

FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT: CONFIDENTIALITY OF STUDENT RECORDS

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I. Family Educational Rights & Privacy Act

Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g.: FERPA is the federal law that sets forth basic privacy requirements for personally identifiable information contained in educational records maintained in schools. In some instances, the IDEA regulations add certain provisions specific to parents of IDEA-eligible students. The following materials will outline the requirements of the provisions together, citing the different regulations as appropriate.

A. Broad Outline of Basic FERPA Provisions

Coverage: Any educational agency that receives any type of federal funding.

Purposes: (1) To allow parents access to educational records relating to their children. (2) To prohibit disclosure of education records to third parties unless the school obtains prior written parental consent for such disclosure, or an exception to the consent requirement applies.

Notice: School districts must notify parents of students annually regarding their rights under FERPA.

Amendment of Records: Schools must set up procedures to allow parents to request amendments to educational records, as well as a hearing process, in case the parents disagree with a school's decision to not amend a certain record.

Enforcement: Department of Education has set up the Family Policy Compliance Office (FPCO) and the Office of Administrative Law Judges to enforce compliance with FERPA, review and investigate complaints, and, in the case of FPCO, provide technical assistance regarding compliance with FERPA.

B. Important FERPA Definitions (34 C.F.R. §99.3)

Education Records: Records that are **directly related to a student**, and **maintained by an educational agency** or a party acting on behalf of the educational agency. The term "education records" does **not** include:

1) Records kept in the sole possession of the maker of the record that are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

For example, lesson plans kept privately by a teacher and not shared with anyone except a substitute would not be education records subject to parental access under FERPA. Likewise,

any other notes or documents created by a staff person that are kept privately and not shared with other personnel are the private property of the staff person and are not subject to parental access under FERPA. The FPCO has recently added this helpful commentary. “The main purpose of this exception to the definition of ‘education records’ is to allow school officials to keep personal notes private. For example, a teacher or counselor who observes a student and takes a note to remind himself or herself of the student’s behavior has a created a sole possession record, so long as he or she does not share the notes with anyone else.”

[Test protocols are not considered education records as long as they do not contain personally identifiable information or the student’s name. *Letter to MacDonald*, 20 IDELR 1159 (OSEP 1993). Thus, the most advisable course of action if a District wishes for protocols to not be accessible to parents is to not put students’ names on them.]

2) District police force records, if maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to other members of a school police force. The school must not disclose education records to the campus police (unless with parent consent, or if an exception to the consent requirement applies)(*For additional analysis, see police access on page 11*).

3) Records relating to an employee of the educational agency that are maintained in the normal course of business, relate exclusively to the employee’s capacity as an employee, and are not available for any other purpose (but does not include records of students employed by the school under a vocational program, office assistant, or work-study project).

4) Records of a student who is 18 years or older, or is attending college that are maintained by health professionals, and are maintained or used only in connection with **physical or mental health treatment issues**..

5) Records that contain information about a student after he or she are no longer students at that educational agency.

Directory Information: Information which would not generally be considered harmful or private, including name, address, telephone listing, **electronic mail address, photograph**, date and place of birth, major field of study, dates of attendance, grade level, **enrollment status (e.g., undergraduate or graduate; full-time or part-time)**; participation in officially recognized sports and activities, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended. (Bold items are newly added on July 6, 2000).

Disclosure: Permitting access to information, or releasing information by any means, including orally, in writing, or electronically. Example: The Family Policy Compliance Office (FPCO) received a complaint from a parent alleging that in frustration over the student’s behavior, the teacher had made inappropriate comments about the disabled student in front of the class.. While the comments were made under her breath, and the exact words were uncertain (probably to the teacher’s advantage), the comments included “I don’t care if he is disabled... it’s his problem and not mine, and I don’t have to deal with it.” The FPCO found that although FERPA provides a variety of exceptions to the requirement that parental consent be received before the school discloses personally

identifiable information, no exception fit this disclosure. FERPA was violated and the school was required to provide a letter of assurances that the problem would not recur. *School (ME) Administrative District #75*, 31 IDELR 222 (Family Policy Compliance Office 1998).

Parent: Includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian (very similar to the IDEA definition of “parent” under 34 C.F.R. §300.13).

Personally Identifiable Information: Name, names of family members, address, social security or student ID number, list of personal characteristics, or any other information that would make identity easily traceable.

