piece of scrap paper does not meet both requirements and is not considered an educational record, but e-mail correspondence between two teachers about a student does meet the standard and is considered a record.

“Be very cautious with what’s put in an e-mail,” Shorter said. “It’s too easy to be pretty casual and presume it will not be disclosed later.”

DISCLOSURE OF INFORMATION

Shorter described three main categories under which disclosures fall: disclosure to the parents and students themselves, disclosure to third parties with consent and disclosure to third parties without consent.

Under FERPA it is permissible to disclose education records to the parent of a student, when the student is 18 years old or older, or to the student himself. According to Shorter, a school district has no more than 45 calendar days to provide the records after the request was made.

Disclosure to third parties with consent pertains to consent from the parent or adult pupil in writing. Not only does the consent need to be in writing, but it also needs to specify which records may be disclosed to whom and for what purpose, and it must be signed.

The consent requirement does not allow for the district to make a judgment call on whether or not releasing certain information would be in the best interest of the student. “That’s again something that’s up to the parents,” Shorter said.

Disclosure to third parties without consent deals with the exceptions to the law. This includes disclosure to: other school officials, other educational institutions, the juvenile justice system, study organizations, accrediting organizations, parents—when the pupil is an adult—subpoena, lawsuits and health and safety emergencies.

The most common form of third party disclosure without consent is that to other school officials, but according to Shorter, the definition of who is a school official is broad.

“Lawyers, someone like myself, when my clients call me and they ask me questions and they say, ‘Tom, will you please look at this student’s IEP,’” Shorter said. “I am providing a service on behalf of the school district, just as an accountant would or an insurance representative and we ultimately fall within the definition of a school official.”

FAMILY RIGHTS UNDER FERPA

Parents not only have the right to request education records, but also they have the right to request amendments to education records and the right to file a complaint. If a parent or student believes that there is inaccurate information in their educational record or that something contained in their educational record invades their privacy, they may request an amendment.

“The school district does not have to comply with the actual amendment change,” Shorter said. “Parents can’t come in and say, ‘Gee, I noticed that my child’s transcript has all C’s. My request for amendment is that you modify that to all A’s.’”

If a requested amendment is not made, parents have the right to a hearing conducted by a third party. The third party will decide whether or not the amendment is appropriate.

When parents have complaints about a district concerning FERPA violations, they may file these complaints with the Family Policy Compliance Office of the US Department of Education. Parents may not sue and seek money damages for a violation of FERPA.

“If in any event there is a violation found the Family Policy Compliance Office does have the authority to require changes in protocols by a public school district,” said Shorter. “In a worst-case scenario setting, it does have the authority to withhold federal funds.

SCHOOLS MUST NOTIFY PARENTS OF THEIR RIGHTS

FERPA requires school districts to annually notify parents of their rights under FERPA. These notifications must include the rights listed above, instructions in how to exercise these rights, and who is considered a school official. It must be accessible to all parents, including those who are disabled or whose primary language is not English.

“Notification requirements also include the directory data notice,” Shorter said. “It’s that information the law says is not typically considered to be harmful or an invasion of privacy if it’s released.” FERPA allows for the release of directory information when parents are given the opportunity to opt out in their annual notification.

SCHOOLS MUST KEEP A RECORD OF DISCLOSURES

Schools must keep record of the parties receiving education records, interests of those parties, and names of any additional parties receiving the records.

“The good thing is that there are certain provisions where the record keeping obligation does not apply,” Shorter said. “To be blunt, I think they are those circumstances that are most frequently used in the public school setting.” Record keeping does not apply to disclosure to parents or students, school officials, any party with written consent, subpoenas or disclosure of directory information.

These five points can help teachers understand FERPA requirements, but they do not cover everything in the law. Shorter also suggested that teachers should be aware of what laws their home state has in place regarding these points.

“This law starts with a general mandate. All education records for pupils must remain confidential and may not be disclosed unless we can point to a very explicit exception that permits disclosure under the law,” Shorter said “Because at the end of the day, that’s what FERPA’s about. It’s about the protection of the privacy rights of students.”



Understand the laws surrounding student privacy.

Are you familiar with the latest changes to FERPA?

As you know, the Family Educational Rights and Privacy Act, or FERPA, ensures that student data will be kept confidential. Student records are more than just the last quiz grade; they deal with students on the free or reduced-price lunch program, the students' address, and the number of siblings a student has.

No matter how trivial the data and regardless of whether it's electronic or hand-written, student records are protected by law.

In *School Law: Pupil Records – Rules, Responsibilities, and Requirements*, you will learn about the current privacy law, the proposed changes, and how the law affects classroom teachers.

You'll cover:

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- * How to identify legal restrictions for use and disclosure of pupil records
- * How the upcoming changes to FERPA will impact the classroom

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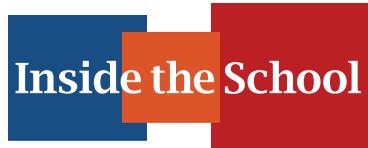
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About the presenter: Thomas N. Shorter is a shareholder in the Employment, Health Care and Education Practice Groups in the Madison, Wis., office of Godfrey & Kahn, S.C. Tom represents health care and educational institutions,

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