

**LEGAL ISSUES
FOR CENTRAL OFFICE AND
SCHOOL-BASED PERSONNEL**

Prepared for

GAEL Secretary and Support Personnel Conference

September 20, 2006

by

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FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

(FERPA)

20 U.S.C. § 1232g and 34 C.F.R. §§ 99.1 through 99.67

(Buckley Amendment)

The Family Educational Rights and Privacy Act:

1. Grants parents or eligible students the right to inspect and review the student's education records
2. Prohibits release of education records to third parties without prior written consent of parent/eligible student

What is an Education Record?

20 U.S.C. § 1232g (a)(4)(A)

Any record, file, document and other materials which

1. contain information directly related to a student
and
2. are maintained by a school district or person acting on behalf of a school district

What is Not an Education Record?

20 U.S.C. § 1232g(a)(4)(B)

Records maintained by a school district's instructional, supervisory, or administrative personnel that are

1. in the sole possession of the maker of the record
and
2. not accessible or revealed to any other person except a substitute

Who is a Parent Under FERPA?

34 C.F.R. § 99.3

1. Natural parent
2. Guardian
3. Individual acting as a parent in the absence of the parent or guardian

Custody is irrelevant to FERPA rights unless legal document specifically prohibits access to education records.

Who is an Eligible Student Under FERPA?

34 C.F.R. § 99.3

1. A student who has reached 18 years of age
or
2. A student who is attending an institution of post-secondary education

What are the Parent Rights?
20 U.S.C. § 1232g(a)(1) and (2)

1. Access within reasonable time

< no more than 45 calendar days
2. No access to information regarding other students
3. Copies if necessary to access records effectively
4. Request amendment of records if information is inaccurate, misleading, or in violation of the privacy
5. Hearing
6. Statement in record

Confidentiality of Records
Basic Rule
20 U.S.C. § 1232g(b)

DO NOT disclose* education records without:

- prior written parental consent
- subpoena
- court order

*Disclosure includes:

- access to records
- release of records
- communication of the contents of the records

Prior Written Parental Consent

34 C.F.R. § 99.30

1. Consent must:
 - Be dated
 - Specify records to be released
 - State purpose of disclosure
 - Identify the person to whom disclosure may be made

2. Consent may be in an electronic form with an electronic signature that:
 - Identifies and authenticates a particular person as the source of the electronic consent
 - Indicates that person's approval of the information contained in the electronic consent

Subpoena and Court Order
20 U.S.C. § 1232g(b)(2)

District must make a reasonable effort to notify parent of the order or subpoena in advance of compliance.

Exceptions to Basic Rule
20 U.S.C. § 1232g(b)(1)

1. Officials of schools in which the student seeks or intends to enroll;

2. Any appropriate party in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or individual;

3. Other school officials, including teachers within the local school system, who have been determined by the system to have legitimate educational interest;
 - a. A school official, as determined by school system, may be:
 - A person employed by the district as an administrator, supervisor, instructor, or support staff member
 - A person elected to the Board of Education
 - A person employed by or under contract to the district to perform a special task including, but not limited to, an attorney, auditor, medical consultant or therapist, or insurance adjuster

- b. A legitimate educational interest may exist if the school official is:
- performing a task that is specified in his or her position description or by contract agreement
 - performing a task related to a student's education
 - performing a task related to the discipline of a student
 - providing a service or benefit relating to the student or student's family, health care, counseling, or job placement including, but not limited to, an attorney, auditor, medical consultant or therapist, or insurance adjuster
4. Federal, state, and local educational officials or authorities who are auditing and evaluating federally supported education programs or enforcing federal legal requirements which relate to such program;
5. Officials involved in financial aid for which the student applied or received;
6. Parent of a dependent student or such parents as defined in Section 152 of the Internal Revenue Code of 1954;
7. Organizations or individuals conducting authorized research on behalf of educational agencies or institutions if the studies are carried out in such a way that no personal identification of students and their parents can be made by persons other than the persons or organizations conducting the studies; and if such information will be destroyed when no longer needed for the purpose for which it was collected;
8. Accredited organizations in order to carry out their accrediting function.

