

THE BROWARD COUNTY LEAGUE OF CITIES'  
SCHOOL AND COMMUNITY PUBLIC SAFETY  
TASK FORCE

INITIAL REPORT AND RECOMMENDATIONS

June 4, 2018

Exhibit #33

## **FERPA for School Resource Officers & Law Enforcement Officials**

Under the Family Educational Rights to Privacy Act (FERPA) a parent has a right to access, seek to amend, and to have some control over the disclosure of personally identifiable information from their child's education records. Student education records cannot be released without the consent of the student parent(s) unless an exception to FERPA applies or a court order is obtained. Directory information may be disclosed if the parent has consented to release of directory information. Directory information is that basic information about a student such as name, grade level, honors and awards, etc. However, if a parent has opted out of directory information being shared then it may not be shared without an exception or a court order.

*So, what does FERPA mean to School Resource Officers (SROs) or Law Enforcement Officers (LEs)? What access do School Resource Officers (SROs) or Law Enforcement Officers (LEs) have to education records under FERPA? For what purpose? Can they have access to education records and redisclose those records to the local law enforcement agency? What responsibility do SROs and LEs they have to comply with FERPA?*

Of course the answer is in part . . . It depends. The Family Policy Compliance Office, within the U.S. Department of Education, which monitors compliance with FERPA has provided guidance to SROs and LEs under FERPA Frequently Asked Questions on their website. (FERPA FAQ) Here are some of the questions they have addressed which I have compiled into this document:

### **What is an Education Record?**

Education records are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution.

### **Who is a "school official" under FERPA?**

A "school official" includes a teacher, school principal, board president, chancellor, board member, trustee, registrar, counselor, admissions officer, attorney, accountant, human resources professional, information systems specialist, and support or clerical personnel. A contractor, consultant, volunteer, or other party to whom a school or institution has outsourced institutional services or functions may also be considered a "school official" provided that they are performing an institutional service or function for which the agency would otherwise use employees and is under the direct control of the agency or institution with respect to the use and maintenance of education records.

### **Under FERPA, may an educational agency or institution disclose education records to any of its employees without consent?**

No. FERPA permits an educational agency or institution to disclose, without consent, personally identifiable information from students' education records only to school officials within the educational agency or institution that the educational agency or institution has determined to have legitimate educational interests in the information.

### **What must educational agencies or institutions do to ensure that only school officials with a legitimate educational interest see protected education records?**

An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement.

**Are there any limitations to sharing information based on personal knowledge or observations?**

The general rule regarding personal knowledge and observations does not apply where a school official learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education record. For example, under FERPA a principal or other school official who took official action to suspend a student may not disclose that information, absent consent or an exception under § 99.31 that permits the disclosure.

**Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?**

FERPA applies to the disclosure of education records and of personally identifiable information from education records that are maintained by the school. Therefore, FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records. For example, if a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information from disclosure. Therefore, a school official may disclose what he or she overheard to appropriate authorities, including disclosing the information to local law enforcement officials, school officials, and parents.

**Can off-duty police officers or School Resource Officers (SROs) be considered school officials under FERPA and, therefore, have access to students' education records?**

Yes, if certain conditions are met. FERPA (§ 99.31(a)(1)(i)(B)) permits schools to outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties *provided* that the outside party:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Is subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
4. Meets the criteria specified in the school or local educational agency's (LEA's) annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

As indicated in the listing above, local police officers acting as school officials may only use personally identifiable information from education records for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of the students. See §§ 99.31(a)(1)(i)(B)(3) and 99.33(a)(2). In addition, these officers are subject to FERPA's redisclosure requirements in § 99.33(a). This means that a local police officer who is acting as a "school official" under FERPA may not redisclose personally identifiable information from education records to others, including other employees of his or her police department who are not acting as school officials without consent, unless the disclosure fits within one of the exceptions to consent in FERPA.

Other exceptions may also permit police officers or other outside parties' access to personally identifiable information from students' education records without consent, such as the subpoena or court order exception, the health or safety emergency exception, or the directory information exception. If the directory information exception is used, the school should verify that the parent or eligible student in question has not opted out of the disclosure of directory information.

**What is a threat assessment team?**

A threat assessment team is a group of officials that convene to identify, evaluate, and address threats or potential threats to school security. Threat assessment teams review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals. These teams are more common in university settings but are also being instituted in K-12 schools.

Members of a threat assessment team might include officials who can assist in making such decisions, such as school principals, counselors, school law enforcement unit officials, as well as outside medical and mental health professionals and local law enforcement officers.

The booklet, *Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates*, jointly issued by the Department and the U.S. Secret Service, includes guidance on forming a threat assessment team on pages 37-38. Information on establishing a threat assessment program, including a link to this booklet and other helpful resources for emergency situations, can be found on the department's Website: <http://www2.ed.gov/admins/lead/safety/edpicks.jhtml?src=ln>

See also "Guide for Developing High-Quality School Emergency Operations Plans" [http://rems.ed.gov/docs/REMS\\_K12\\_Guide\\_508.pdf](http://rems.ed.gov/docs/REMS_K12_Guide_508.pdf). For more information on emergency operations planning please visit the Iowa Department of Education's website at: <https://www.educateiowa.gov/pk-12/school-facilities/safety-and-accessibility/emergency-operations-planning>.

