

LegalWatch

Your guide to court, federal agency and state administrative rulings on education issues

Topic: FERPA

Issue: What is (and what is not) an 'education record'?

Background . . . When a document is characterized as an "education record," it receives protection under the **Family Educational Rights and Privacy Act**. Under FERPA, parents possess statutory rights to inspect and review their child's records, and the district is prohibited from disclosing the records to third parties without prior parental consent. FERPA speaks only in generalities when defining "education records," however, stating only that they must be (1) directly related to a student; and (2) maintained by an education agency or a party acting on the agency's behalf. The statute contains several exceptions to that definition.

COURT	CITATION	SUMMARY
U.S.	<i>Owasso Indep. Sch. Dist. v. Falvo</i> , 36 IDELR 62 (U.S. 2002)	Peer grading. The U.S. Supreme Court ruled students who graded one another's papers and then called out the grades to their teacher did not create a protected education record. The records were not "maintained" by the agency at that point, since the students merely handled the papers for a few moments. Nor were the students acting on the school's behalf by following their teacher's instructions.
D.N.H.	<i>Belanger v. Nashua Sch. Dist.</i> , 856 F. Supp. 40 (D.N.H. 1994)	Attorney records. The court rejected the district's claim it did not have to provide parental access to student files created by its attorney. While the district believed those files were not education records, the court said FERPA does not distinguish between what is and what is not a record based on its source.
FPCO	<i>Letter to Thomas</i> , 211 IDELR 420 (FPCO 1986)	Reminders. The Family Policy Compliance Office , which is

		responsible for responding to FERPA-based claims, explained that records intended as mere recollection reminders or memory joggers for the person making them, do not qualify as education records.
OSEP	<i>Letter to Cossey</i> , 211 IDELR 351 (OSEP 1984)	IEPs. A child's individualized education program is considered an education record because it contains information about a student and is maintained by the educational agency. If the child is eligible for special education, the IEP also receives confidentiality protection under the Individuals with Disabilities Education Act .
OCR	<i>Orville Sch. Dist.</i> , 257 IDELR 147 (OCR 1980)	Log books. When a district placed a portion of a teacher-aide's log book in its report to a hearing officer, the log lost its quality as a sole possession record. It was therefore required to provide the log book to the parent.