

**BUSTER!**

*A Product of the Federal Interagency Reentry Council*

**MYTH:** Transfer of individual student education information from local school systems to juvenile justice agencies is prohibited by FERPA.

**FACT:** FERPA allows educational institutions and agencies to disclose student's education records, without parental consent, as long as certain conditions are met.

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g and 34 C.F.R. Part 99) is an important federal law for ensuring the privacy of students' education records. The FERPA statute and regulations and other state and local privacy requirements have significant implications for students who are involved in the juvenile justice system. Youth involved with the juvenile justice system experience many transitions between educational programs—from community school into facilities, between facilities, and when returning to their community schools—so it is critical that the relevant agencies understand the conditions under which FERPA allows for the transfer of student records. In fact, FERPA specifically authorizes the non-consensual disclosure of personally identifiable information (PII) from students' education records to state or local authorities within the juvenile justice system under the following conditions:

**I. When Disclosing to Juvenile Justice Agency-Run Schools or School Districts Where the Student is Placed by the Juvenile Justice Agency**

FERPA permits the nonconsensual disclosure of PII from education records to officials of other schools or school systems in advance of the transfer to the new school or school system where a student seeks or intends to enroll or into which a student is being placed (see § 99.31(a)(2) and § 99.34 of FERPA regulations). Juvenile justice agencies that have been designated by their State as either a school or school district are assigned a code by the National Center for Education Statistics (go to <http://nces.ed.gov/globallocator/>). An originating school may disclose without parental consent student education records to other school systems or schools before a student's actual transfer by meeting any of the following criteria (see § 99.34 and § 99.7):

- The originating school previously notified/informed parents in its annual notification of FERPA rights that it forwards education records to other schools that have requested the records and into which (a) the student seeks or intends to enroll or (b) the student is being placed; or
- The originating school makes a reasonable attempt to notify the parent at his or her last known address of the disclosure; or
- The disclosure is initiated by the parent.

Note that the parent has the right under FERPA to request a copy of the records that were disclosed and the right to seek to amend them.

## II. When Disclosing Pursuant to an Authorizing State Statute

FERPA specifically permits juvenile justice agencies to receive PII from students' education records pursuant to an authorizing state statute if the disclosure concerns the juvenile justice system and is needed by such system to effectively serve the student (see § 99.31(a)(5)(i)). However, if the underlying state statute authorizing the disclosure was enacted after November 19, 1974, then the disclosure must be needed by such system to effectively serve the student prior to the student's adjudication as a delinquent (see § 99.31(a)(5)(i)(B) and § 99.38). Also, for state statutes enacted after November 19, 1974, the officials or authorities receiving the PII from education records must have certified in writing that they will not nonconsensually disclose the information to a third party, except as provided under State law. Id.

## III. When Disclosing Pursuant to Court Order or Subpoena

In addition, PII from students' education records may be disclosed without parental consent if the disclosure is to comply with a judicial order or lawfully issued subpoena (see § 99.31(a)(9)(i)). However, the educational agency or institution generally only may disclose information under a court order or a subpoena if the agency or institution makes a reasonable effort to notify the parent of the order or subpoena in advance of compliance with it, so that the parent may seek protective action (see § 99.31(a)(9)(ii)). Notification is not required, however, if disclosure is in compliance with a subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. Id.

### For More Information:

Family Policy Compliance Office

<http://www.ed.gov/fpco>

FERPA Regulations

<http://www.ed.gov/policy/gen/reg/ferpa/index.html>

Privacy Technical Assistance Center (PTAC)

<http://ptac.ed.gov>

Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs (1997)

<https://www.ncjrs.gov/pdffiles/163705.pdf>

## What is a REENTRY MYTH BUSTER?

This Myth Buster is one in a series of fact sheets intended to clarify existing federal policies that affect formerly incarcerated individuals and their families. Each year, more than 700,000 individuals are released from state and federal prisons. Another 9 million cycle through local jails. When reentry fails, the social and economic costs are high -- more crime, more victims, more family distress, and more pressure on already-strained state and municipal budgets.

Because reentry intersects with health and housing, education and employment, family, faith, and community well-being, many federal agencies are focusing on initiatives for the reentry population. Under the auspices of the Cabinet-level interagency Reentry Council, federal agencies are working together to enhance community safety and well-being, assist those returning from prison and jail in becoming productive citizens, and save taxpayer dollars by lowering the direct and collateral costs of incarceration.

For more information about the Reentry Council, go to: [www.nationalreentryresourcecenter.org/reentry-council](http://www.nationalreentryresourcecenter.org/reentry-council)