Directory Information

20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3; 34 C.F.R. § 99.37

1. May disclose "directory information" about students without prior parental consent if it has given public notice to parents of students presently attending its schools and eligible students in attendance of the types of personally identifiable information that the district has so designated.
2. The public notice must inform parents of their right to prohibit the school district from releasing directory information regarding their children and must state the time period in which the parent must notify the district in writing of the prohibition.
34 C.F.R. §99.37(a).
3. A school district may disclose directory information about former students without providing the public notice required in 34 C.F.R. § 99.37(a). 34 C.F.R. § 99.37(b).
4. Directory information is defined as information in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed.

5. Examples of possible directory information include:

- student's name
- address
- telephone listing
- electronic mail address
- photograph
- date and place of birth
- major field of study
- dates of attendance
- grade level
- enrollment status (e.g., undergraduate or graduate, full-time or part-time)
- participation in officially recognized activities and sports
- weight and height of members of athletic teams
- degrees
- honors and awards received
- most recent educational agency or institution attended

20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

Enforcement of FERPA
20 U.S.C. § 1232g(f)

- United States Department of Education, Family Compliance Office
 - < Cease-and-desist order
 - < Terminate federal funding

CUSTODY

§ 19-9-6. Definitions

As used in this article, the term:

- (1) "Joint custody" means joint legal custody, joint physical custody, or both joint legal custody and joint physical custody. In making an order for joint custody, the court may order joint legal custody without ordering joint physical custody.
- (2) "Joint legal custody" means both parents have equal rights and responsibilities for major decisions concerning the child, including the child's education, health care, and religious training; provided, however, that the court may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.
- (3) "Joint physical custody" means that physical custody is shared by the parents in such a way as to

assure the child of substantially equal time and contact with both parents.

- (4) “Sole custody” means a person, including, but not limited to, a parent, has been awarded permanent custody of a child by a court order. Unless otherwise provided by court order, the person awarded sole custody of a child shall have the rights and responsibilities for major decisions concerning the child, including the child’s education, health care, and religious training, and the noncustodial parent shall have the right to visitation. A person who has not been awarded custody of a child by court order shall not be considered as the sole legal custodian while exercising visitation rights.

HISTORY: Code 1981, § 19-9-6, enacted by Ga. L. 1990, p. 1423, § 2.

§ 20-2-780. Change of custody of minor child by removing child from premises of private or public school prohibited

- (a) No person shall make or attempt to make a change of custody of a minor child by removing the child from the premises of a private or public elementary or secondary school without the permission of the person who enrolled the child in the school, notwithstanding the fact that the person seeking to obtain custody of the child from the school has a court order granting custody of the child to such person.
- (b) This Code section shall not apply with respect to the following:
- (1) Persons seeking to enforce court orders that specifically authorize or direct the release of custody by the school; or
- (2) State or local officials acting under the express authority of this state’s child protection laws.
- (c) Any person violating this Code section shall be guilty of a misdemeanor.
- (d) School officials when acting in their official capacities in preventing or attempting to prevent a violation of this Code section shall be immune from civil or criminal liability that otherwise might be incurred or imposed.

HISTORY: Code 1981, § 20-2-780, enacted by Ga. L. 1990, p. 344, § 1.

DISRUPTION OF SCHOOL BY NON-STUDENTS

A number of Georgia statutes address safety issues caused by non-students on school property.

O.C.G.A. § 20-2-1180 states that it is unlawful for a person to be on school property or within the school safety zone when that person does not have a legitimate cause or need to be present. Each principal or designee has the authority to exercise control over school premises to prohibit any person who does not have a legitimate need or cause to be present on school property from loitering upon such premises. With respect to persons loitering in a school safety zone without a legitimate need or cause to be present, the law states that the principal or designee shall notify the appropriate

law enforcement agency to address this issue.

