

Does the noncustodial parent have the right to be informed of, and to attend teacher conferences?

FERPA does not address conferences for the purpose of discussing student performance. Thus, a school has no obligation under FERPA to arrange a conference to accommodate the noncustodial parent. However, based upon other laws, the school should do so upon request. When records of conferences are maintained, the noncustodial parent has the right under FERPA to see those records.

Must the school notify the noncustodial parent of his/her FERPA rights?

No. The school would be considered in compliance with the law if it notifies only the parent who has custody of the child.

What constitutes educational records?

Generally, educational records include the student's permanent academic record, achievement and scholastic aptitude test results, an attendance and discipline file, health inventory cards, and student support services folders (if appropriate).

Must the school provide the noncustodial parent the same general notices it provides the custodial parent?

No. General notices, lunch menus, PTA information, announcement of teacher conferences, school pictures, and other similar information, are not "education records" as defined by FERPA. Therefore, schools are not legally required to provide them. However, the school may wish to do so.

Is the school required to honor a parent's "standing request" for access or copies?

No. FERPA does not require a school to honor a standing request, but the school may do so if it wishes. If parents want to obtain information from their child's records on a regular basis, they should submit written requests periodically. The school must respond to each request within 10 school days from the request.

Can the parent with custody prevent the noncustodial parent from exercising their FERPA rights?

No. FERPA rights are given to both parents. The school may assume that a parent has these rights unless it has evidence to the contrary. The school does not need the permission of the custodial parent to give access to the noncustodial parent.

RIGHTS OF THE NONCUSTODIAL PARENT



Clark County School District
Instruction Unit

The Family Education Rights and Privacy Act of 1974

FERPA sets requirements designed to protect the privacy of parents and students. In brief, the law requires a school district to: (1) provide a parent access to their child's educational records; (2) provide a parent an opportunity to seek correction of records he or she believes to be inaccurate or misleading; and (3) with some exceptions, obtain the written permission of a parent before disclosing information contained in the student's education record.

- The definition of a parent as found in FERPA

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act, unless the agency or institution has been provided with evidence that there is a state law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides the contrary.

This means that, in the case of **divorce** or separation, **a school district must provide access to both natural parents, custodial and noncustodial**, unless there is a legally binding document that specifically removes a parent's FERPA rights. In this context, **a legally binding document is a court order or other legal paper that prohibits access to educational records, or removes the parent's right to have knowledge about his or her child's education.** However, this situation is extremely rare. Even if a parent is given no custody rights, he or she typically retains his or her FERPA rights.

Custody or other residential arrangements for a child do not, by themselves, affect the FERPA rights of the child's parents. One can best understand the FERPA position of parent's rights by separating the concept of **custody** from the concept of rights that FERPA gives parents. Custody **establishes where a child will live**, and often, the **duties** of the person(s) with **whom the child lives**. FERPA on the other hand, **simply establishes the parents' right of access to their child's educational records.** As stated, a parent could have no custody rights but maintain all of his or her FERPA rights.

Noncustodial parent(s), **with proof** they are the natural parent(s), may inspect and review the education records of their child unless the school has been provided with evidence that there is a legally binding instrument, or state law, or court order which provides to the contrary. **The request to review must be in writing and school personnel will notify the custodial parent(s). Schools should respond to requests as soon as possible, but not more than 10 school days from request.**

In instances where school personnel have difficulty defining the noncustodial parent(s) rights under FERPA, the parent(s) should be referred to the region FERPA liaison.

ANSWERS TO QUESTIONS FREQUENTLY ASKED ABOUT THE RIGHTS OF NONCUSTODIAL PARENTS.

How to Handle Noncustodial Parent Requests for Records:

1. Establish, through documentation, that the requestor is the natural parent. The documentation would show both names and indicate one as the natural parent and one as the child, e.g., divorce decree, birth certificate, baptismal record.
2. Make a copy of the document that the parent presents.
3. Establish that the requestor is the person whose name is on the document. (A driver's license with a picture is best, employee card, etc.)
4. Make a copy of the identifying document.
5. Contact the custodial parent to
 - A. Determine if the legal documents are available from the custodial parent to prevent giving the noncustodial parent the student records.
 - B. Determine if there is information within the student records that should not be made available to the noncustodial parent, i.e., custodial parent address, phone numbers, and/or place of employment.
6. Notify the custodial parent that the school district is making records available to the noncustodial parent.
7. Provide such records to the noncustodial parent(s) and document the activity in the student's folder and on the SASAxp screen, for each student.

Does FERPA require a school to keep a parent informed of the child's progress even though the parent is divorced and living some distance from the child?

Not unless that parent initiates a request for such records.

Does FERPA require a school to provide a parent copies of records?

Generally, a school is not required to provide parents copies of records. However, if the distance is great enough to make it impractical for the parent to visit the school to review the records, the school must make copies of the records and send them to the parent.

May a school charge for copies of records?

Yes. A school may charge a reasonable fee for copying. The first 100 copies should be provided at no charge.

