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United States Code Annotated [Currentness](#)

Title 20. Education

Chapter 31. General Provisions Concerning Education ([Refs & Annos](#))

▣ [Subchapter III](#). General Requirements and Conditions Concerning Operation and Administration of Education Programs: General Authority of Secretary ([Refs & Annos](#))

▣ [Part 4](#). Records; Privacy; Limitation on Withholding Federal Funds

→ **§ 1232g. Family educational and privacy rights**

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of post-secondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations--

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following--

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the

educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of (I) the Comptroller General of the United States, (II) the Secretary, or (III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted--

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if--

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student. [\[FN1\]](#)

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student or such parents, as defined in [section 152 of Title 26](#);

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the know-

ledge of such information is necessary to protect the health or safety of the student or other persons; and

(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each

student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in [section 16 of Title 18](#)), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in [section 16 of Title 18](#)), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding--

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under [section 14071 of Title 42](#) concerning registered sex offenders who are re-

quired to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(c) Surveys or data-gathering activities; regulations

Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(h) Disciplinary records; disclosure

Nothing in this section shall prohibit an educational agency or institution from--

(1) including appropriate information in the education record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student.

(i) Drug and alcohol violation disclosures

(1) In general

Nothing in this Act or the Higher Education Act of 1965 [20 U.S.C.A. § 1001 et seq.] shall be construed to prohibit an institution of higher education from disclosing, to a parent or legal guardian of a student, information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, regardless of whether that information is contained in the student's education records, if--

(A) the student is under the age of 21; and

(B) the institution determines that the student has committed a disciplinary violation with respect to such use or possession.

(2) State law regarding disclosure

Nothing in paragraph (1) shall be construed to supersede any provision of State law that prohibits an institution of higher education from making the disclosure described in subsection (a) of this section.

(j) Investigation and prosecution of terrorism

(1) In general

Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to--

(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in [section 2332b\(g\)\(5\)\(B\) of Title 18](#), or an act of domestic or international terrorism as defined in section 2331 of that title; and

(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

(2) Application and approval

(A) In general

An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

(3) Protection of educational agency or institution

An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

(4) Record-keeping

Subsection (b)(4) of this section does not apply to education records subject to a court order under this subsection.

CREDIT(S)

(Pub.L. 90-247, Title IV, § 444, formerly § 438, as added [Pub.L. 93-380, Title V, § 513\(a\)](#), Aug. 21, 1974, 88 Stat. 571, and amended [Pub.L. 93-568, § 2\(a\)](#), Dec. 31, 1974, 88 Stat. 1858; [Pub.L. 96-46, § 4\(c\)](#), Aug. 6, 1979, 93 Stat. 342; [Pub.L. 96-88, Title III, § 301, Title V, § 507](#), Oct. 17, 1979, 93 Stat. 677, 692; [Pub.L. 99-514, § 2](#), Oct. 22, 1986, 100 Stat. 2095; [Pub.L. 101-542, Title II, § 203](#), Nov. 8, 1990, 104 Stat. 2385; [Pub.L. 102-325, Title XV, § 1555\(a\)](#), July 23, 1992, 106 Stat. 840; renumbered § 444 and amended [Pub.L. 103-382, Title II, §§ 212\(b\)\(1\)](#), 249, 261(h), Oct. 20, 1994, 108 Stat. 3913, 3924, 3928; [Pub.L. 105-244, Title IX, §§ 951, 952](#), Oct. 7, 1998, 112 Stat. 1835, 1836; [Pub.L. 106-386, Div. B, Title VI, § 1601\(d\)](#), Oct. 28, 2000, 114 Stat. 1538; [Pub.L. 107-56, Title V, § 507](#), Oct. 26, 2001, 115 Stat. 367; [Pub.L. 107-110, Title X, § 1062\(3\)](#), Jan. 8, 2002, 115 Stat. 2088.)

[\[FN1\]](#) So in original. The period probably should be a comma.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93-805 and [Senate Conference Report No. 93-1026](#), see 1974 U.S. Code Cong. and Adm. News, p. 4093.

[House Report No. 93-1056](#) and [Senate Conference Report No. 93-1409](#), see 1974 U.S. Code Cong. and Adm. News, p. 6779.

1979 Acts. House Report No. 96-338, see 1979 U.S. Code Cong. and Adm. News, p. 819.

[Senate Report No. 96-49](#) and [House Conference Report No. 96-459](#), see 1979 U.S. Code Cong. and Adm. News, p. 1514.

1990 Acts. House Report No. 101-518, see 1990 U.S. Code Cong. and Adm. News, p. 3363.

1992 Acts. House Report No. 102-447 and [House Conference Report No. 102-630](#), see 1992 U.S. Code Cong. and Adm. News, p. 334.

1994 Acts. House Report No. 103-425 and [House Conference Report No. 103-761](#), see 1994 U.S. Code Cong. and Adm. News, p. 2807.

1998 Acts. House Conference Report No. 105-750, see 1998 U.S. Code Cong. and Adm. News, p. 417.

2000 Acts. House Report No. 106-939, see 2000 U.S. Code Cong. and Adm. News, p. 1380.

2002 Acts. House Conference Report No. 107-334 and Statement by President, see 2001 U.S. Code Cong. and Adm. News, p. 1230.

Codifications

Section 261(h)(5)(A) of Pub.L. 103-382, purporting to amend subsec. (g) of this section by striking “of Health, Education, and Welfare”, was incapable of literal execution because of the earlier substitution of “of Education” for “of Health, Education, and Welfare” pursuant to sections 301 and 507 of Pub.L. 96-88. Such amendment was, however, executed by striking “of Education.” See Transfer of Functions note set out under this section.

Amendments

2002 Amendments. Subsec. (b)(1)(J). Pub.L. 107-110, § 1062(3), in the undesignated par. following (b)(1)(J)(ii) struck “clause (E)” and inserted “subparagraph (E)”, and made other technical amendments.

2001 Amendments. Subsec. (j). Pub.L. 107-56, § 507, added subsec. (j).

2000 Amendments. Subsec. (b)(7). Pub.L. 106-386, § 1601(d), added par. (7).

1998 Amendments. Subsec. (b)(1)(C). Pub.L. 105-244, § 951(1), rewrote subpar. (C), which formerly read: “authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, or (iii) State educational authorities under the conditions set forth in paragraph (3) of this subsection;”.

Subsec. (b)(6)(A). Pub.L. 105-244, § 951(2)(A), (B), designated existing provisions as subpar. (A) and, as so designated, substituted “or a nonforcible sex offense, the final results” for “the results” and “such crime or offense with respect to such crime or offense.” for “such crime with respect to such crime.”.

Subsec. (b)(6)(B), (C). Pub.L. 105-244, § 951(2)(C), added subpars. (B) and (C).

Subsec. (i). Pub.L. 105-244, § 952, added subsec. (i).

1994 Amendments. Subsec. (a)(1)(B). Pub.L. 103-382, § 249(1)(A)(i), (ii), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(1)(C). Pub.L. 103-382, § 249(1)(A)(i), (ii), redesignated former subpar. (B) as (C) and, in subcl. (iii) of subpar. (C) as so redesignated, substituted “(D)” for “(C)”.

Subsec. (a)(1)(D). Pub.L. 103-382, § 249(A)(1)(i), (iv), redesignated former subpar. (C) as (D) and, in subpar. (D) as so redesignated, substituted “(C)” for “(B)”.

Subsec. (a)(2). Pub.L. 103-382, § 249(1)(B), substituted “rights” for “or other rights”.

Subsec. (a)(4)(B)(ii). Pub.L. 103-382, § 261(h)(1), substituted a semicolon for the period.

Subsec. (b)(1)(A). Pub.L. 103-382, § 249(2)(A)(ii), inserted “, including the educational interests of the child for whom consent would otherwise be required” after “interests”.

Subsec. (b)(1)(C). Pub.L. 103-382, § 261(h)(2)(A), substituted “or (iii)” for “(iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title, or (iv))”.

Subsec. (b)(1)(E). Pub.L. 103-382, § 249(2)(A)(ii), amended subpar. (E) generally. Prior to amendment subpar. (E) read as follows: “State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;”

Subsec. (b)(1)(H). Pub.L. 103-382, § 261(h)(2)(B), substituted “1986” for “1954”, which for purposes of codification required no change in text.

Subsec. (b)(1)(J). Pub.L. 103-382, § 249(2)(A)(iii)-(v), added subpar. (J).

Subsec. (b)(2). Pub.L. 103-382, § 249(2)(B), in provision preceding subpar. (A) substituted “, unless--” for a period and in subpar. (B) inserted “except as provided in paragraph (1)(J),” before “such information”.

Subsec. (b)(3). Pub.L. 103-382, § 261(h)(2)(C), substituted “or (C)” for “(C) an administrative head of an education agency or (D)” and “education programs” for “education program”.

