

FERPA Memorandum: Access to Test Protocols and Test Answer Sheets

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On October 2, 1997, the Family Policy Compliance Office of the U. S. Department of Education issued a memorandum about a parent's right to have access to test protocols. The full text of the letter is reprinted here.

From: LeRoy S. Rooker, Director, Family Policy Compliance Office

Date: October 2, 1997

Subject: Access to test protocols and test answer sheets

This is in response to your letter dated July 24, 1997, in which you ask several questions regarding a parent's right to have access to test protocols and test answer sheets under the Family Educational Rights and Privacy Act (FERPA). Specifically, you ask, in an effort to protect the integrity of a protocol, for alternative means of providing a parent the opportunity to inspect and review a protocol when he or she does not live within commuting distance of a school. You also ask if a parent of a child in one of the school districts you represent and who will be reviewing a protocol of a test taken by her child is entitled to a copy of the protocol. Finally, you ask if the same parent is entitled to a copy of her child's answer sheet. As you are aware, this Office administers FERPA.

FERPA is a Federal law which affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. FERPA requires that a school comply with a parent's request for access to the student's records within 45 days of the receipt of a request. Also, a school would generally be required to provide copies of education records to a parent if a failure to do so would effectively prevent the parent from exercising the right to inspect and review the records. One such case is when the parent does not live within commuting distance of the school.

FERPA generally protects a student's privacy interests in "education records."
"Education records" are broadly defined as:

those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. §1232g(a)(4)(A). See also 34 CFR §99.3.

Where test "protocols" are meant to refer to test instruments or question booklets that do not identify a student or that do not contain personally identifiable information, such documents are not considered "education records" under FERPA. See 34 CFR §99.3. "Personally identifiable information."

In contrast, completed test instruments or question booklets containing information that identify a particular student, whether or not the actual name of the student appears on the booklet, constitute "education records" subject to the FERPA

requirements. Therefore, in cases where an answer sheet is directly related to the student and is separate from the question booklet not directly related to a student, only the answer sheet would be considered an education record under FERPA. In cases where a question booklet that includes both the questions and the student's responses, the question booklet is an education record subject to FERPA.

Although under FERPA an educational agency or institution is not required to provide a parent with an opportunity to inspect and review information that is not personally identifiable to his or her child, such as test instruments and question booklets that are not directly related to the student, §99.10(c) of the FERPA regulations provides that an educational institution or agency is required "to respond to reasonable requests for explanations and interpretations of the records." Accordingly, an educational agency or institution would be required to respond to a reasonable request for an explanation or interpretation of a student's answer sheet. This could include reviewing the question booklet with the parent.

Because answer sheets are usually directly related to a student, they generally fall within the definition of education records to which a parent has the right to inspect and review. In response to your questions, therefore, the parent has the right to have access to her child's answer sheet and an explanation or interpretation of that answer sheet which, in some cases, could require access to the question booklet. However, because FERPA requires a parent be given access and not copies, except in specific instances, the school district is not required to provide the parent a copy of the answer sheet or the question booklet (emphasis in original).

There is an alternative to providing copies of records for those parents who do not live within commuting distance of the school [word(s) illegible]. For example, if a school believes that providing a parent with a copy of a certain education record would violate any copyright laws or jeopardize test security, the school could make arrangements with the local school district in which the parent resides to provide the parent an opportunity to inspect and review the record. Please note that the sending school must ensure that officials at the receiving school do not gain access to the education records while acting on the sending school's behalf.

I trust that the above information is helpful in responding to your concerns. Please do not hesitate to contact us if you have further questions.

Sincerely,

LeRoy S. Rooker
Director
Family Policy Compliance Office

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