**Does FERPA permit the sharing of education records with outside law enforcement officials, mental health officials, and other experts in the community who serve on a school's threat assessment team?**

Maybe. Under FERPA, a school or school district may disclose personally identifiable information from education records without consent to threat assessment team members who are not employees of the school or school district only if they qualify as "school officials" with "legitimate educational interests."

In establishing a threat assessment team, the school must follow the FERPA provisions in § 99.31(a)(1)(i)(B) concerning outsourcing this function if team members will be privy to personally identifiable information from students' education records. While not a requirement of FERPA, one way to ensure that members of the team do not redisclose personally identifiable information obtained from education records would be to have a written agreement with each of the team members specifying their requirements and responsibilities.

Schools are reminded that members of the threat assessment team may only use personally identifiable information from education records for the purposes for which the disclosure was made, i.e., to conduct threat assessments, and are be subject to FERPA's redisclosure requirements in § 99.33(a). For example, a representative from the city police who serves on a school's threat assessment team generally could not give the police department any personally identifiable information from a student's education records to which he or she was privy as a member of the team. However, if the threat assessment team determines that a health or safety emergency exists, then the police officer may disclose, on behalf of the school, personally identifiable information from a student's education records to appropriate officials under the health or safety emergency exception under §§ 99.31(a)(10) and 99.36, as discussed below.

**Are SROs or other outside local law enforcement officials who serve as a school's law enforcement unit automatically considered school officials?**

Not automatically. These officials may be considered "school officials" with "legitimate educational interests" and have access to students' education records, but only if they:

1. Perform an institutional service or function for which the agency or institution would otherwise use employees;
2. Are under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Are subject to the requirements in § 99.33(a) that the personally identifiable information from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of personally identifiable information from education records; and
4. Meet the criteria specified in the school or LEA's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

**Can a school provide local or other law enforcement officials with “directory information” on students?**

Yes. If the school or school district has a directory information policy under FERPA that permits this disclosure, then the directory information of those students whose parents (or the eligible students) have not opted out of such a disclosure may be disclosed.

**Does FERPA distinguish between School Resource Officers (SROs) and other local police officers who work in a school?**

No. As noted previously, an SRO typically serves as an on-site law enforcement officer and as a liaison with the local police or sheriff’s department. An SRO also works with teachers and school administrators to promote school safety and to help ensure physical security. An SRO may be designated by the school as a “law enforcement unit” official under FERPA (§ 99.8). However, in order for a school to disclose personally identifiable information from education records to an SRO, the SRO must be considered a “school official” under FERPA in accordance with § 99.31(a)(1)(i)(B) concerning outsourcing. A school may only non-consensually disclose personally identifiable information from students’ education records to its law enforcement unit if those individuals in the law enforcement unit meet the requirements set forth in FERPA’s school official exception or if some other FERPA exception to the general consent rule applies.

A school must have direct control over an SRO’s maintenance and use of education records in providing SRO services in order for the SRO to be considered a school official. Further, under the school official exception (as well as any FERPA exception to consent), SROs may only use the personally identifiable information from education records for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of the students. See §§ 99.31(a)(1)(i)(B)(3) and 99.33(a)(2). In addition, SROs are subject to the redisclosure requirements of § 99.33(a). This means that an SRO who is serving as a “school official” under FERPA may not disclose personally identifiable information from education records to others, including other employees of his or her local police department who are not acting as school officials, without consent unless the redisclosure fits within one of the exceptions to FERPA’s consent requirement.

**May schools comply with a subpoena or court order for education records without the consent of the parent or eligible student?**

Yes. FERPA permits disclosure of education records without consent in compliance with a lawfully issued subpoena or judicial order. See § 99.31(a)(9)(i) and (ii). However, a school must generally make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply.

Exceptions to the requirement of prior notification apply to: (1) a federal grand jury subpoena or other subpoena issued for a law enforcement purpose if the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; (2) an *ex parte* order obtained by the United States Attorney General (or designee not lower than Assistant Attorney General) concerning investigations or prosecutions of an act of terrorism or other specified offenses. See § 99.31(a)(9)(ii). For example, if a school received a law enforcement subpoena that requested information on a student suspected of selling drugs, it would not have to make an effort to notify the parent or eligible student if the court or other issuing agency ordered that the existence or the contents of the subpoena or information furnished in response to the subpoena not be disclosed. Additionally, when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required, the school does not have to notify the parent.

**What are Juvenile Justice Information Sharing Agreements?**

Both state and federal law allow school districts and nonpublic schools to have an agreement with juvenile justice agencies to share information without parental consent or a court order. The juvenile justice

agencies must be public agencies, not not-for-profits or for-profit agencies. The information can only be shared between the school and juvenile justice agencies to determine the programs and services appropriate to the needs of the juvenile or the juvenile's family, or coordinating the delivery of programs and services to the juvenile or the juvenile's family. The information cannot be shared for the purposed of criminal charges or discipline. For a sample juvenile justice sharing agreement, contact the Iowa Association of School Boards at [www.ia-sb.org](http://www.ia-sb.org).

