

# Educational Institutions' Liability Under FERPA



Under the Family Educational Rights and Privacy Act (FERPA), educational facilities are obligated to protect the privacy of education records and allow parents and students over 18 to view and correct the information contained therein. Violating FERPA rights could represent a serious exposure for your facility. Knowing the Act and educating faculty can help mitigate your risk.

## Rights of Parents and Eligible Students

FERPA gives parents certain rights regarding their children's education records. When a student reaches the age of 18 or attends a school beyond the high school level, these rights transfer to the student, referred to as an "eligible student." These rights include the following:

- The right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies except in rare circumstances.
- The right to request that a school correct records they believe to be inaccurate or misleading. If the school does not amend the record, the parent or eligible student has the right to a formal hearing. If the school still does not amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view of the contested information.

- Schools must have written permission from the parent or eligible student to release information from a student's education record.

## Disclosure Without Consent

Under FERPA, schools may disclose records without written permission from the parent or eligible student to the following parties under the following conditions:

- School officials with legitimate educational interest

Under FERPA, educational facilities have a series of obligations to parents and eligible students regarding education records. Are you prepared?

- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Appropriate parties in connection with financial aid to a student



**Mark Muscatiello**  
Managing Director, Education  
[markm@ffbinsurance.com](mailto:markm@ffbinsurance.com)  
Office: (212) 933-9050 x1818  
Cell: (646) 265-0662



**Kelly Machu**  
Executive Vice President  
[kmachu@ffbinsurance.com](mailto:kmachu@ffbinsurance.com)  
Office: 212-933-9050 x1830  
Cell: 732-865-3285

- Organizations conducting certain studies for or on behalf of the school
- Accrediting organizations
- Compliance with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities within a juvenile justice system, pursuant to specific state law.

### Directory Information

The information that FERPA allows schools to freely disclose without consent is referred to as “directory information,” and includes a student’s name, address, telephone number, date and place of birth, honors and awards and dates of attendance. Schools must tell parents and eligible students about directory information and allow them a reasonable amount of time to request that the educational institution not disclose it.

### Sanctions and Liability Risks

FERPA provides for a complaint procedure to the U.S. Department of Education with the ultimate sanction of withholding federal funding, although this is very rare.

Students could seek to hold the facility or any individual liable of damage resulting from divulging information—and any faculty, staff or administrator with access to education records could subject the entire school to FERPA liability. Until it was determined that there was not a private cause of action in federal court for a violation of FERPA, many plaintiffs sued under civil rights statutes for FERPA violations. It is important to keep in mind that it is a criminal offense in many states to knowingly disclose confidential information unless allowed by law.

*For more information on FERPA and student record laws or any other question related to school liability, contact First Fidelity Brokerage Inc. today.*



**Mark Muscatiello**  
Managing Director, Education  
[markm@ffbinsurance.com](mailto:markm@ffbinsurance.com)  
Office: (212) 933-9050 x1818  
Cell: (646) 265-0662



**Kelly Machu**  
Executive Vice President  
[kmachu@ffbinsurance.com](mailto:kmachu@ffbinsurance.com)  
Office: 212-933-9050 x1830  
Cell: 732-865-3285