Records: Information recorded in any way (e.g., handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche).

C. Student and Parent Rights

General Rights. Either parent is accorded full rights under FERPA, unless the school has been provided with evidence of a court order, statute, or legally binding document relating to divorce, separation, or custody that specifically revokes those rights. 34 C.F.R. §99.4. Thus, **non-custodial parents** in a divorce situation are still entitled to access to FERPA records, unless the divorce or custody decree specifically takes those rights away from the non-custodial parent.

When a student becomes 18 or enrolls in a postsecondary institution, the rights afforded to parents under FERPA transfer to the student. 20 U.S.C. §1232g(d), 34 C.F.R. 99.5(a). At that point, the student is called an “eligible student” in the regulations. This means that when an IDEA-eligible student turns 18, the rights to access records and prevent disclosure to third parties without consent transfer to the student, unless the student has been determined to be incompetent by a court of law. The IDEA regulations, moreover, appear to recognize this issue. *See* Note to 34 C.F.R. §300.574. Thus, an 18-year-old student who is not held incompetent could presumably prevent his parents from accessing his educational records. But the District must still try to ensure the participation of parents in ARD meetings. *See* 34 C.F.R. §300.344(a)(3), 19 TEX. ADMIN. CODE §1050(b) (requiring compliance with §300.344 in constituting Texas ARD committee meetings). The only way to reconcile these provisions would be to understand that an adult student can prevent his or her parents from reviewing or accessing education records, but not from participating in ARD committee discussions and deliberations, although some personally identifiable information would likely be disclosed to the parents incidentally. (Proposed regulations by TEA implementing IDEA’97 do not adopt the transfer of IDEA rights to students on majority, even though allowed to do so by federal law.)

Parent and Eligible Students’ Rights to Inspect and Review Records. A District must comply with requests to access records within a reasonable period of time, without unnecessary delay, and before an ARD meeting or hearing, and **in no case later than 45 days after the request** is made. *See* 34 C.F.R. §99.10(b) and 34 C.F.R. §300.562(a).

Parents have a right to have the District respond to **reasonable requests for explanations and interpretations** of the records. 34 C.F.R. §99.10(c).

Parents have the **right to request that the District provide copies** of the records if failure to provide copies would effectively prevent the parents from exercising the right to inspect and review the records. 34 C.F.R. §99.10(d)(1) and 34 C.F.R. §300.562(b)(2).

The District can charge a **fee for copies** if the fee would not effectively prevent the parent from accessing the records. No fee can be charged for searching for or retrieving records. 34 C.F.R. §99.11, 34 C.F.R. §300.566.

The IDEA regulations allow parents the **right to have their representatives inspect and review the records** (representatives must have a written parent consent). 34 C.F.R. §300.562(b)(3).

Upon request, parents must be provided with a **list of the types and locations of education records** kept by the District. 34 C.F.R. §300.565.

Parents can only obtain information about their children. If a record contains information about more than one student, it must be redacted accordingly before the parents can obtain access. 34 C.F.R. §99.12(a).

Students do not have a right access their parents' **financial records** that are part of Districts' education records. In addition, students do not have to be permitted to access **confidential letter and statements of recommendation** under certain circumstances. *See* 34 C.F.R. §99.12(b)(2),)3).

D. Amendment of Education Records

Parents can request a District to make amendments to education records that they believe are **inaccurate, misleading, or in violation of their privacy rights**. 34 C.F.R. §99.20, 34 C.F.R. §300.567.

If the District decides not to amend a record as requested, it must inform the parents of its refusal and their right to seek a hearing. The District must decide whether to amend the record as requested within a reasonable time (probably safe to stay under 45 days).

The **hearing** must be held within a reasonable time after it receives a request for a hearing. The parents must be provided notice of the date, time, and place of the hearing reasonably in advance of the hearing. The hearing can be conducted by any individual, including an employee of the District, as long as such person has no direct interest in the outcome of the hearing. Parents can present evidence and be represented by any person, including an attorney. The District must render a decision in writing within a reasonable time after the hearing, and such decision must be based on the evidence alone. 34 C.F.R. §99.22. If, as a result of the hearing, the District decides that the parents are correct in their allegations regarding the records, it must amend the record accordingly and inform the parent of such action in writing. 34 C.F.R. §99.21(b)(1). If not, the District must inform the parents that they have a right to place a statement in the record commenting on the contested information

and/or the results of the hearing. Such a statement must be thereafter treated as an integral part of the record.