## Examples and Explanations

- 1) ***An SRO who is employed by the local police department who has an agreement with the school district for the SRO to work in the school district. The SRO is investigating a student's involvement in an incident of vandalism at the school and on school property. The SRO requests the student's education records to include the home address and phone number, attendance records, and grades from the school counselor. The SRO plans to use the information for disciplinary proceedings with the school and seek possible restitution for the damages. The SRO has also obtained a copy of video surveillance showing the student damaging school property.***

**Should the SRO get the students records from the school counselor?** The student's address and phone number may be considered directory information dependent on local board policy and parental preference. The SRO should check with the principal regarding the board's directory information policy as well as parental preference. The other information requested is not directory information. Therefore, under FERPA, the school counselor would need consent of the parent or a court order to disclose the records to the SRO unless another exception applies. Consent may not be required if the following applies:

- 1) No consent is required if the SRO is a "school official" that has a legitimate educational interest in the records. The SRO however cannot redisclose this information under FERPA without parental consent.

**Is the video of the incident an education record?** Yes, the video of the student is an education record of the student because it is maintained by the educational institution and it contains evidence pertaining to a potential disciplinary issue with the student. Thus, the video is a FERPA covered record.

**Can the SRO share the student's records and the video with the local police Department for prosecution?** The SRO cannot share or redisclose the student's records or the video to the local police department without consent or a court order. In the event that the SRO receives a court order or a subpoena a reasonable effort should be made to notify the parent of the order before releasing the records to LE.

- 2) **We have a student and a teacher on camera. The student claims the teacher was inappropriate. Can the SRO provide the police the video?**

The SRO can provide the video to the police for the purpose of investigating the teacher for a criminal offense. Best practice would be to get consent of the student's parent to provide the video.

- 3) **We have vandalism outside our building after hours. Can we provide that video to the police? (We as security do not know who the student is). If we find out the vandal was a student after the fact, can we discipline them.**

There is no indication that the video is of a student who attends the school. Thus, at this point it is not an education record of a student. It would be permissible to turn this video over to law

enforcement to investigate a crime of vandalism. If the SRO or LE determines that the offender is a student the District can still discipline the student for the conduct.

**4) If students break into the school after school hours and we can identify them, is this a student record?**

If there is a video of student breaking into the school afterhours and the school intends to use the video to discipline the students then the video is an education record that is protected under FERPA from disclosure without an exception.

**5) If an adult is depicted on camera committing a crime and there are students also in the video; can that be given to LE?**

Yes, the video can be given to law enforcement for the purpose of determining who the adult is that committed the crime and for prosecution of that individual. The mere fact that a student in on the video does not make it an education record. It would be an education record if the student were also committing a crime and it was going to be used as evidence in s disciplinary proceeding.

**6) If a student's misconduct recorded on video, which is a violation of school policy and a criminal act, be released to LE? (With the assumption the school took disciplinary action)?**

The school official cannot release the video to LE unless there is an agreement in place with LE without parental consent, a court order, or a subpoena.

**7) If school cameras capture an accident between two student driven vehicles in the parking lot can that video be shown or given to parents? Can that video be shown or given to an insurance agent? Can that video be shown or given to LE?**

If the camera captures a fender bender in the parking lot this is not an education record that would be covered under FERPA. Thus, disclosure of the video without consent of the parties would be permissible. In this case it could be provided to the parents, insurance company, or LE.

However, if a student purposefully rammed their vehicle into another student's vehicle it could be considered an education record if the school were going to use this for disciplinary purposes In this case the school could not disclose the video to the insurance company or local law enforcement without consent of the parents or a court order,

**8) If there is a fight between two or more students who have been disciplined as a result of the fight; can that video be shared with LE?**

The video is an education record of the two students involved in the fight. The video cannot be released to LE absent and agreement between the school and the LE, consent of the parent or a court order.

**9) If school cameras capture footage of a convenient store robbery can the district provide that video to LE?**

The school may provide footage to the LE in this situation. This incident was not on school property and is not an education record of a student.

**10) If a staff member is caught committing a criminal act; can the district release that video to LE?**

Yes, the district can release video of a staff member committing a criminal act on school property. School staff members are not covered under FERPA. Thus, the video is not an education record protected from release.

**11) Does a school or district have to make staff or students aware that there is camera surveillance?**

No, notification is not necessary but may be given and may deter individuals from committing violations of policy or committing criminal acts on school grounds.

If you have questions please contact Nicole Proesch, Legal Counsel Office of the Director at 515-281-8661 or [Nicole.Proesch@iowa.gov](mailto:Nicole.Proesch@iowa.gov). Or for more information on FERPA please you may visit the Family Compliance Office Website.



# FLOW CHART

## SRO & LE Access to FERPA records

