

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

By Attorney Michael H. Wald

If you or your children attend an educational institution which receives Federal funds, you have certain rights respecting your children's education records. The Family Educational Rights and Privacy Act of 1974 gives parents and students the right to inspect education records, and the opportunity to delete or amend information contained in those records. The Act also prohibits the release of certain information to third parties, without your written consent. The penalty for noncompliance with this law is the withholding of federal monies.

Exempted from disclosure are personal records of teachers and administrators, as long as the information is not accessible to anyone other than a substitute, and records of law enforcement units of an institution, as long as these records are for the sole purpose of law enforcement. These latter records can be disclosed to other law enforcement officials of the same jurisdiction.

Who has the right to inspect records? The parents of minor students, the parents of post secondary students who are claimed as dependents, and students who have reached age eighteen or who are attending a post secondary institution. Once a request for review is made the institution has forty-five days in which to comply, and must respond to reasonable requests for interpretations and explanations. In some cases, copies of the records may be obtained.

A special point for divorced parents: The school will presume that both parents have the authority to inspect files, unless legal evidence to the contrary has been provided.

For post secondary students, your school is not required to allow review of your parents' financial statements. There are also some cases where you may not inspect certain confidential letters of recommendation.

Once you have reviewed your records, if you believe that some information is inaccurate, you may request that the information be amended or deleted. If the institution refuses, you have the right to a hearing to challenge the contents of the file. If, as a result of the hearing, the school decides that the record is not inaccurate, you have the right to place in the record any statements outlining your disagreement.

The Act not only gives you the right of access to you records; it also sets rules for the release of your files to others. Personally identifiable information, including Social Security numbers, may be given without written consent to certain other school officials, to state and federal agencies for research and audit purposes, in connection with financial aid applications, and in a limited number of other cases. In all other instances, you must provide written consent before the information may be released.

Data classified as directory information is not protected under this law. This includes: the student's name, address, phone number, date and place of birth, major field of study, participation in sports or activities, weights and heights of team members, dates of attendance, degrees received, and the most recent educational institution attended. An institution may disclose any of this information without your written consent. However, you must be given notice which information has been designated directory information, and you have the right to refuse permission of certain data being classified as such.

Each institution is required to give annual notification to parents and students of their rights under this Act, and the policies and procedures the institution has adopted with respect to the Act. Elementary and secondary institutions must provide for effective notification to non-English speaking parents.

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