E. District Duties and Responsibilities

Annual District Notice of FERPA Rights

The new FERPA regulations do not require that Districts maintain policies explaining FERPA requirements, but now require only the annual notification of FERPA rights to parents and eligible students. In fact, however, the new notice provisions incorporate many of the statements that had to be included in the old policies. *See old* 34 C.F.R. §99.6 (now removed and reserved).

Contents of the required notification (34 C.F.R. 99.7):

- 1) Statement of **right to inspect and review education records**..
- 2) Statement of **right to seek amendment of records**..
- 3) Statement of **right to consent to disclosures** of personally identifiable information to third parties, except where the regulations allow disclosure without consent.
- 4) Statement of **right to file a complaint** with the FPCO.
- 5) The District **procedure for inspecting and reviewing records**..
- 6) The District **procedure for requesting amendment of records**..
- 7) A specification of the **criteria used by the District for determining who constitutes a “school official” and what constitutes a “legitimate educational interest”** (since schools can disclose information without parent consent to other District employees with a legitimate educational interest in the information—*see below*).

With respect to **disabled parents or eligible students**, the notice must “effectively” notify such persons. This is a higher standard of notice than for non-disabled parents and students, who are only entitled to notice “by any means that are reasonably likely to inform the parents or eligible students who are disabled.” *See* 34 C.F.R. §99.7(b)(1). For disabled parents, this section is likely to require notice in an appropriate communication medium, depending on the parent’s disability (i.e. Braille or large-print for visually impaired parents).

Practical Note: The parental rights booklet published by TEA to inform parents of their procedural safeguards under IDEA contains most of the requirements of the FERPA notice. The booklet, however, does not include a specification of the criteria used by the District for determining who constitutes a “school official” and what constitutes a “legitimate educational interest.” If Districts add such a provision, the booklet could constitute the annual notification required by FERPA (for IDEA-eligible students).

F. Disclosure of Education Records or Information

General Rule: Unless an exception applies, a District may not disclose personally identifiable information in a student's education records unless the parent or adult student provides a signed and dated written consent to such disclosure. 34 C.F.R. §99.30(a), 34 C.F.R. §300.571.

The written consent must (1) specify the records that are to be disclosed, (2) state the purpose of the disclosure, (3) identify the party to whom the record is being disclosed. 34 C.F.R. §99.30(b). The parent can request a copy of any record that is disclosed, or can request that a copy be provided to the student. 34 C.F.R. §99.30(c).

Exceptions to the Consent Requirement (34 C.F.R. §99.31)

1) Disclosures to **other school officials or employees** that the District has determined have a **legitimate educational interest** in the information. 34 C.F.R. §99.31(a)(1). In its annual notice, the District must inform the parents of the criteria under which it determines who is a "school official" with "legitimate educational interests." That provision does not appear in the TEA "Explanation of Procedural Safeguards" booklet. *See above*.

Contract staffpersons who assist in providing a child with an appropriate education have been held to have legitimate educational interests in reviewing pertinent education records. *Marshfield School (Union 102)*, 22 IDELR 198 (Maine Hearing Officer's Decision, January, 1995).

Schools do not have to obtain parental consent to release education records to their **attorneys**, since they perform "professional services as part of the operation of the institution." *Letter to Diehl*, 22 IDELR 734 (OSEP 1995).

2) Disclosures to **other Districts where the student seeks or intends to enroll**. 34 C.F.R. §99.31(a)(2). In such situations, the disclosing **District must attempt to notify the parent or eligible student** at their last known address unless the parent or eligible student initiated the disclosure or the District has included in its annual notice a statement indicating that it routinely forwards education records to other Districts where the student seeks or intends to enroll. 34 C.F.R. §99.34(a)(1).

Practical Note: If the District's annual FERPA notice indicates that the District routinely complies with such requests from other schools, it does not need to attempt to contact the parents when disclosing.

In addition, the **District must also provide copies of the disclosed records, upon request** of the parent.

Finally, the District must also provide the parents an **opportunity for a FERPA hearing** (see above), upon request.

Districts are not *required*, however, to disclose records to another District in which the child seeks or intends to enroll. 34 C.F.R. §99.31(b). It is a matter of inter-District courtesy, but

not legal obligation. In addition, it is probably wise not to provide information over the telephone until some evidence is received to the effect that the information is truly being requested from a school employee (i.e. a fax verification) working for the District that is requesting the records.