Subsec. (b)(4). Pub.L. 103-382, § 249(2)(C), inserted provision that if a third party outside the educational institution permits access to information or fails to destroy information in violation of subpars. (2)(A) and (1)(F), respectively, the educational institution or agency be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

Subsec. (c). Pub.L. 103-382, § 249(3), substituted “Not later than 240 days after October 20, 1994, the Secretary shall adopt appropriate regulations or procedures, identify existing regulations or procedures, which” for “The Secretary shall adopt appropriate regulations to”.

Subsec. (d). Pub.L. 103-382, § 261(h)(3), inserted a comma after “education”.

Subsec. (e). Pub.L. 103-382, § 249(4), inserted “effectively” before “informs”.

Subsec. (f). Pub.L. 103-382, § 261(h)(4), struck out “, or an administrative head of an education agency,” and substituted “enforce this section” for “enforce provisions of this section”, “in accordance with” for “according to the provisions of”, and “comply with this section” for “comply with the provisions of this section”.

Subsec. (g). Pub.L. 103-382, § 261(h)(5), struck out “of Education” after “Department” and “the provisions of” after “violations”. See Codifications note under this section.

Subsec. (h). Pub.L. 103-382, § 249(5), added subsec. (h).

1992 Amendments. Subsec. (a)(4)(B)(ii). Pub.L. 102-325, § 1555(a), substituted provisions excluding records created for purpose of law enforcement from definition of “education records”, for provisions excluding from such definition records that are kept apart from other records, are maintained for law enforcement purposes, and are unavailable to persons other than law enforcement officials, and struck out provision conditioning such exception upon lack of access to such records.

1990 Amendments. Subsec. (b)(6). Pub.L. 101-542, § 203, added par. (6).

1986 Amendments. Subsec. (b)(1)(H). Pub.L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “Title 26” thus requiring no change in text.

1979 Amendments. Subsec. (b)(5). Pub.L. 96-46 added subsec. (b)(5).

1974 Amendments. Subsec. (a)(1). Pub.L. 93-568, § 2(a)(1)(A) to (C), (2)(A) to (C), (3), designated existing par. (1) as subpar. (A), and in subpar. (A) as so designated, substituted reference to educational agencies and institutions for reference to state or local educational agencies, institutions of higher education, community colleges, schools, agencies offering preschool programs, and other educational institutions, substituted the generic term education records for the enumeration of such records, and extended the right to inspect and review such records to parents of children who have been in attendance, and added subpars. (B) and (C).

Subsec. (a)(2). Pub.L. 93-568, § 2(a)(4), substituted provisions making the availability of funds to educational agencies and institutions conditional on the granting of an opportunity for a hearing to parents of students who are or have been in attendance at such institution or agency to challenge the contents of the student's education records for provisions granting the parents an opportunity for such hearing, and added provisions authorizing insertion into the records a written explanation of the parents respecting the content of such records.

Subsec. (a)(3). Pub.L. 93-568, § 2(a)(1)(G), added subsec. (a)(3).

Subsec. (a)(4), (5). Pub.L. 93-568, § 2(a)(2)(F), added subsec. (a)(4) and (5).

Subsec. (a)(6). Pub.L. 93-568, § 2(a)(5), added subsec. (a)(6).

Subsec. (b)(1). Pub.L. 93-568, § 2(a)(1)(D), (2)(D), (3), (8)(A) to (C), (10)(A), in provisions preceding subpar. (A), substituted “educational agency or institution which has a policy of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section)” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of permitting the release of personally identifiable records or files (or personal information contained therein)”, in subpar. (A), substituted “educational agency, who have been determined by such agency or institution to have” for “educational agency who have”, in subpar. (B), substituted “the student seeks or intends to” for “the student intends to”, in subpar. (C), substituted reference to “section 408(c)” for reference to “section 409 of this Act” which for purposes of codification has been translated as “section 1221e-3(c) of this title”, and added subpars. (E) to (I).

Subsec. (b)(2). Pub.L. 93-568, § 2(a)(1)(E), (2)(E), substituted “educational agency or institution which has a

policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection” for “state or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) of this section”.

Subsec. (b)(3). Pub.L. 93-568, § 2(a)(8)(D), substituted “information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements” for “data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data so obtained has been collected”.

Subsec. (b)(4). Pub.L. 93-568, § 2(a)(9), substituted provisions that each educational agency or institution maintain a record, kept with the education records of each student, indicating individuals, agencies, or organizations who obtained access to the student's record and the legitimate interest in obtaining such information, that such record of access shall be available only to parents, school officials, and their assistants having responsibility for the custody of such records, and as a means of auditing the operation of the system, for provisions that with respect to subsecs. (c)(1), (c)(2), and (c)(3) of this section, all persons, agencies, or organizations desiring access to the records of a student shall be required to sign forms to be kept with the records of the student, but only for inspection by the parents or the student, indicating specifically the legitimate educational or other interest of the person seeking such information, and that the form shall be available to parents and school officials having responsibility for record maintenance as a means of auditing the operation of the system.

Subsec. (e). Pub.L. 93-568, § 2(a)(1)(F), substituted “to any educational agency or institution unless such agency or institution” for “unless the recipient of such funds”.

Subsec.(g). Pub.L. 93-568, § 2(a)(7), (10)(B), struck out reference to §§ 1232c and 1232f of this title and added provisions that except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Effective and Applicability Provisions

2002 Acts. Except as otherwise provided, amendments by Pub.L. 107-110 effective Jan. 8, 2002, see Pub.L. 107-110, § 5, set out as a note under [20 U.S.C.A. § 6301](#).

1998 Acts. Amendment by Pub.L. 105-244 effective Oct. 1, 1998, except as otherwise provided, see section 3 of Pub.L. 105-244, set out as a note under section 1001 of this title.

1994 Acts. Amendment by Title II of Pub.L. 103-382 effective Oct. 20, 1994, see section 3(a)(2) of Pub.L. 103-382, set out as a note under section 1221 of this title.

1992 Acts. Section 1555(b) of Pub.L. 102-325 provided that: “The amendment made by this section [amending subsec. (a)(4)(B)(ii) of this section] shall take effect on the date of enactment of this Act [July 23, 1992].”

1974 Acts. Section 2(b) of Pub.L. 93-568 provided that: “The amendments made by subsection (a) [amending this section] shall be effective, and retroactive to, November 19, 1974.”

Section 513(b)(1) of Pub.L. 93-380 provided that: “The provisions of this section [classified to this section and provisions set out as a note under section 1221 of this title] shall become effective ninety days after the date of enactment [Aug. 21, 1974] of section 438 of the General Education Provisions Act [this section].”

Transfer of Functions

“Department of Education” was substituted for “Department of Health, Education, and Welfare” in subsec. (g) pursuant to sections 301 and 507 of Pub.L. 96-88, which is classified to sections 3441 and 3507 of this title and which transferred functions and offices (relating to education) of the Department of Health, Education, and Welfare to the Department of Education.

CROSS REFERENCES

Applicability of this section to program to collect information relating to nonimmigrant foreign students and other exchange program participants, see [8 USCA § 1372](#).

Application of this section to national education reform, see [20 USCA § 5917](#).

Crime victims' rights, rights afforded and best efforts to accord rights, procedures to promote compliance, see [18 USCA § 3771](#).

Privacy rights accorded information collected regarding--

Education of handicapped, see [20 USCA § 1417](#).

School records of homeless youth, see [42 USCA § 11432](#).

CODE OF FEDERAL REGULATIONS

Privacy rights accorded information collected regarding--

Privacy rights of parents and students, see [34 CFR § 99.1 et seq.](#)

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Cleaning up Buckley: How the Family Educational Rights and Privacy Act shields academic corruption in college athletics. Matthew R. Salzwedel and Jon Ericson, [2003 Wis. L. Rev. 1053 \(2003\)](#).

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[CJS Aliens § 199](#), Bureau of Immigration and Customs Enforcement.

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[CJS Grand Juries § 140](#), Standing.

[CJS Records § 107](#), Family Educational Rights and Privacy Act.

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[73 ALR, Fed. 448](#), What is "Interest" Relating to Property or Transaction Which is Subject of Action Sufficient to Satisfy that Requirement for Intervention as Matter of Right Under Rule 24(A)(2) of Federal Rules of Civil...

[85 ALR 4th 344](#), Validity, Construction, and Effect of Provision Releasing School from Liability for Injuries to Students Caused by Interscholastic and Other Extracurricular Activities.

[27 ALR 4th 680](#), What Are "Records" of Agency Which Must be Made Available Under State Freedom of In-

formation Act.

[175 ALR 438](#), Jurisdiction of Equity to Protect Personal Rights; Modern View.