The law also requires that, upon entering any school building between the official starting time and official dismissal time, any person who is not a student at such school, an employee of the school or school system, a school board member, an approved volunteer following the established guidelines of the school, or a person who has been invited to or otherwise authorized to be at the school by a principal, teacher, counselor, or other authorized employee of the school is required to check in at the designated location as stated on posted signs and provide a reason for his or her presence at the school. If the school posts signs on entrances to the school requiring visitors to check in at the designated location, those signs are “prima-facie evidence” that persons entering the school were on notice of the requirement to check in.

The law goes on to provide that a person who willfully fails to remove himself or herself from school property or the school safety zone after being requested by the principal or designee to do so shall be guilty of a misdemeanor of a high and aggravated nature. A person who fails to check in at the designated location of the school shall also be guilty of a misdemeanor of a high and aggravated nature.

Please note that the criminal penalties and the check-in requirements do not apply to:

- (1) Law enforcement officers, firefighters, emergency medical technicians or paramedics, or any public safety or emergency management officials in the performance of an emergency call or to other persons making authorized deliveries to the school;
- (2) Any person entering a school on election day for purposes of voting when the school serves as an official polling place; or
- (3) Any person attending or participating in an academic or athletic event while remaining in the authorized area or a parent, grandparent, or guardian listed on a child’s pick-up list who fails to sign in while delivering school supplies, food, clothing, or on other legitimate business and who has not previously been sanctioned by school officials for disrupting a school.

O.C.G.A. § 20-2-1182 authorizes school personnel to order any parent, guardian, or person other than a student who has been advised that children are present and who continues to upbraid, insult, or abuse any public school teacher, public school administrator, or public school bus driver in the presence and hearing of a student to leave school property. If the individual refuses to leave, he or she shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$500.00.

O.C.G.A. § 20-2-1181 prohibits the disruption of or interference with the operation of any public school, public school bus, or public school bus stop in Georgia. Any person violating this Code

section shall be guilty of a misdemeanor of a high and aggravated nature.

GEORGIA OPEN RECORDS ACT
O.C.G.A. §§ 50-18-70 through 50-18-77

Basics

- All public records of a school district are available for inspection and copying by the general public, unless exempted by law. (O.C.G.A. § 50-18-70(b))
- School district has three (3) business days to determine whether the requested document are subject to inspection under the Act and to release the documents. (O.C.G.A. § 50-18-70(f))
- If the documents are not available within three (3) business days, the district must provide the requestor a written description of the documents and a timetable that specifies when the documents will be available. (O.C.G.A. § 50-18-70(f))

Is the Record Requested a Public Record?
O.C.G.A. § 50-18-70(a)

- Any record, whether printed or computer-generated, which is
 - < prepared and maintained
 - or
 - < receivedin the course of the operation of the school district.
- Also includes records received or maintained by a private person or entity on behalf of the school district

School districts are not required to prepare reports, summaries, or compilations not in existence at the time of the request. Therefore, school districts need only produce existing documents and are not required to create new documents to satisfy an open records request. (O.C.G.A. § 50-18-70(d))

Is the Record Requested Exempted from Public Inspection?

O.C.G.A. § 50-18-72

Records in the Act relating to school districts that are exempt:

1. Records specifically required by the federal government to be kept confidential (O.C.G.A. § 50-18-72(a)(1))
 - a. Student education records
(Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g)
 - b. Employee medical records
(Americans with Disabilities Act, 42 U.S.C. § 12101)
2. Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy (O.C.G.A. § 50-18-72(a)(2))
 - a. Those parts of a personnel record in which the public has a legitimate concern are not exempt:
 - Names
 - Salaries
 - Job title
 - Applications and resumés
 - Bus driver's job performance, disciplinary actions, accidents on the job
 - Contracts
 - Professional certificates
3. An individual's social security number and insurance or medical information in personnel record, which may be redacted from such record. (O.C.G.A. § 50-18-72(a)(11.1))
4. Records that reveal the home address, home phone number, and day and month of birth of teachers and public school employees (O.C.G.A. § 50-18-72(a)(11.3)(13.1))
5. Those parts of a personnel record in which the public has no legitimate concern
 - Performance evaluations are confidential by state law (O.C.G.A. § 20-2-210).

