

# Dealing with the Police, Subpoenas, and Law Enforcement Investigations

Dennis J. Eichelbaum



**EICHELBAUM WARDELL**  
HANSEN POWELL & MUÑOZ, P.C.

## FERPA and Education Records

- FL(Legal) and CFR Section 99.30–38
- Records, files, documents, and other materials that contain information directly related to a student and are maintained by an education agency or institution or by a person acting for such agency or institution

8. Health or Safety Emergency

Appropriate parties, including the student's parents, in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of the student or other individuals.

In making a determination, a district may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the district determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the U.S. Department of Education (ED) will not substitute its judgment for that of the district in evaluating the circumstances and making its determination.

*34 C.F.R. 99.31(a)(10), .36*

5. Juvenile Justice Officials

State and local officials to whom such information is specifically allowed to be reported or disclosed by state statute if:

1. The allowed reporting or disclosure concerns the juvenile justice system and its ability to effectively serve, prior to adjudication, the student whose records are released; and
2. The officials and authorities to whom such information is disclosed certify in writing to the district that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

*34 C.F.R. 99.31(a)(5)(i), .38*

A school district superintendent or the superintendent's designee shall disclose information contained in a student's educational records to a juvenile service provider as required by Family Code 58.0051 [see GRAC]. *Education Code 37.084(a)*

## What isn't an Education Record?

- Records created or received by a district after no longer a student in attendance and that are not directly related student's attendance
  - Records made by district personnel that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to anyone other than a substitute of the maker
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## What isn't an Education Record?

- Records maintained by a law enforcement unit of a district that were created by that law enforcement unit for the purpose of law enforcement.
  - Grades on peer-graded papers before they are collected and recorded by a teacher.
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## Some Information May Be Disclosed Without Consent

- Directory information is defined in FL(Local)
  - Directory information may include: student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, dates of attendance, grade level, enrollment status, participation in recognized activities and sports, weight and height of members of athletic teams, honors and awards received, and the most institution attended
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## Responding to a Subpoena

- The district shall make a reasonable effort to notify the parents of the subpoena (so they may obtain a protective order)
  - A district shall release student records in compliance with a judicial order, or pursuant to any lawfully issued subpoena, except when a parent is a party to a court proceeding involving child abuse and neglect and the order is issued in the context of that proceeding
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## Responding Without Consent

- A district may disclose FERPA information without parental notification if:
  - A federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena not be disclosed
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## Responding Without Consent

- Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence not be disclosed
  - An ex parte court order obtained by the United States attorney concerning investigations or prosecutions of an act of domestic or international terrorism
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## What Should the Written Consent Include?

- Signed and dated by the parent (via email will suffice)
  - The consent must specify the records, state the purpose of the disclosure, and identify to whom the disclosure will be made
  - The parent may request a copy of the disclosed records
  - 34 CFR section 99.30
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## Recordkeeping

- Required to maintain a record of each request for access to and each disclosure of personally identifiable information from education records of each student
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## Scenarios

- What should I do if the police tell me not to investigate/interview employees accused of wrongdoing?
  - What should I do if the police tell me not to interview someone who has made a Title IX claim?
  - Will the police share their investigation with me?
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## Questions?



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HANSEN POWELL & MUÑOZ, P.C.

[www.edlaw.com](http://www.edlaw.com)

(800) 488-9045

[information@edlaw.com](mailto:information@edlaw.com)

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