


TO: Local Education Agency Superintendents

FROM: Carey M. Wright, Ed.D., State Superintendent of Schools 

DATE: February 27, 2025

SUBJECT: Response to Immigration Enforcement in Schools – Privacy of Student Records

Response to Immigration Enforcement in Schools – Standing Weekly Item

As local education agencies (LEAs) develop protocols to respond to potential immigration enforcement activities affecting their students, it is necessary to ensure compliance with the Family Educational Rights and Privacy Act (FERPA), its implementing regulations, and State regulations governing the privacy of student records. To support LEAs in protecting student privacy, this week’s update provides a brief overview of student privacy and the rights of parents and students to manage the disclosure of school records. LEAs should consult with their legal counsel to ensure local procedures and communications are consistent with state and federal law.

What types of information require parental consent before a school can disclose it?

Generally, school records that include personally identifiable information (PII) cannot be released without parental consent, unless it is for educational purposes, otherwise authorized by law, or in response to a court order or subpoena. Examples of PII include: a student’s or family member’s name, address, or other information that would make it possible to identify the student with reasonable certainty.¹

Who can provide or withhold consent to disclose information from a student’s education record?

A parent, guardian, or individual acting as a parent in the absence of a parent or guardian has the right to provide or withhold consent to release a student’s education records.² Adults providing daily care and supervision for children whose parents have been detained or deported may meet this definition of a parent. LEAs should consult with legal counsel to clarify their consent policies.

Under what circumstances can students manage the disclosure of their education records?

When a student turns 18 years old, the student becomes an “eligible” student and the privacy rights of the parent transfer to the student.³ The eligible student can consent to disclose records, refuse to disclose records, and access their records without the consent of a parent. The law does not preclude LEAs from providing younger students with rights to manage their education records, in addition to the rights given to

¹ 34 CFR § 99.3 and .30-.39; COMAR 13A.08.02.03B(13) and .18-.19.

² 34 CFR 34 §99.3; COMAR 13A.08.02.03B(10).

³ 34 CFR §99.5(a); COMAR 13A.08.02.08.

parents, as long as the rights given to the non-eligible student do not supersede the parent’s rights.⁴ Providing such rights to youth under age 18 may be particularly valuable when youth have become separated from their parents and guardians, such as when a parent is detained or deported. For example, “schools may use their judgment in determining whether an unaccompanied minor is responsible enough to exercise certain privileges, such as inspecting and reviewing education records and providing consent for disclosure.”⁵

Are there exceptions to the consent requirement that allow schools to release student education records to law enforcement officers?

Yes, with limits, if the law enforcement officer provides a valid court order or lawfully issued subpoena.⁶ Parent or eligible student consent is not required to comply with a court order or subpoena, but only if the LEA “makes a reasonable effort (for example, telephone call and have it witnessed, telegram, registered letter, etc.) to notify the parent or guardian of the student or the eligible student of the order or subpoena in advance of compliance, so that the parent, guardian, or eligible student may seek protective action.”⁷ Such efforts are not required if the court order or subpoena itself orders that the document not be disclosed. To ensure full compliance with this regulation, including assessment of whether there is a valid court order or lawfully issued subpoena, school staff should not release student records to law enforcement without consulting with and receiving specific instructions from the LEA’s designated administrator or legal counsel.

Can schools release directory information about a student?

Directory information is information about students that “would not generally be considered harmful or an invasion of privacy if disclosed.”⁸ Typically, directory information includes details such as a student’s name, address, photograph, birth date, and participation in school activities. However, in the case of a student who may be undocumented, releasing such information may be harmful or an invasion of privacy. Schools should exercise discretion when releasing student addresses as part of directory information.

In addition, LEAs must provide parents with written notice of their directory information policies and provide parents the option to refuse release of their child’s information.⁹ The notice must effectively notify parents who have a primary or home language other than English. LEAs should consider sending all parents instructions about how to refuse the release of directory information, even if notice was provided to parents earlier in the school year.

⁴ U.S. Department of Education (June 2010), [*Family Educational Rights and Privacy Act \(FERPA\) and the Disclosure of Student Information Related to Emergencies and Disasters*](#); 34 CFR §99.5(b); COMAR 13A.08.02.08C.

⁵ U.S. Department of Education (June 2010), [*Family Educational Rights and Privacy Act \(FERPA\) and the Disclosure of Student Information Related to Emergencies and Disasters*](#). It is advised that LEAs discuss compliance with administrative warrants with legal counsel.

⁶ FERPA does not specifically define what constitutes a “lawfully issued subpoena”. The [U.S. Department of Education](#) maintains that LEAs and their legal counsel are best suited to make those determinations. LEAs should consult with legal counsel on responding to administrative subpoenas, such as those issued by the Immigration and Customs Enforcement (ICE) agency.

⁷ 34 CFR §99.31(a)(9); COMAR 13A.08.02.19A(9).

⁸ 34 CFR §99.3; COMAR 13A.08.02.03B(2).

⁹ 34 CFR §99.37; COMAR 13A.08.02.25C.

Resources

- Family Educational Rights and Privacy Act (FERPA) and Implementing Regulations (34 CFR Part 99)
- Code of Maryland Regulations (COMAR) on [Student Records](#)
- The U.S. Department of Education's [Protecting Student Privacy website](#)
- U.S. Department of Education (February 2019), [School Resource Officers, School Law Enforcement Units, and the Family Educational Rights and Privacy Act \(FERPA\)](#)

Additional Information

MSDE will continue to provide updated information for the public about Immigration Enforcement Actions at Schools on its [website](#).

Given the complex nature of immigration in schools, LEAs should consult with their legal counsel to ensure local procedures and communications are consistent with State and federal law.

Questions about immigration enforcement in schools may be directed to Phil Lasser, Senior Executive Director, Strategic Initiatives, at phil.lasser@maryland.gov