If the record is exempted under the Act, the district must explain in writing to the person requesting the record the specific legal authority which exempts the record, by Code section, subsection, and

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paragraph. (O.C.G.A. § 50-18-72(h))

Exemptions are interpreted narrowly so that only those documents or those portions of documents to which an exclusion is directly applicable are excluded from public access. (O.C.G.A. § 50-18-72(g))

The school district has a duty to provide any portion of a document that does not come within a specific exclusion. (O.C.G.A. § 50-18-72(g))

Computer Documents

At the request of the requestor, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to non-requested or non-available records. (O.C.G.A. § 50-18-70(g)).

OPEN MEETINGS ACT **O.C.G.A. §§ 50-14-1 through 50-14-6**

General Rule: All meetings shall be open to the public unless specifically exempt in the Open Meetings Act.

Any resolution or other official action adopted, taken, or made at a meeting which is not open to the public as required by the Open Meetings Act shall not be binding.

Visual, sound, and visual and sound recording during open meetings shall be permitted.

A meeting means:

- the gathering of a quorum of the members of the local board of education or any committee of its members created by the board, whether standing or special
- pursuant to schedule, call, or notice of or from the board or committee or an authorized member
- at a designated time and place
- at which any public matter, official business or policy of the school district is to be discussed or presented or at which official action is to be taken
- in the case of a committee, at which recommendations on any public matter, official business, or policy of the board are to be formulated, presented, or discussed

A meeting does not include:

- the assembling of a quorum of the board or committee for the purpose of making inspections of physical facilities under the jurisdiction of the school district
- a quorum of the board meeting with the governing bodies, officers, agents, or employees of other governmental bodies at places outside the geographical jurisdiction of the school district and at which no final action is to be taken

Public Notice Requirements for Meetings

Regular Meetings:

1. Open Meetings Act requires bodies subject to its requirements to:
 - a. prescribe the time, place, and dates of regular meetings;
 - b. make this schedule available to the general public;
 - c. post and maintain a notice containing such information in a conspicuous place available to the public at the regular meeting place.
2. Meetings shall be held in accordance with a regular schedule.
3. The board is not precluded from canceling or postponing any regularly scheduled meeting.

Called Meetings:

1. If the meeting is to be held at a time or place other than at the time and place prescribed for regular meetings, the board shall give due notice thereof.
2. In counties where the legal organ is published at least four (4) times weekly, the board may give due notice by:
 - a. posting a written notice for at least twenty-four (24) hours at the place of regular meetings, and
 - b. providing written notice or oral notice by telephone at least twenty-four (24) hours in advance of the meeting to the county legal organ in which notices of sheriff's sales are published or at the option of the board to a newspaper having a general

circulation in the county at least equal to that of the legal organ.

3. In counties where the legal organ is published less often than four (4) times weekly, a board may give due notice by:
 - a. posting a written notice for at least twenty-four (24) hours at the place of regular meetings, and
 - b. upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least twenty-four (24) hours in advance of the called meeting.

Emergency Meeting:

1. A board may hold a meeting with less than twenty-four (24) hours' notice when special circumstances occur and are so declared by the board.
2. The board must give notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to the legal organ.
3. The reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes of the meeting.

How to Close a Meeting to the Public

1. A meeting subject to the Open Meetings Act may be closed to the public only for the specific reasons provided in the Act or by other relevant statutes.
2. A meeting shall be closed only by a majority vote of a quorum of the board present for the meeting.
3. The official minutes of the meeting shall:
 - a. State the specific reasons for the closure
 - b. List the names of the members present
 - c. List the names of those voting for closure

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4. When a meeting is closed to the public, the chairperson or other person presiding over the meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the closed meeting was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.