[130 ALR 327](#), Practice or Procedure for Testing Validity or Scope of the Command of Subpoena Duces Tecum.

Encyclopedias

[19 Am. Jur. Proof of Facts 2d 649](#), Arbitrary or Capricious Grading of Student.

[20 Am. Jur. Proof of Facts 2d 511](#), Teacher's Use of Excessive Corporal Punishment.

[43 Am. Jur. Proof of Facts 2d 449](#), Invasion of Privacy by Public Disclosure of Private Facts.

[35 Am. Jur. Proof of Facts 3d 439](#), Landlord's Liability for Lead-Based Paint Hazard in Residential Dwelling.

[40 Am. Jur. Proof of Facts 3d 237](#), Governmental Liability for Liberty or Privacy Deprivation Resulting from Erroneous Information in Agency Records.

[47 Am. Jur. Proof of Facts 3d 1](#), Negligent Misrepresentation in Employment References.

[87 Am. Jur. Proof of Facts 3d 259](#), Confidentiality of Medical and Other Treatment Records.

[101 Am. Jur. Proof of Facts 3d 1](#), Wrongful Death in Claims Against Emergency Service Workers.

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[Am. Jur. 2d Aliens and Citizens § 906](#), Students; Academic Students.

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1. Constitutionality

Family Educational Rights and Privacy Act (FERPA) did not violate First Amendment by denying right of public access to university student disciplinary records. [U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132](#), affirmed [294 F.3d 797](#). [Colleges And Universities](#) [🔑 9.40](#); [Constitutional Law](#) [🔑 2005](#)

If Family Educational Rights and Privacy Act imposed penalty for disclosure of student security and crime reports produced by noncommissioned campus law enforcement unit, Act created irrational classification in violation of equal protection component of due process clause of Fifth Amendment; distinction between student and nonstudent suspects, criminals, victims and witnesses was not related to their student or educational status. [Bauer v. Kincaid, W.D.Mo.1991, 759 F.Supp. 575, 112 A.L.R. Fed. 671](#). [Constitutional Law](#) [🔑 3626\(1\)](#); [Records](#) [🔑 2](#)

2. Construction with other laws

Family Educational Rights and Privacy Act (FERPA) did not prevent state education department from releasing records, pursuant to Developmental Disabilities and Bill of Rights Act (DD), Protection and Advocacy for Mentally Ill Individuals Act (PAIMI), and Protection and Advocacy of Individual Rights Act (PAIR), to state-designated protection and advocacy agency of its investigation into use of seclusion rooms for disciplining students at elementary school, but district court would be cautioned not to ignore students' privacy interests when deciding details of release of information. [Disability Rights Wisconsin, Inc. v. State of Wisconsin Dept. of Public Instruction, C.A.7 \(Wis.\) 2006, 463 F.3d 719](#). [Records](#) [🔑 31](#)

Section 1983 could not be used to assert alleged violation of provisions of Family Education and Privacy Rights Act (FERPA) prohibiting disclosure of student records. [Shockley v. Svoboda, C.A.7 \(Ill.\) 2003, 342 F.3d 736](#). [Civil Rights](#) [🔑 1070](#)

Federal statutes mandating confidentiality of drug abuse and mental health records in federally regulated or funded programs did not require school district to maintain confidentiality of its staff members' knowledge of students' pregnancies, i.e. did not preclude district's adoption of policy generally requiring parental notification of such pregnancies, especially given applicability of Family Educational Rights and Privacy Act (FERPA). [Port Washington Teachers' Ass'n v. Board of Educ. of Port Washington Union Free School Dist., E.D.N.Y.2005, 361 F.Supp.2d 69](#). [Schools](#) [🔑 157](#)

Elementary school principal's disclosure, to parents complaining of sexual harassment, of information regarding accused student did not violate Family Educational Rights and Privacy Act (FERPA); FERPA addressed systematic, not individual, violations of students' privacy by unauthorized releases of sensitive information in their educational records. [Jensen v. Reeves, D.Utah 1999, 45 F.Supp.2d 1265](#), affirmed [3 Fed.Appx. 905, 2001 WL 113829](#). [Records](#) [🔑 31](#)

Autistic student and his parents stated § 1983 action against school district and its members for violation of Family Educational Rights and Privacy Act (FERPA); plaintiffs were within class of persons intended to be benefitted by Act, Act established mandatory and direct obligations regarding educational records on school districts that receive federal funds, and available sanction under Act of federal funding termination did not provide remedy to plaintiffs for alleged violation of Act and would serve to exacerbate community's financial burden in providing free, appropriate, public education required by other federal statutes. [Maynard v. Greater Hoyt School Dist. No. 61-4, D.S.D.1995, 876 F.Supp. 1104. Civil Rights ↪ 1070](#)

Section 1983 was available as remedy for violation of Family Educational Rights and Privacy Act (FERPA), since language of FERPA revealed congressional intent to impose obligations directly on educational agencies or institutions, obligation on educational agencies or institutions was unambiguous, FERPA created enforceable federal right in favor of parent of educational disabled student and Congress had not foreclosed enforcement of the statute in the enactment itself. [Belanger v. Nashua, New Hampshire, School Dist., D.N.H.1994, 856 F.Supp. 40. Civil Rights ↪ 1069; Civil Rights ↪ 1070](#)

3. Purpose

Family Educational Rights and Privacy Act (FERPA), which was enacted to assure parents of students access to their educational records and to protect such individuals' rights to privacy, takes a carrot-and-stick approach: the carrot is federal funding, while the stick is the termination of such funding to any educational institution which has a policy or practice of permitting the release of educational records of students without the written consent of their parents. [Frazier v. Fairhaven School Committee, C.A.1 \(Mass.\) 2002, 276 F.3d 52. Records ↪ 30; Records ↪ 31](#)

Family Educational Rights and Privacy Act (FERPA) imposes a direct obligation on universities not to disclose education records. [U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132, affirmed 294 F.3d 797. Colleges And Universities ↪ 9.40](#)

Purpose of the Family Educational Rights and Privacy Act (FERPA) is to ensure access to educational records for students and parents while protecting privacy of such records. [Student Press Law Center v. Alexander, D.D.C.1991, 778 F.Supp. 1227. Records ↪ 31](#)

4. Students within section

Person whose application to graduate school of university has been rejected, but who nevertheless audited some classes at university, was not "student" as defined in Family Educational Rights and Privacy Act. [Tarka v. Franklin, C.A.5 \(Tex.\) 1989, 891 F.2d 102, certiorari denied 110 S.Ct. 1809, 494 U.S. 1080, 108 L.Ed.2d 940, rehearing denied 110 S.Ct. 2605, 496 U.S. 913, 110 L.Ed.2d 285. Colleges And Universities ↪ 9.40](#)

4a. Persons protected

School defendants owed mother a duty not to violate her rights to procedural due process and under Family and Educational Rights and Privacy Act (FERPA) by providing her notice prior to releasing to the media her letter to

her son's teacher about his education. [Warner v. St. Bernard Parish School Bd., E.D.La.2000, 99 F.Supp.2d 748.](#) [Constitutional Law](#) 🔑 4190; [Records](#) 🔑 31

5. Inmates

Inmate's rights under Family Educational and Privacy Rights Act were not violated by prison regulation prohibiting inmate from sending college transcripts to university in sealed envelope; nothing in Act required prison officials to take inmate's word that envelope contained transcripts and to accept sealed mailing. [Stow v. Grimaldi, C.A.1 \(N.H.\) 1993, 993 F.2d 1002.](#) [Prisons](#) 🔑 147

6. Criminal reports

Government's discovery request to county board of education regarding information on student transfers and requests and makeup of student body fell within law enforcement purpose exception to Family Educational Rights and Privacy Act's (FERPA's) general prohibition on release of students' personal information without parental consent; Government filed underlying lawsuit to enforce Civil Rights Act and achieve goal of desegregation and was seeking records to demonstrate that school was still operating as racially identifiable white school in violation of statute and enforce compliance with the Act. [U.S. v. Bertie County Bd. of Educ., E.D.N.C.2004, 319 F.Supp.2d 669.](#) [Federal Civil Procedure](#) 🔑 1581

University student disciplinary records were not "records of a law enforcement unit," and thus, did not fall within Family Educational Rights and Privacy Act's (FERPA) exception for law enforcement records. [U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132,](#) affirmed [294 F.3d 797.](#) [Colleges And Universities](#) 🔑 9.40

Prospective university student's claim that equal protection clause (or component of Fifth Amendment) prohibited university officials from relying upon Family Educational and Rights of Privacy Act (FERPA) as defense to prospective student's claim under Arkansas' freedom of information (FOI) claim for disclosure of records pertaining to university's investigation of sexual incident in athletic dormitory, did not state federal claim, regardless of merits. [Norwood v. Slammons, W.D.Ark.1991, 788 F.Supp. 1020.](#) [Colleges And Universities](#) 🔑 9.40; [Constitutional Law](#) 🔑 3626(4); [Federal Courts](#) 🔑 243