With respect to release of educational information to **Juvenile Justice AEPs**, the Travis County agreement provides that schools will seek permission from parents to release records to the JJAEP, and if they refuse, the school/JJAEP liaison will inform the juvenile court of the potential need for an order requiring the District to release the records. *Memorandum of Understanding for the Juvenile Justice Alternative Education Cooperative of Travis County*, §4.2. This is probably the smartest way of handling release of records to JJAEP, since it will be unclear whether the JJAEP is a “school” where the student “seeks or intends” to enroll, which would allow the District to disclose without parental consent. The Travis County agreement clearly errs on the side of caution to protect participating Districts from possible FERPA challenges due release of records to the JJAEP.

3) **Disclosures to authorized representatives of certain government agencies**, including the Comptroller General of the U.S., the Department of Education, or state and local educational authorities. 34 C.F.R. §99.31(a)(3). These agencies may have access to records in connection with an audit or evaluation of education programs, or enforcement of federal legal requirements relating to those programs. 34 C.F.R §99.35(a).

4) **Disclosures in connection with student financial aid** for which the student has applied or which the student has received. 34 C.F.R. §99.31(a)(4). The information must be necessary for determining eligibility for aid, amount of aid, conditions for aid, or to enforce the terms and conditions of the aid.

5) **Disclosures to state and local officials or authorities** to whom the information is specifically allowed to be disclosed pursuant to a state statute. 34 C.F.R. §99.31(a)(5). **If the statute was adopted before November 19, 1974**, the disclosure must concern the juvenile justice system and its ability to effectively serve the student whose records are disclosed. **If the statute was adopted after November 19, 1974**, the disclosure must concern the juvenile justice system and its ability to effectively serve the student whose records are disclosed, **prior to adjudication**.. The authorities to whom the records are disclosed must certify in writing to the District that the information will not be disclosed to other parties except as provided by state law, unless they have the written consent of the parents. 34 C.F.R. §99.38.

6) **Disclosures to organizations conducting studies** on behalf of educational agencies or institutions. 34 C.F.R. §99.31(a)(6). The disclosure must be for the purpose of developing, validating, or administering testing, improving instruction, or to administer student aid programs. The study must be conducted in a manner that does not permit personal identification of parents and students by persons other than representatives of the organization, and the information disclosed must be destroyed when no longer needed. If the FPCO determines that an educational study organization fails to destroy disclosed information when the information is no longer needed for the study’s purpose, the District cannot allow that organization access to records for at least five years.

7) **Disclosures to accrediting organizations** as necessary to carry out their accrediting functions. 34 C.F.R. §99.31(a)(7).

8) **Disclosures to parents of a dependent student**, as defined in the Internal Revenue Code. 34 C.F.R. §99.31(a)(8). Under the Internal Revenue Code, dependents must (1) be relatives, (2) not married filing jointly, (3) a citizen or legal resident, (4) earn less than \$2,550.00, (5) be supported at least 50% by the person claiming them as dependents.

9) **Disclosures required by judicial order or lawfully issued subpoena.** 34 C.F.R. §99.31(a)(9). Districts must make reasonable efforts to notify the parent or eligible student of the order or subpoena in advance of disclosure, so that they may seek protective action. This requirement does not apply if the disclosure is in compliance with a federal grand jury subpoena or a law enforcement subpoena, where the court has ordered that the contents of the subpoena or the information furnished in response not be disclosed. If the District has filed suit against a parent or student and has notified the parent or student that it intends to disclose education records relevant to the legal action to the court, it does not need a court order or subpoena to accomplish the disclosure.

Districts must comply with “**lawfully issued subpoenas,**” as they are, in essence, court orders. Failure to comply can lead to fines, and outright refusal to comply can lead to jail time, under the contempt powers of the courts.

