



The Peninsula Center
for Estate and Lifelong Planning
Attorneys and Counselors at Law

461 McLAWS CIRCLE, SUITE 2
WILLIAMSBURG, VIRGINIA 23185
Telephone: (757) 969-1900
Facsimile: (757) 969-1903
www.tpcestate.com

Trust, But Verify
A Parent's Guide to Maintaining Access to a
Child's Education Records

Sending your child to college is seen by many as the great American right of passage. The (not so) little bird is finally spreading his wings and leaving the safety and structure of the home nest. College will certainly be different from home, and will surely involve overcoming new and diverse challenges, but the memories made, and skills learned along the way will be instrumental in helping your child begin her own journey.

Some parents have a harder time letting go than others, but all parents usually agree that the first day of college is not the end of parenting. Their child will still need some help, some guidance, and, in most cases, some money too. Since many parents still financially support their child in college, many may be thinking that they should have access to things like their child's grades or other education records. If you're paying for it, you should know what you're getting (or at the least if your child is going to class) right? Many parents may be surprised, however, when the same educational institution they send a check to refuses to grant them access to their child's records. This unpleasant reality is most often due to a law called FERPA.

The Family Educational Rights and Privacy Act (aka “FERPA”) is a federal law that provides certain rights for parents regarding their children’s education records. Primarily, the law (1) protects “education records” from access by or disclosure to third parties, and (2) requires certain records to be disclosed to children or parents when requested.

The “education records” protected under FERPA generally include all records that are directly related to a student and maintained by an educational agency or institution. This means a student’s grades, disciplinary records, incident reports, or generally any other record the educational institution maintains on the student.

Another way to think about FERPA is that it is comparable to the commonly known federal law HIPPA, which protects health records and requires providers to share the protected information only with persons who are authorized to request and receive it. Simply put, FERPA is HIPPA within the realm of education.

Though most parents understand that when their child reaches the age of 18, the majority of the child’s “legal rights” pass from the parent to the child, many are unsure which rights, if any, they maintain. As a general rule, FERPA rights transfer from parent to child when the child attains the age of 18. This means that parents will lose the legal right to access their child’s education records regardless of whether they’re still financially supporting the child. Of course, there are some major exceptions that this article will briefly touch on, however, it is important to note that the exceptions are fluid, and that parents may receive backlash even if they have the “legal right,” so to speak, if FERPA rights are not clearly spelled out in a legal document such as a Power of Attorney or FERPA Release Form.

The most noteworthy exception to FERPA is the “dependent child,” exception. Essentially, if a parent claims the child as a dependent for income tax purposes, schools may, **BUT ARE NOT REQUIRED TO**, disclose any and all of a student’s FERPA information to the parent claiming the student as a dependent. To be clear, this exception only **ALLOWS** the educational institution to release the information; it does not require them to do so. If, however, there is a properly executed power of attorney or FERPA Release Form, the school is **REQUIRED** to release the requested information within 45-days of the request.

Unfortunately, most all the other exceptions involve situations you hope your child is never a part of (FERPA does not apply to court requests, third party inquires into offenses against other students, instances of sexual assault, etc.).

For these reasons, it is important for parents to plan ahead if they wish to maintain access to their child’s education records. Encouraging your child (or grandchild) to execute a power of attorney with FERPA waiver, an advance medical directive, and a HIPAA release is one of the most important steps in helping your child (or grandchild) prepare for the great American right of passage that is college.