

Q&A with Chief Privacy Officer, Kathleen Styles on Requesting Information from Schools



So here's a common scenario. A requestor (the news media, an advocacy group, a FOIA requestor) tries to get information from a school on a topic of public interest. Sometimes it's alleged bad behavior by high profile students. Sometimes it's alleged wrongdoing by school officials. There are many public interest topics that prompt requestors to seek information from public institutions. Schools sometimes refuse to produce the records, and often cite to FERPA, the Family Educational Rights and Privacy Act. The requestor is outraged, believing that the school is "hiding behind FERPA" and calls the Department seeking assistance to obtain the records in question. ED wants schools to apply FERPA appropriately. So what can we do to help?

First, it helps to understand FERPA, especially its access provisions. FERPA only **compels** schools to release covered records to two categories of requestors: parents and eligible students (those that are at least 18 or attending a postsecondary institution). The general rule is that schools must obtain prior written consent from the parent or eligible student before disclosing a covered record. So it would be rare that FERPA would be the vehicle that forces a school to turn over covered records to other categories of requestors.

Second, requestors need to understand the details of the open records law that they are attempting to apply. Most states have statutes like this – open records statutes, sunshine statutes, or freedom of information statutes – but the provisions vary widely from state to state. We're not experts on specific state statutes, and we cannot advise you on whether you have a good legal case under your state statute to compel the school to produce records. But if you're asking a public institution to produce records, you should be familiar with your state's statute.

We can help you and the school analyze whether FERPA would permit the disclosure of the records you seek. Note again the use of "**permits**." A school may be permitted to provide information under FERPA but FERPA doesn't compel release of covered records other than to parents and eligible students – nor can the Department compel a school to release covered records other than to parents and eligible students.

If you have questions, contact the Family Policy Compliance Office (FPCO) at 202-260-3887 or FERPA@ed.gov.