Family Educational Rights and Privacy Act did not protect from disclosure criminal investigation and incident reports maintained by university police department for law enforcement purposes. [Bauer v. Kincaid, W.D.Mo.1991, 759 F.Supp. 575, 112 A.L.R. Fed. 671.](#) [Records](#) 🔑 60

7. Educational records, Generally

A student assignment does not satisfy the definition within the Family Educational Rights and Privacy Act (FERPA) of "education records," as soon as it is peer-graded by another student, so that FERPA is not violated by such grading or by calling out the scores, since the student papers are not, at that stage, "maintained" within the meaning of FERPA, nor is each student grader "a person acting for" an educational institution. [Owasso Independent School Dist. No. I-011 v. Falvo, U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896.](#) [Records](#) 🔑 31

Within the Family Educational Rights and Privacy Act (FERPA), which defines “education records” as records containing information directly related to a student, which “are maintained by an educational agency or institution or by a person acting for such agency or institution,” the word “maintained” suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled, while the phrase “acting for” connotes agents of the school, such as teachers, administrators, and other school employees. [Owasso Independent School Dist. No. I-011 v. Falvo, U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896. Records 🔑 31](#)

Grades of pre-secondary school students that were revealed to other students through teachers' practice of permitting students to grade one another's work were “education records” within meaning of Family Education Rights and Privacy Act (FERPA) provision generally prohibiting educational institutions from maintaining policy or practice of permitting release of such records without written consent of students' parents, notwithstanding letter and declaration of Department of Education official suggesting that such grades would not be deemed education records. [Falvo v. Owasso Independent School Dist. No. I-011, C.A.10 \(Okla.\) 2000, 233 F.3d 1203, certiorari granted 121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715, reversed 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896, opinion vacated in part, reinstated in part 288 F.3d 1236. Records 🔑 31](#)

Family Education Rights and Privacy Act (FERPA) provision requiring education institutions to keep “access records,” indicating which individuals, agencies, or organizations have obtained access to student's education records, did not preclude conclusion that grades revealed to other students through teachers' practice of permitting students to grade one another's work were “education records” within meaning of FERPA, since “access records” could still be maintained by a central custodian. [Falvo v. Owasso Independent School Dist. No. I-011, C.A.10 \(Okla.\) 2000, 233 F.3d 1203, certiorari granted 121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715, reversed 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896, opinion vacated in part, reinstated in part 288 F.3d 1236. Records 🔑 31](#)

Middle school student's “hit list” of fellow students was not “education record” under Family Educational Rights and Privacy Act (FERPA), and thus principal's disclosure of “hit list” to her support staff did not violate student's right to privacy under Fourteenth Amendment, where “hit list” was written on cover of student's geography book and found by janitor. [Risica ex rel. Risica v. Dumas, D.Conn.2006, 466 F.Supp.2d 434. Constitutional Law 🔑 4209\(1\); Records 🔑 31](#)

A university student's media access control (MAC) address is not part of his or her educational records, and so its disclosure is not restricted by FERPA. [Arista Records LLC v. Does 1-4, D.Conn.2008, 589 F.Supp.2d 151. Colleges And Universities 🔑 9.40](#)

Government lacked compelling interest in sealing depositions of female student and parents in action brought against university, alleging sexual harassment while member of sports team, as required under First Amendment; student lacked reasonable expectations of confidentiality in information exchanged by and about her in conversations with team members, coach's alleged comments about student's body were not educational records under Family Educational Rights and Privacy Act (FERPA), and comments were individual's observations rather than personal information about student. [Jennings v. University of North Carolina at Chapel Hill,](#)

[M.D.N.C.2004, 340 F.Supp.2d 679. Constitutional Law ↪ 2005; Colleges And Universities ↪ 9.40](#)

Grades that were revealed to other students through teachers' practice of having students grade one another's work and call out grade were not "education records" within meaning of Family Educational Rights and Privacy Act (FERPA) provision generally prohibiting educational institutions from releasing education records without parental consent; grades on interim tests and homework assignments were not "maintained" by educational agency or institution at point of grading so as to qualify them as "education records" subject to FERPA's restrictions. [Falvo v. Owasso Independent School Dist. No. I-011, N.D.Okla.1999, 146 F.Supp.2d 1137](#), affirmed in part, reversed in part [233 F.3d 1203](#), certiorari granted [121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715](#), reversed [122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896](#), opinion vacated in part, reinstated in part [288 F.3d 1236](#). [Records ↪ 31](#)

Family Educational Records Privacy Act (FERPA), which governs accessibility and privacy of student education records at educational institutions, was not applicable to voluntary student survey which was funded solely by local government. [C.N. v. Ridgewood Bd. of Educ., D.N.J.2001, 146 F.Supp.2d 528](#), affirmed in part, reversed in part [281 F.3d 219](#), on remand [319 F.Supp.2d 483](#). [Records ↪ 31](#)

University student disciplinary records were "education records" as defined by Family Educational Rights and Privacy Act (FERPA), and thus, protected from public disclosure. [U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132](#), affirmed [294 F.3d 797](#). [Colleges And Universities ↪ 9.40](#)

Action seeking document from university under the Mississippi Public Records Act did not arise under federal law, and thus federal district court did not have original jurisdiction and removal from state court was improper, even though complaint anticipated defense under the federal Family Educational Rights and Privacy Act (FERPA) by alleging that information sought did not constitute "educational records" within the ambit of FERPA. [Gannett River States Pub. Corp. v. Mississippi State University, S.D.Miss.1996, 945 F.Supp. 128](#). [Removal Of Cases ↪ 25\(1\)](#)

District records relating to student's juvenile court proceedings, which were part of district's attorney's file, were "education records" which mother of student was entitled to access to, under Family Educational Rights and Privacy Act (FERPA), as bearing on student's educational and residential placement. [Belanger v. Nashua, New Hampshire, School Dist., D.N.H.1994, 856 F.Supp. 40](#). [Infants ↪ 133](#)

Contemporaneous disclosure to the parents of a victimized child of the results of any investigation and resulting disciplinary actions taken against an alleged child perpetrator does not constitute a release of an "education record" within the meaning of the Family Educational Rights and Privacy Act (FERPA). [Jensen v. Reeves, C.A.10 \(Utah\) 2001, 3 Fed.Appx. 905, 2001 WL 113829](#), Unreported. [Records ↪ 31](#)

Middle school officials did not violate Individuals with Disabilities Education Act (IDEA) requirement that special education and disciplinary records of special education students be forwarded to authorities when student was arrested, when officials failed to inform police, who had taken away student referred to them following po-

tentially violent classroom incident, of student's medication needs. [Valentino C. v. School Dist. of Philadelphia](#), E.D.Pa.2003, 2003 WL 177210, Unreported. [Schools](#) 🔑 155.5(1)

7a. ---- Students acting for educational institution, educational records

Even if students are acting for the teacher when they correct another student's assignment, that is different from saying they are acting for the educational institution in maintaining a record of the assignment, as required for the records to be "education records" within the Family Educational Rights and Privacy Act (FERPA). [Owasso Independent School Dist. No. I-011 v. Falvo](#), U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896. [Records](#) 🔑 31

7b. ---- Central custodian, educational records

Family Educational Rights and Privacy Act (FERPA) implies that "education records" are institutional records kept by a single central custodian, such as a registrar, not individual assignments handled by many student graders in their separate classrooms. [Owasso Independent School Dist. No. I-011 v. Falvo](#), U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896. [Records](#) 🔑 31

8. Exam scores

Students did not have legitimate expectation of privacy in grades on interim tests and homework assignments, and thus teacher's grading practice of having students grade one another's work and call out grade did not violate their constitutional right to privacy; grades on interim tests and homework assignments dealt only with a student's performance as a student and were not "highly personal" matters worthy of constitutional protection. [Falvo v. Owasso Independent School Dist. No. I-011](#), N.D.Okla.1999, 146 F.Supp.2d 1137, affirmed in part, reversed in part 233 F.3d 1203, certiorari granted 121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715, reversed 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896, opinion vacated in part, reinstated in part 288 F.3d 1236. [Constitutional Law](#) 🔑 1264(2); [Schools](#) 🔑 163

Former medical student seeking to challenge his failure of challenge exam administered to allow student to waive out of taking pharmacology course did not have cause of action under Family Educational Rights and Privacy Act (FERPA); complaint was fundamentally challenge to substance of professor's evaluation which was beyond reach of statute, challenge exam test score did not even appear in student's permanent school record and score of high pass that ultimately student received after taking class was accurately reflected in his permanent record. [Lewin v. Medical College of Hampton Roads](#), E.D.Va.1996, 931 F.Supp. 443, affirmed 120 F.3d 261, decision clarified on rehearing 131 F.3d 135. [Colleges And Universities](#) 🔑 9.40