10) **Disclosures in connection with health or safety emergencies.** 34 C.F.R. §99.31(a)(10). The disclosure must be **necessary to protect the health or safety of the student or other individuals**, and only to appropriate parties in connection with the emergency. 34 C.F.R. §99.36(a). Schools are free to include in a student’s education records information concerning disciplinary actions taken against the student for conduct that posed a significant risk to the safety or well-being of the student, other students, or other members of the school community. Such information can be disclosed to employees with legitimate educational interests in the student’s behavior, or to teachers and school officials **of other schools** who have been determined to also have legitimate educational interests in the student’s behavior. Thus, if a student has committed a serious offense that posed a significant risk to the safety or well-being of the student, staff, or other students, and the District knows that the student tends to go to another school in a neighboring District to visit his girlfriend, the District may inform the neighboring District about the student’s offense. The regulations explicitly state that the **health or safety emergency exception “will be strictly construed,”** meaning that the FPCO will closely scrutinize a District’s determination of what constitutes a health or safety emergency. 34 C.F.R. §99.36(c).

11) **Disclosures of directory information** (*see above for definition of directory information*). 34 C.F.R. §99.31(a)(11). Districts must notify parents regarding (1) the types of information it considers directory information, (2) parents’ right to refuse to allow the District to designate any or all of their child’s information as directory information, and (3) the period of time within which a parent must elect to exercise their right to refuse designation of information as directory information. 34 C.F.R. §99.37(a). Directory information regarding **former** students may be disclosed without complying with the above conditions.

12) Disclosures to the parent of a student (who is not 18 or attending college) or to the student.. 34 C.F.R. §99.31(a)(12).

Schools should remember that these exceptions to the consent requirement do not *require* the school to disclose records, except when the parent, eligible student, or their representative seeks access. 34 C.F.R. §99.31(b). The exceptions merely *allow* the schools to disclose without parental consent if they wish to do so, and in accordance with any conditions set forth under the applicable exception.

So what exception applies to students grading other students' papers? In a problematic opinion released in the Summer of 2000, the 10th Circuit found that the practice of allowing students to swap papers for grading purposes in an Oklahoma district was a violation of FERPA. *Falvo v. Owasso ISD*, 233 F.3d 1203 (10th Cir. 2000). According to the court, since the students graded papers on behalf of the teacher, and the grades were used by the teacher either to determine future instruction or as elements of the students' semester grades (and for that purpose were entered into the teacher's grade book), the students were maintaining the record on behalf of the school and the papers they graded thereby qualified as educational records. The court did not reach the question of whether calling out grades to the teacher is a violation as well. The court's ruling disregarded the long-standing position of the Family Policy Compliance Office approving of the practice. According to the court, the FPCO's interpretation of FERPA on the point is not persuasive since it lacks "sufficient reasoning" [FPCO did not show its work], failed to account for the breadth of FERPA's language, and because the position was in response to a hypothetical rather than a fully-developed set of facts. The Supreme Court granted certiorari (court-talk for "we'll see if the lower court got it right"), heard oral argument, and subsequently issued its opinion in February of 2002. In a short, unanimous decision, the Court wrote that the 10th Circuit's logic "does not withstand scrutiny." Its rationale was based on the following points.

1. At the time students are grading each other's assignments, those papers are not "maintained" within the meaning of FERPA. Citing dictionary definitions for "maintain," the Court held that a student-graded assignment is not an educational record until the teacher records the grade.
2. The Court rejected as "fanciful" the 10th Circuit's assertion that by grading a peer's paper and possessing it for a short time, a student "maintains" a record "on behalf of the school" in the same way that the school registrar maintains the student's folder in the permanent file.
3. The Court acknowledged the educational policy argument that peer grading is a valid educational tool for teachers to re-teach, reinforce lessons, evaluate students' understanding of the material, and promote student-to-student cooperation and assistance. The Court stated that "[c]orrecting a classmates work can be as much a part of the assignment as taking the test itself."
4. The parents' reading of FERPA would have bizarre and extreme results, such as written records of access for each and every instance that a student corrects a peer's work. Moreover, agreeing that student graders maintain records on behalf of the school would imply that educational records could be conceivably kept by students in many locations. The Court found the language of FERPA "suggests Congress contemplated that education records

would be kept in one place with a single record of access.” It noted that FERPA contains provisions about a single school official and his assistants as personnel responsible for maintaining education records.

5. Federalism constraints require an interpretation of FERPA that does not allow the federal government to force teachers to abandon long-used educational practices, such as group grading of team assignments. “We doubt Congress meant to intervene in such a drastic fashion with traditional state functions. Under the Court of Appeals’ interpretation of FERPA, the federal power would exercise minute control over specific teaching methods and instructional dynamics in classrooms throughout the country. The Congress is not likely to have mandated this result, and we do not interpret the statute to require it.”

