

FERPA

Family Education Rights and Privacy Act

While the law is full of acronyms, our focus for this month is on FERPA, which stands for the Family Educational Rights and Privacy Act. FERPA was originally enacted as a species of civil rights legislation, and is a federal statute designed to protect the rights of students and their parents. In Massachusetts, we also adhere to statutes and state regulations on this same topic. As such, the federal law must be considered in tandem with state law, as well as local law and policy.

The challenge is to read the laws together in a way that makes sense.

In general, the Massachusetts regulations are more protective of students' rights than the federal regulations. So, you will find that the district's response is generally more conservative when interpreting the law in specific situations.

Together, FERPA and the Massachusetts regulations, when read together, provide parents and eligible students (those who have reached the age of 14 or who have entered the ninth grade) certain rights with respect to the student's educational record. These include:

1. The **right to access** the student's education record by submitting their request to the building principal.
2. The **right to request** an amendment of the record, again, by directing a request to the building principal.
3. The **right to consent** to disclosures of personally identifiable information contained in the records.

The student record includes:

- Health records
- Special education records
- The Cumulative record (the student record that follows a child throughout his/her school career)

The following people have access to the student record without obtaining written consent:

- Parents and/or legal guardians
- School personnel who have a legitimate educational interest (need to know) in reviewing the record to "fulfill their professional responsibilities"
- Student, age 14, or in the 9th grade
- Office staff who maintain the record

Within the "student record", the school committee designates what selected student records are considered "directory information". This is information not generally considered harmful if released.

For elementary students, the following has been designated as directory information:

- Name
- Address
- Telephone number
- Date of birth
- Grade
- Classroom Assignment

For middle and high school students, the following is designated as directory information:

- Name
- Address
- Telephone number
- Date of birth
- Graduating class
- Team/class assignment
- Participation in officially recognized activities and sports
- Honors and awards

Important exceptions to be aware of:

We can now disclose certain designated directory information **without parent/guardian consent** (outlined above). The rationale is to help schools facilitate a connection to an outside organization, e.g. a class ring manufacturer, a yearbook publisher, fund raising for the Parent Teacher School Organization (PTSO), military recruiters, college planning, etc.

We can also disclose the complete student record to another school, **without parent/guardian consent**, as long as the student is seeking or intending to enroll in this other school, and is currently in attendance in Acton or Acton-Boxborough.

In other words, if one of the district's schools receives a request from another school for a child's student record after the student has already left our school, then Acton cannot forward the record without obtaining parent/guardian consent at our end.

A school official within Acton-Boxborough who has a legitimate interest in reviewing a child's record may do so, **without parent/guardian consent**, if the official needs to review the record to fulfill his/her professional responsibilities.

Additional Information:

Since 1998, Massachusetts law has had a detailed process regulating the access a parent without physical custody of his/her children ("non-custodial parent") has to his/her child's student records. Until recently (2006), non-custodial parents have had the burden of producing documents showing that there are no court documents rendering them ineligible for access to their children's student records. After receiving a complaint from a

Massachusetts non-custodial parent, the federal government informed the Massachusetts Department of Education that Massachusetts law conflicted with the access rights given to parents under FERPA. The Massachusetts legislature amended the state statute addressing a non-custodial parent's access to student records (MGL ch. 71, section 34H) so that now the burden is on the custodial parent to produce any documents showing that the non-custodial parent is not entitled to access to their child's student records. The process now works as follows:

1. The non-custodial parent must submit a written request for the records to the principal.
2. The school must immediately notify the custodial parent by certified and first class mail, in English and the primary language of the custodial parent, that the non-custodial parent has requested the records and that the school will provide the non-custodial parent with access to the records after 21 days unless the custodial parent provides the principal with documentation that the non-custodial parent is not eligible to obtain access (based on factors set forth in Massachusetts statute and regulations).
3. If the custodial parent does not produce any documentation showing the parent is ineligible to access the records, the school provides the requested records. The school, however, must delete all electronic and postal address and telephone number information relating to either the work or home locations of the custodial parent from the student records and must mark the records to indicate that they must not be used to enroll the student in another school.
4. If the school subsequently receives a court order prohibiting the distribution of the student record information, the school must notify the non-custodial parent that it must stop providing access.

Questions and Answers:

In a divorce situation, how am I to understand the difference between physical and legal custody?

Massachusetts law focuses only on physical custody and who gets it. In most instances, both parents are granted legal custody. It is rare in Massachusetts to have joint physical custody. What is typically ordered is that one parent has physical custody and the other parent has visitation rights. So - you have one custodial parent and one non-custodial parent.

If I am holding a divorce agreement that stipulates JOINT physical and JOINT legal custody – an even sharing of responsibility – are both parents entitled to everything?

Yes. While this is atypical for Massachusetts, it does happen. In this case, you do not have a custodial/non-custodial parent and both parents have equal entitlements when it comes to the child.

Let's say I know who the custodial parent is and I know who the non-custodial parent is. I also know they are both entitled to the record. Does the school have an affirmative duty to send "everything" from the school to both parents?

No, there is no affirmative duty to send "everything" from the school. However, the school district must meet Ch.71, Section 34H requirements **if requested in writing by the non-custodial parent.** 34H requirements are: report cards and progress reports, the results of intelligence and achievement tests, notification that a child requires a special education assessment, notification of enrollment in an ELL program, notification of absences, illnesses,

detentions, suspensions, expulsions, and notification of withdrawal from school. 34H also speaks to the school district making "reasonable efforts" to share information.

If it hasn't been requested, does the school have an affirmative duty to initiate the sharing of information with the non-custodial parent?

No, but it is the right thing to do. Supporting divorced parents in remaining involved with their children is best for children and adolescents.

When the non-custodial parent requests the record, does the school district simply release it?

No. We still send a letter to the **custodial** parent letting him/her know that the record will be released after 21 days unless the custodial parent produces information that would restrict access. We also send a letter to the non-custodial parent to inform him/her of the process. Please note that the request from the non-custodial parent should be in writing.

If we don't hear from the custodial parent, does the school have an affirmative duty to release the educational record after the 21 days have passed?

Yes, we are obligated to provide the requested student records and we need to make sure we do so immediately following the 21 day period. Tracking days becomes important.

What's included in the educational record?

The educational record includes all information concerning a student that is organized by the student's name or in a way that the student can be individually identified.

If a representative from another school calls and requests the educational record for a student, is the school allowed to produce it even though they don't have a signed release from the parent or eligible student?

Yes, as long as the school official has a legitimate reason to request it, i.e, the student is seeking or intending to enroll in their school. As a general rule, however, schools need the written consent of a parent or the eligible student before releasing student record information and it would be more prudent to ask that the receiving school put the request in writing. Acton and Acton-Boxborough strongly prefer and encourage obtaining a parent's written consent.

However, Massachusetts and federal law allow school staff, upon request, to forward a student's records to another school in which a student seeks or intends to enroll as long as the district has given notice to parents that this is the school district's practice. Our district has provided the required notice in the school committee's policy regarding student records and in the annual notice that is sent home to parents.

If a student has already left Acton or Acton-Boxborough and has enrolled in a new school, can the district respond to the new school's request for records even without a signed release from the parents or eligible student?

No. This exception to the general rule only applies if the student is seeking or intending to enroll in another school. Once the new school enrolls the student, it's too late to use this exception. You now need a written release to respond to the request.