9. Independent sources of information

Physical education teacher's disclosure to his cross-country team that he had kicked two students out of his gym class did not violate Family Educational Rights and Privacy Act, simply because information might appear in school records, where it was also known independently by members of school community, including two gym classes which had witnessed incident. [Daniel S. v. Board of Educ. of York Community High School](#),

[N.D.Ill.2001, 152 F.Supp.2d 949. Records](#) 🔑 31

In connection with letter printed in official high school student newspaper, which stated, among other things, that a particular student had been suspended from school, school official, being sued by former editor in chief and present assistant editor of student newspaper on ground that his action of seizing newspaper violated [U.S.C.A. Const. Amend. 1](#), mistakenly relied upon this section, which prevents disclosure by a school district of certain information about students which is deemed to be confidential, since, although suspension information in such letter would fall within scope of this section if source of information had been school records, prohibitions of this section did not extend to information which was derived from a source independent of school records. [Frasca v. Andrews, E.D.N.Y.1979, 463 F.Supp. 1043. Constitutional Law](#) 🔑 1986; [Schools](#) 🔑 172

10. Persons entitled to access

Record companies had good cause under FERPA to take expedited discovery from university regarding true identities of university students who allegedly infringed companies' copyrights through use of university's computer system, along with students' current and permanent addresses and telephone numbers, email addresses, and media access control (MAC) addresses, since such information was not only relevant but crucial to prosecution of claims of companies. [Warner Bros. Records, Inc. v. Does 1-6, D.D.C.2007, 527 F.Supp.2d 1, 85 U.S.P.Q.2d 1157. Federal Civil Procedure](#) 🔑 1261

Family Educational Rights and Privacy Act (FERPA) did not apply to require law school to provide adult former student with access to his medical records. [Gundlach v. Reinstein, E.D.Pa.1996, 924 F.Supp. 684, affirmed 114 F.3d 1172. Colleges And Universities](#) 🔑 9.40

Use of videotape of handicapped student's behavior at IDEA hearing regarding appropriate placement of student was not shown to violate Family Educational Rights and Privacy Act, which permits disclosure of information to other local school officials who have legitimate education interest, and to state educational authorities in connection with enforcement of federal legal requirements. [MR by RR v. Lincolnwood Bd. of Educ., Dist. 74, N.D.Ill.1994, 843 F.Supp. 1236, reconsideration denied 1994 WL 30968, affirmed 56 F.3d 67, rehearing and suggestion for rehearing en banc denied. Records](#) 🔑 31; [Schools](#) 🔑 155.5(4)

Disclosure of student's school records, including his psychological reports, to Department of Education Office for Civil Rights (OCR), did not breach confidentiality of student's records under Federal Educational Rights and Privacy Act (FERPA), as incorporated by Individuals with Disabilities in Education Act (IDEA), and did not violate his right to privacy under substantive due process clause, since parent filed complaint with OCR alleging that school district discriminated on basis of disability and records were disclosed to OCR only after it requested them in letter citing federal regulations requiring disclosure of all pertinent documents. [C.M. v. Board of Educ. of Union County Regional High School Dist., C.A.3 \(N.J.\) 2005, 128 Fed.Appx. 876, 2005 WL 899927, Unreported. Records](#) 🔑 31

11. Request for records

Although student grades and/or evaluations regarding academic performance and behavior in high school teacher's former mathematics department were education records covered by FERPA, teacher's need for disclosure of these records in her discrimination action against school district and school officials outweighed the student's privacy interest, and thus the court would compel school district to disclose the records; requested records were relevant to whether grounds for denying teacher tenure, namely poor classroom management skills, inability to engage students from bell to bell, and inability to explain material in a simple manner for students to understand and follow, were pretext for discrimination. [Ragusa v. Malverne Union Free School Dist., E.D.N.Y.2008, 549 F.Supp.2d 288. Records ↪ 31](#)

Buckley/Pell Amendment of Family Educational Rights and Privacy Act, which addresses conditions under which institution becomes ineligible for funds, does not prohibit request for or release of student records. [Tombrello v. USX Corp., N.D.Ala.1991, 763 F.Supp. 541. Colleges And Universities ↪ 9.40](#)

12. Notice of compliance with judicial order

Provision of this section that no funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in educational records unless furnished in compliance with judicial order, upon condition that parents and students are notified of all such orders in advance, relates to "privacy" and rather than establish a privilege would appear to establish procedures for advising or notifying a person what educational records pertaining to said person are to be released pursuant to judicial order. [Reeg v. Fetzer, W.D.Okla.1976, 78 F.R.D. 34. Federal Civil Procedure ↪ 1600\(1\)](#)

If subpoenaed documents in relation to placing children with handicapping conditions in specialized classes were considered to be in a personally identifiable form, this section placed the burden on the educational agency or institution, and not on the party who subpoenaed the documents, to make reasonable effort to notify students or parents of the subpoena in advance of compliance therewith. [Mattie T. v. Johnston, N.D.Miss.1976, 74 F.R.D. 498. Witnesses ↪ 16](#)

Requirement of the section that school district give notice to parents and students of disclosure, under court order, of school records and of opportunity of students or parents to contest disclosure did not create unreasonable administrative burden upon district, inasmuch, as under Department of Health, Education and Welfare guidelines, district would be only required to make reasonable effort to notify parents of impending disclosure, notice could be effected by publication or other reasonable method chosen by district and, since case was one to vindicate civil rights, cost or inconvenience was less weighty factor than in other cases. [Rios v. Read, E.D.N.Y.1977, 73 F.R.D. 589. Federal Civil Procedure ↪ 1622](#)

13. Disclosure orders

Copyright owners could use subpoena on state university to obtain names of university students who allegedly infringed owners' copyrights through use of university's computer system, along with addresses, telephone numbers, e-mail addresses, and media access control (MAC) addresses for students associated with certain Internet protocol (IP) addresses at certain times, without violating FERPA, since limited scope of subpoena made it un-

likely that private information would become public as result of order, whether or not information sought amounted to “directory information.” [Interscope Records v. Does 1-14, D.Kan.2008, 558 F.Supp.2d 1176. Colleges And Universities](#) 🔑 9.40

Confidential information otherwise protected by the Family Educational Rights and Privacy Act (FERPA) may be disclosed pursuant to court order. [D.L. v. Unified School Dist. No. 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090, on remand 2008 WL 4148593. Records](#) 🔑 31

While district court would not quash government's subpoena duces tecum, in light of potential relevance of subpoenaed documents if defendant raised contemplated defense at trial, court would order that subpoenaed records be deposited with court rather than with the United States Attorney's Office to be made available to government if, and only if, they became relevant upon defendant's raising of contemplated defense; such an order was appropriate in order to protect confidentiality accorded to such documents under the Family Educational Rights and Privacy Act (FERPA). [U.S. v. Hunter, D.Vt.1998, 13 F.Supp.2d 586. Witnesses](#) 🔑 16

Family and Educational Privacy Right Act precluded disclosure, in response to discovery request of student who alleged that she had been fraudulently induced to settle prior action against university, of the names of students who had transferred in and out of the university and the schools that they had transferred from, the examinations they had taken, and the schools that sponsored the students for the examination, but university could be required to provide statistical data without names and addresses of students. [Naglak v. Pennsylvania State University, M.D.Pa.1990, 133 F.R.D. 18. Federal Civil Procedure](#) 🔑 1514.1

When disclosure of public school students' records to private party is directed by court order, disclosure order should require that recipients of records avoid revealing data to individuals unconnected with litigation and destroy data when it is no longer needed, but it is not required that names of students be redacted from records and neutral identifying information be substituted. [Rios v. Read, E.D.N.Y.1977, 73 F.R.D. 589. Federal Civil Procedure](#) 🔑 1624

14. Policy or practice permitting unauthorized release

School's alleged conduct of contacting a student's doctors, a potential home instructor, and a lawyer to provide defamatory and inaccurate information about student who was allegedly unable to attend classes for an extended period of time due to chronic fatigue syndrome and fibromyalgia did not constitute a “policy or practice” of permitting unauthorized release of educational records by the school for purposes of a claim under Federal Educational Rights and Privacy Act (FERPA). [Weixel v. Board of Educ. of City of New York, C.A.2 \(N.Y.\) 2002, 287 F.3d 138. Records](#) 🔑 31

Physical education teacher's disclosure to his cross-country team that he had kicked two students out of his gym class did not involve “policy or practice” permitting unauthorized disclosure that could violate provisions of Family Educational Rights and Privacy Act (FERPA), which was designed to protect systematic, rather than individual, releases of sensitive information. [Daniel S. v. Board of Educ. of York Community High School,](#)