A little commentary: It may have hurt the parents’ case when their attorney boldly asserted in questioning at oral argument that FERPA required prior written parent consent if a student ever saw a happy face, a gold star, or a disapproving remark on another classmate’s paper in any of the many thousands of public classrooms in the nation.

G. Redislosure of Records

General Rule: A District may disclose confidential information from education records, subject to the provisions of FERPA, only on the condition that the party to whom the information is disclosed will not disclose it to any other party without parental or eligible student consent. 34 C.F.R. §99.33(a)(1).

Schools are not strictly prohibited, however, from disclosing records to a party with the understanding that that party might make further disclosures on the school’s behalf, if the original disclosure is appropriate under FERPA, and the record of access shows to whom there might be redislosure (*see below*). The general rule above does not apply to disclosures pursuant to subpoenas, disclosures of directory information, or disclosures to a parent or eligible student. 34 C.F.R. §99.33(c). Districts must inform parties who access information of the requirement to not redisclose without parental consent, unless one of the above exceptions applies. 34 C.F.R. §99.33(d). If the FPCO determines that a third party violated these requirements, the District that released records to that party may not release records to the party for at least five years. 34 C.F.R. §99.33(d).

H. District Record of Persons Accessing Records

Districts must maintain a **record of parties obtaining access** to education records each time records are accessed or disclosed. 34 C.F.R. §99.32(a)(1), 34 C.F.R. §300.562(c). The record must include the party’s name, the date of access, and the purpose for which the party is allowed to access the records. If the party to whom the records are disclosed might **redisclose** records or information contained therein on behalf of the District, the record of access must also include the names of the persons to whom the information may be redisclosed, and a statement of the legitimate interests of such persons. 34 C.F.R. §99.32(b). *See above* for additional discussion of redislosure issues.

Practical Note: Districts can keep an access log sheet on the front of student eligibility folders. The form used should contain spaces for the party's name, date of access, and purpose.

I. Exceptions to the Record-of-Access Requirement

A record of access does **not** have to be documented for the following parties when they access education records (34 C.F.R. §99.32(d)):

1. Parents or eligible students accessing their children or their own records, respectively.
2. School officials or employees with legitimate educational interest in the records or information.
3. Parties with written consent from the parent or eligible student.
4. Parties seeking directory information.
5. Parties accessing records as directed by a federal grand jury or other law enforcement subpoena (if the grand jury or subpoena orders that the contents or existence of the subpoena, as well as information furnished in response, not be disclosed).

J. District Custodian of Records

IDEA regulations also require that Districts appoint at least one **official to assume responsibility for ensuring the confidentiality of education records**. In addition, all persons collecting or using personally identifiable information must receive **“training or instruction”** regarding the requirements of applicable laws. Districts must also maintain a **list of those employees who may have access** to education records. 34 C.F.R. §300.572(b). The custodian of records (or whatever the person's title may be) and his or her assistants are expressly allowed to inspect and review records (even if they are not considered to have a “legitimate educational interest”). 34 C.F.R. §99.32(c)(2).

K. Miscellaneous Issue

Police Access to Records

(see Sharing Information: A Guide to the Family Educational Rights & Privacy Act and Participation in Juvenile Justice Programs, a program report jointly authored by the U.S. Department of Justice, Office of Juvenile Justice & Delinquency Prevention and the Family Policy Compliance Office, June 1997. <http://www.ncjrs.org/jjgen.htm>.)

Can police get access to student records? If what is sought is directory information, the clear answer is yes, to the extent that the parent has not opted out of directory information on the annual notification.

What if more than directory information is sought by the police? The district may only release with parental consent or if an exception to consent is present.

Note that one additional area of exception exists when local law enforcement officers are designated as the school district's law enforcement unit by a memorandum of understanding (MOU) or a contract. If the officer has been designated a school district law enforcement officer and parents have been notified by the annual FERPA notice that officers so designated are school officials with legitimate educational interest, these police officers (sheriff's deputies, etc) can have the same access to educational records as any school district employee with a legitimate educational interest. This access also means that these officers are subject to FERPA restrictions on disclosing personally identifiable information from student records to third parties (including rest of police department for whom they work). While FERPA may allow them to access records, they cannot share information obtained from student records with a third party unless they receive consent or an exception to consent applies. Importantly, where information is gained not because of access to an educational record, but from the officer's personal observation at the school, that information which he observed can be shared with third parties, even if it also becomes part of a school record.