[N.D.Ill.2001, 152 F.Supp.2d 949. Records](#) 🔑 31

Law school graduate complaining that law school attached as exhibits to its answer to his complaint for breach of contract and inference with contractual relations two of graduate's confidential communications with school concerning matters relevant to the suit did not state civil rights claim under § 1983 for redress of alleged non-compliance with the Family Educational Rights and Privacy Act (FERPA), in that FERPA requires only that participating institution not have policy or practice in place that permits unauthorized release of educational records, and proposed claim was predicated on discrete submission of the two letters in the instant lawsuit. [Gundlach v. Reinstein, E.D.Pa.1996, 924 F.Supp. 684, affirmed 114 F.3d 1172. Civil Rights](#) 🔑 1070

15. Immunity

New York State Education Department had Eleventh Amendment immunity from suit by parent and student for alleged violations of Americans with Disabilities Act (ADA), Family Educational Rights and Privacy Act (FERPA), and §§ 1983. [Hayes v. Williamsville Cent. School Dist., W.D.N.Y.2007, 506 F.Supp.2d 165. Federal Courts](#) 🔑 269

Students' rights of privacy under Family Educational Rights and Privacy Act (FERPA) and Fourteenth Amendment were clearly established at time parent and her minor children brought action against school district and individual school officials, challenging teachers' practice of allowing students to grade other student's papers, and thus individual school officials were not entitled to qualified immunity. [Falvo v. Owasso Independent School Dist. No. I-011, N.D.Okla.1999, 146 F.Supp.2d 1137, affirmed in part, reversed in part 233 F.3d 1203, certiorari granted 121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715, reversed 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896, opinion vacated in part, reinstated in part 288 F.3d 1236. Civil Rights](#) 🔑 1376(5)

Whether state university officials were permitted to release list of black male students' names and addresses to law enforcement officers, to facilitate search for violent criminal, under emergency exception to Family Educational Rights and Privacy Act (FERPA) was not clear issue, and officials were thus entitled to qualified immunity in students' subsequent § 1983 action alleging FERPA violation. [Brown v. City of Oneonta, N.Y., Police Dept., C.A.2 \(N.Y.\) 1997, 106 F.3d 1125. Civil Rights](#) 🔑 1376(5)

School board members were entitled to qualified immunity in their personal capacities in § 1983 action brought by autistic student and his parents against school district and its members for violation of Family Educational Rights and Privacy Act (FERPA); objectively reasonable school board member would not have known that release of information regarding cause of increase in property taxes, which was out-of-state schooling for son, was violation of plaintiffs' clearly established right to confidentiality. [Maynard v. Greater Hoyt School Dist. No. 61-4, D.S.D.1995, 876 F.Supp. 1104. Civil Rights](#) 🔑 1376(5)

College officials were not entitled to qualified immunity with respect to claim of violation of Family Educational Rights and Privacy Act (FERPA), despite their claim that release of list was authorized by emergency, since a reasonable college official would have construed the emergency exception narrowly as required by law and refused to release the list. [Brown v. City of Oneonta, N.Y., N.D.N.Y.1994, 858 F.Supp. 340. Civil Rights](#) 🔑

1376(5)

16. Exhaustion of remedies

Family Educational Rights and Privacy Act (FERPA) does not contain an implied exhaustion requirement. *Krebs v. Rutgers*, D.N.J.1992, 797 F.Supp. 1246. *Colleges And Universities* ↪ 9.40; *Records* ↪ 31

17. Access to judicial proceedings

Any right of public access, whether based on First Amendment or common law, would not have entitled newspaper publisher to attend proceeding on school district's motion to preliminarily enjoin handicapped student from attending school pending exhaustion of administrative remedies to challenge expulsion; restricting access would protect confidentiality of information under Family Educational Rights and Privacy Act; and there was strong public policy favoring special protection of minors where their privacy and sensitive and possibly stigmatizing matters were concerned. *Webster Groves School Dist. v. Pulitzer Pub. Co.*, C.A.8 (Mo.) 1990, 898 F.2d 1371, rehearing denied. *Federal Civil Procedure* ↪ 1951

18. Private right of action

Provisions of Family Educational Rights and Privacy Act (FERPA) prohibiting federal funding of educational institutions that had policy or practice of releasing education records to unauthorized persons created no personal rights to enforce under § 1983; abrogating *Falvo v. Owasso Independent School Dist. No. 1-011*, 233 F.3d 1203, *Brown v. Oneonta*, 106 F.3d 1125. *Gonzaga University v. Doe*, U.S.2002, 122 S.Ct. 2268, 536 U.S. 273, 153 L.Ed.2d 309.

Neither Higher Education Act (HEA) nor Family Educational Rights and Privacy Act (FERPA) authorized litigation by a former student against private university for its alleged failure to assist him in obtaining full-time employment so that he could repay his student loans; statutes did not authorize suit against anyone other than the Secretary of Education. *Slovinec v. DePaul University*, C.A.7 (Ill.) 2003, 332 F.3d 1068. *Colleges And Universities* ↪ 9.25(2); *Colleges And Universities* ↪ 9.40

Noncustodial parent lacked standing to bring record-amendment claim under the Family Educational Rights and Privacy Act (FERPA) to challenge alleged inaccuracies in her daughter's school records; divorce decree clearly stated that custodial father had all legal rights over education, and thus parent no longer had authority to make decisions related to the education of her daughter. *Taylor v. Vermont Dept. of Educ.*, C.A.2 (Vt.) 2002, 313 F.3d 768. *Records* ↪ 31

Family Educational Rights and Privacy Act (FERPA) does not confer a private right of action. *Frazier v. Fairhaven School Committee*, C.A.1 (Mass.) 2002, 276 F.3d 52.

School district's alleged violation of Family Education Rights and Privacy Act (FERPA) provision precluding educational institutions from receiving federal funds if they permit improper disclosure of educational records

was actionable under § 1983, as FERPA was intended to protect privacy of students and their parents, and imposed binding, enforceable obligation on schools, and remedy provided by FERPA, namely, termination of funding, was not sufficiently comprehensive to raise inference of congressional intent to foreclose a § 1983 remedy. [Falvo v. Owasso Independent School Dist. No. I-011, C.A.10 \(Okla.\) 2000, 233 F.3d 1203](#), certiorari granted [121 S.Ct. 2547, 533 U.S. 927, 150 L.Ed.2d 715](#), reversed [122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896](#), opinion vacated in part, reinstated in part [288 F.3d 1236](#). [Civil Rights](#) 🔑 1070

Provision of Family Educational Rights and Privacy Act (FERPA) requiring educational institution to afford parents or adult students opportunity to challenge student's educational record to ensure that the records are not inaccurate, misleading, or otherwise in violation of privacy or other rights of students precludes cause of action whose purpose is to challenge, except for ministerial error, grade assigned to student. [Tarka v. Cunningham, C.A.5 \(Tex.\) 1990, 917 F.2d 890](#). [Colleges And Universities](#) 🔑 9.40; [Records](#) 🔑 31

No private right of action exists under Family Educational Rights and Privacy Act. [Tarka v. Franklin, C.A.5 \(Tex.\) 1989, 891 F.2d 102](#), certiorari denied [110 S.Ct. 1809, 494 U.S. 1080, 108 L.Ed.2d 940](#), rehearing denied [110 S.Ct. 2605, 496 U.S. 913, 110 L.Ed.2d 285](#). [Colleges And Universities](#) 🔑 9.40

Family Educational Rights and Privacy Act itself does not give rise to private cause of action. [Fay v. South Colonie Cent. School Dist., C.A.2 \(N.Y.\) 1986, 802 F.2d 21](#). [Action](#) 🔑 3

This section giving students and their parents right to access to student educational records does not say that private remedy is given, but rather, enforcement is solely in hands of Secretary, and under such circumstances, no private cause of action arises by inference. [Girardier v. Webster College, C.A.8 \(Mo.\) 1977, 563 F.2d 1267](#). [Colleges And Universities](#) 🔑 10

Family Educational Rights and Privacy Act (FERPA) provision prohibiting federal funding of educational institutions with policy or practice of releasing education records to unauthorized persons does not create any individually enforceable federal rights. [Zona v. Clark University, D.Mass.2006, 436 F.Supp.2d 287](#). [Action](#) 🔑 3

Family Educational Rights and Privacy Act (FERPA) is not enforceable through private lawsuits, either directly under the statute or via § 1983. [Curto v. Smith, N.D.N.Y.2003, 248 F.Supp.2d 132](#), affirmed in part, appeal dismissed in part [87 Fed.Appx. 788, 2004 WL 287290](#), certiorari denied [125 S.Ct. 1689, 544 U.S. 935, 161 L.Ed.2d 504](#), rehearing denied [125 S.Ct. 2293, 544 U.S. 1057, 161 L.Ed.2d 1105](#), affirmed [93 Fed.Appx. 332, 2004 WL 539234](#). [Action](#) 🔑 3; [Civil Rights](#) 🔑 127.1

There is no private right of action for violation of the Family Educational Rights and Privacy Act (FERPA). [Warton v. New Fairfield Bd. of Educ., D.Conn.2002, 217 F.Supp.2d 261](#). [Records](#) 🔑 31; [Action](#) 🔑 3

Neither Protection of Pupils Rights Amendment (PPRA) nor Family Educational Records Privacy Act (FERPA) provide private right of action. [C.N. v. Ridgewood Bd. of Educ., D.N.J.2001, 146 F.Supp.2d 528](#), affirmed in part, reversed in part [281 F.3d 219](#), on remand [319 F.Supp.2d 483](#). [Action](#) 🔑 3

There is no private right of action for school's violation of Family Educational Rights and Privacy Act (FERPA). [Frazier v. Fairhaven School Committee, D.Mass.2000, 122 F.Supp.2d 104, affirmed 276 F.3d 52. Records ↩ 31; Action ↩ 3](#)

Family Educational Rights and Privacy Act (FERPA) does not create private right of action. [Hartfield v. East Grand Rapids Public Schools, W.D.Mich.1997, 960 F.Supp. 1259. Records ↩ 31; Action ↩ 3](#)

Violation of Family Educational Rights and Privacy Act may be basis for civil rights claim under § 1983, even though FERPA does not provide private cause of action. [Doe v. Knox County Bd. of Educ., E.D.Ky.1996, 918 F.Supp. 181. Civil Rights ↩ 1070](#)

Former student could not support private cause of action under Family Education Rights and Privacy Act of 1972 (FERPA) based on her allegation that university failed to provide her with her transcript and other records, and refused to provide her with disciplinary hearing when she was accused of breaking window, since FERPA itself did not give rise to private cause of action, and, although FERPA created interest that could be vindicated in § 1983 action, student's complaint did not and could not allege § 1983 violation because university, as private institution, did not act under color of state law. [Odom v. Columbia University, S.D.N.Y.1995, 906 F.Supp. 188. Colleges And Universities ↩ 9.40](#)

No private right of action exists under Family Educational Rights and Privacy Act (FERPA). [Belanger v. Nashua, New Hampshire, School Dist., D.N.H.1994, 856 F.Supp. 40. Records ↩ 31; Colleges And Universities ↩ 9.40; Schools ↩ 115; Action ↩ 3](#)

Family Educational Rights and Privacy Act (FERPA) did not create private right of action. [Rothman v. Emory University, N.D.Ill.1993, 828 F.Supp. 537. Colleges And Universities ↩ 9.40](#)

The Family Education Rights and Privacy Act does not provide private right of action for confidentiality violation; instead, it provides expressly that the Secretary of Education is responsible for enforcing its provisions and protections. [Norris by Norris v. Board of Educ. of Greenwood Community School Corp., S.D.Ind.1992, 797 F.Supp. 1452. Schools ↩ 115](#)

Although Family Educational and Rights of Privacy Act (FERPA) creates no private cause of action, plaintiff may assert FERPA violation as basis for claim under § 1983. [Norwood v. Slammons, W.D.Ark.1991, 788 F.Supp. 1020. Civil Rights ↩ 1070](#)

Even if university's release of transcript of student's academic record to United States Attorney's Office without providing proper notification violated Family Educational Rights and Privacy Act (FERPA), student had no private cause of action under FERPA; only Secretary of Education or administrative head of education agency may take appropriate actions to enforce FERPA. [Francois v. University of District of Columbia, D.D.C.1992, 788 F.Supp. 31, affirmed. Colleges And Universities ↩ 9.40](#)

Buckley/Pell Amendment of Family Educational Rights and Privacy Act does not create private right of action, but rather, addresses conditions under which institution may become ineligible for funds. [Tombrello v. USX Corp.](#), N.D.Ala.1991, 763 F.Supp. 541. [Colleges And Universities](#) 🔑 9.40

High school student's father had no private right of action under Family Educational Rights and Privacy Act to view faculty evaluation sheets justifying exclusion of student from Beta Club. [Moore v. Hyche](#), N.D.Ala.1991, 761 F.Supp. 112. [Schools](#) 🔑 115

No private federal cause of action existed against university under Family Educational Rights and Privacy Act [20 U.S.C.A. § 1232g] for denial of him access to educational records. [Smith v. Duquesne University](#), W.D.Pa.1985, 612 F.Supp. 72, affirmed 787 F.2d 583. [Colleges And Universities](#) 🔑 9.40

No private right of action existed under this section arising out of rejection of student for inclusion in an honor society. [Price v. Young](#), E.D.Ark.1983, 580 F.Supp. 1. [Schools](#) 🔑 115

University student could not bring a private right of action under the Family Educational Rights and Privacy Act (FERPA), against state university and its instructors, for alleged disability discrimination. [Bevington v. Ohio University](#), C.A.6 (Ohio) 2004, 93 Fed.Appx. 748, 2004 WL 551479, Unreported, certiorari denied 125 S.Ct. 316, 543 U.S. 927, 160 L.Ed.2d 226. [Action](#) 🔑 3; [Colleges And Universities](#) 🔑 9.40

18a. Jurisdiction

Though it is an open question whether the Family Educational Rights and Privacy Act (FERPA) provides private parties with a cause of action enforceable under § 1983, the Supreme Court had subject-matter jurisdiction in an action by a private party asserting a claim under FERPA, because the party's federal claim was not so completely devoid of merit as not to involve a federal controversy. [Owasso Independent School Dist. No. I-011 v. Falvo](#), U.S.2002, 122 S.Ct. 934, 534 U.S. 426, 151 L.Ed.2d 896. [Federal Courts](#) 🔑 445

19. Persons entitled to maintain action

Teacher was employee of school district, not student with respect to whom educational agency or institution maintained education records, and her college transcript was not education record subject to protection from disclosure pursuant to Family Educational Rights and Privacy Act, and thus teacher did not fall within class of persons for whose benefits Act was created and Act bestowed no enforceable rights, privileges or immunities which she could enforce. [Klein Independent School Dist. v. Mattox](#), C.A.5 (Tex.) 1987, 830 F.2d 576, certiorari denied 108 S.Ct. 1473, 485 U.S. 1008, 99 L.Ed.2d 702. [Colleges And Universities](#) 🔑 9.40

20. Pleadings

Parents of handicapped student allegedly denied free appropriate preschool education failed to allege justiciable case or controversy against state Department of Education (DOE) and Commissioner of Education under Individuals with Disabilities Education Act (IDEA), despite inclusion in complaint of requests for declaratory and

injunctive relief; state policy alleged in complaint to have formed basis for school district's initial refusal to pay for student's placement played no part in student's ultimate injury, and relief sought against DOE and Commissioner would not have redressed student's loss of free appropriate preschool education or entitled his parents to reimbursement for his alternative placement. [M.M. v. Board of Educ. of Waterville Cent. School Dist., N.D.N.Y.1997, 963 F.Supp. 185. Federal Courts ↪ 13.30](#)

20a. Moot questions

School district's action for declaratory judgment establishing its right to withhold records of students with disabilities from protection and advocacy (P&A) agency, based on Family Educational Rights and Privacy Act (FERPA) and Individuals with Disabilities Education Act (IDEA), was moot, under Article III requirements, since agency had voluntarily withdrawn its records request after district filed action, agency did not have further requests pending with district, and district was not threatened by any adverse action based on its denial of request. [Unified School Dist. No. 259, Sedgwick County, Kan. v. Disability Rights Center of Kansas, C.A.10 \(Kan.\) 2007, 491 F.3d 1143. Declaratory Judgment ↪ 210; Federal Courts ↪ 13.30; Records ↪ 31](#)

School district's deference to Department of Education's (DOE) view of Family Educational Rights and Privacy Act (FERPA) did not moot appeal from order granting permanent injunction, requiring district to grant Connecticut Office of Protection and Advocacy for Persons with Disabilities (OPA) access to students and records of transitional learning academy for special needs students; as district continued to press arguments with respect to the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), the Developmental Disabilities Assistance and Bill of Rights Act, and the Protection and Advocacy of Individual Rights Act (PAIR), the parties remained adverse with respect to at least some of the issues on appeal. [Connecticut Office of Protection and Advocacy For Persons With Disabilities v. Hartford Bd. of Educ., C.A.2 \(Conn.\) 2006, 464 F.3d 229. Federal Courts ↪ 724](#)

21. Hearings

Dismissed medical student who claimed that he was denied opportunity to challenge alleged scoring error in pharmacology exam and a hearing in accordance with Family Educational Rights and Privacy Act and its implementing regulations stated cause of action against medical college. [Lewin v. Medical College of Hampton Roads, E.D.Va.1996, 910 F.Supp. 1161, affirmed 131 F.3d 135. Colleges And Universities ↪ 9.35\(2\)](#)

22. Injunction

Government, which showed that universities had violated Family Educational Rights and Privacy Act (FERPA) by releasing student disciplinary records containing personally identifiable information without the prior consent of the students or their parents, was entitled to permanent injunction since that was the only adequate remedy available, and the harm to third parties, specifically, students, prospective students, and parents, that could arise from an injunction enforcing FERPA was slight. [U.S. v. Miami University, S.D.Ohio 2000, 91 F.Supp.2d 1132, affirmed 294 F.3d 797. Injunction ↪ 138.54](#)

University students demonstrated likelihood of success under Family Educational Rights and Privacy Act

(FERPA) § 1983 claims to the extent they were based on alleged university practice of disseminating class rosters with student names and undisguised social security numbers and established likelihood of irreparable harm entitling them to preliminary injunction; many occurrences recounted in students' certification supported their claim that distribution of class roster with social security numbers was a "practice" within the university, and policy of disseminating class rosters with names of social security numbers would violate FERPA. [Krebs v. Rutgers, D.N.J.1992, 797 F.Supp. 1246. Civil Rights ↪ 1457\(3\)](#)

23. Sanctions

Failure of school district to produce names and addresses of students was not sanctionable, even though school district did not comply with order of magistrate to provide them, since school district simultaneously sought review of magistrate's decision and stay of that order. [D.L. v. Unified School Dist. No. 497, D.Kan.2002, 270 F.Supp.2d 1217, amended 2002 WL 31296445, modified on reconsideration 2002 WL 31253740, vacated 392 F.3d 1223, certiorari denied 125 S.Ct. 2305, 544 U.S. 1050, 161 L.Ed.2d 1090, on remand 2008 WL 4148593. Federal Civil Procedure ↪ 1278](#)

24. Consent to document release

Government lacked compelling interest in sealing university registrar's affidavit in action brought by female student against state university, alleging sexual harassment while a member of sports team, as required under First Amendment; student's academic transcript attached to affidavit was potentially integral to action, transcript may have been exempted from Family Educational Rights and Privacy Act (FERPA), and student constructively consented to transcript's release. [Jennings v. University of North Carolina at Chapel Hill, M.D.N.C.2004, 340 F.Supp.2d 679. Constitutional Law ↪ 2005; Colleges And Universities ↪ 9.40](#)

25. Subpoena

Plaintiff's subpoena which requested that university disclose the names and addresses of any university students who witnessed incidents which gave rise to plaintiff's suit against university did not violate the Family Educational Rights and Privacy Act (FERPA), as the statute allows an educational institution to release personally identifiable information contained in a student's records if the institution is subpoenaed. [Victory Outreach Center v. City of Philadelphia, E.D.Pa.2005, 233 F.R.D. 419. Colleges And Universities ↪ 9.40](#)

20 U.S.C.A. § 1232g, 20 USCA § 1232g

Current through P.L. 111-25 (excluding P.L. 111-22) approved 6-2-09

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United States Code Annotated [Currentness](#)

Title 20. Education

▢ [Chapter 31](#). General Provisions Concerning Education ([Refs & Annos](#))

▢ [Subchapter IV](#). Enforcement ([Refs & Annos](#))

→ **§ 1234g. Judicial review**

(a) Recipients entitled to review; stay of action by Secretary

Any recipient of funds under an applicable program that would be adversely affected by a final agency action under [section 1234a](#), [1234d](#), or [1234e](#) of this title, and any State entitled to receive funds under a program described in [section 1232d\(a\)](#) of this title whose application has been disapproved by the Secretary, shall be entitled to judicial review of such action in accordance with the provisions of this section. The Secretary may not take any action on the basis of a final agency action until judicial review is completed.

(b) Petition for review; filing of record

A recipient that desires judicial review of an action described in subsection (a) of this section shall, within 60 days of that action, file with the United States Court of Appeals for the circuit in which that recipient is located, a petition for review of such action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary shall file in the court the record of the proceedings on which the action was based, as provided in [section 2112 of Title 28](#).

(c) Findings of fact

The findings of fact by the Office, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Office to take further evidence, and the Office may make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) Scope of review; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Office or the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in [section 1254 of Title 28](#).

CREDIT(S)

(Pub.L. 90-247, Title IV, § 458, as added [Pub.L. 100-297, Title III, § 3501\(a\)](#), Apr. 28, 1988, 102 Stat. 356, and amended [Pub.L. 103-382, Title II, § 212\(b\)\(3\)\(D\)](#), Oct. 20, 1994, 108 Stat. 3913.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1988 Acts. Senate Report No. 100-222 and [House Conference Report No. 100-567](#), see 1988 U.S.Code Cong. and Adm.News, p. 101.

1994 Acts. House Report No. 103-425 and [House Conference Report No. 103-761](#), see 1994 U.S. Code Cong. and Adm. News, p. 2807.

Amendments

1994 Amendments. Subsec. (a). [Pub.L. 103-382, § 212\(b\)\(3\)\(D\)](#), substituted reference to section 441(a) of the General Education Provisions Act for reference to section 435(a) of such Act, which in view of the redesignation of section 435(a) of such Act as 441(a) of such Act, are both translated as section 1232d(a) of this title and required no change in text.

Effective and Applicability Provisions

1994 Acts. Amendment by Title II of [Pub.L. 103-382](#) effective Oct. 20, 1994, see section 3(a)(2) of [Pub.L. 103-382](#), set out as a note under section 1221 of this title.

1988 Acts. Section effective 180 days after Apr. 28, 1988, but not applicable to recipients receiving written notice to return funds prior to that date, see section 3501(b) of [Pub.L. 100-297](#), set out as a note under section 1234 of this title.

RESEARCH REFERENCES

Forms

[Federal Procedural Forms § 37:75](#), Governing Law.

[Federal Procedural Forms § 37:91](#), Judicial Review.

[Federal Procedural Forms § 37:93](#), Petition for Review by Grant Recipient--To Office of Hearings and Appeals--Of Initial Decision by Administrative Law Judge that Recipient Return Grant Funds [[20 U.S.C.A. § 1234a](#); [34](#)

[C.F.R. § 81.37\]](#)

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 42:1374](#), Review by Supreme Court.

[Federal Procedure, Lawyers Edition § 42:1471](#), Review by Supreme Court.

NOTES OF DECISIONS

[Jurisdiction 2](#)

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1. Retroactive effect

Provisions of section 2851 of this title permitting judicial review in courts of appeals of final action of Secretary of Education with respect to audits, and provisions of section 1234d prior to amendment by Pub.L. 100-297, now covered by this section, permitting judicial review in courts of appeals of actions of Education Appeal Board apply retroactively. [Bell v. New Jersey, U.S.1983, 103 S.Ct. 2187, 461 U.S. 773, 76 L.Ed.2d 312](#), on remand [724 F.2d 34](#). [Schools](#) 🔑 10

2. Jurisdiction

In absence of final agency action, district court lacked subject matter jurisdiction over state's pre-enforcement declaratory judgment claim seeking determination whether interpretation, by Secretary of Education, of Unfunded Mandates Provision of No Child Left Behind Act of 2001 was consistent with the Act; General Education Provisions Act (GEPA) provided procedures governing Secretary's enforcement of Act's requirements, and GEPA contained comprehensive enforcement scheme requiring final agency action before meaningful and adequate opportunity for judicial review. [Connecticut v. Spellings, D.Conn.2006, 453 F.Supp.2d 459](#). [Schools](#) 🔑 47

Grant recipients' challenge to Department of Education's authority to promulgate regulations under Rehabilitation Act of 1973 could not be maintained separately from their challenge to Department's specific termination of recipients' grants, jurisdiction for which lay exclusively in court of appeals for circuit in which recipients resided. [Freeman v. Cavazos, D.D.C.1990, 756 F.Supp. 1](#), subsequent mandamus proceeding [923 F.2d 1434](#), affirmed [939 F.2d 1527](#). [Federal Courts](#) 🔑 1132

3. Remand

On petition to review federal agency decision ordering state to refund federal vocational education funds that were allegedly misspent, remand was necessary for clarification of Education Appeal Board's reasons for disallowance for failure to benefit targeted students; Board did not adequately address Assistant Secretary's determin-

ation that state had not properly appointed mainstream program using excess cost approach. [State of Wyo. v. Alexander, C.A.10 1992, 971 F.2d 531. Administrative Law And Procedure ↩ 817.1; Schools ↩ 19\(6\)](#)

20 U.S.C.A. § 1234g, 20 USCA § 1234g

Current through P.L. 111-25 (excluding P.L. 111-22) approved 6-2-09

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