

Federal Educational Rights and Privacy Act (FERPA)

I want to go into education, either as an educator, or as a data manager or programmer. The California Department of Education has an Education Data Governance program, and they have a specific section dedicated to data privacy which can be found at <https://www.cde.ca.gov/ds/ed/dataprivacy.asp>. FERPA is among the data privacy laws referred to on that page. FERPA is a federal law that was enacted in 1974 basically to give parents and students over 18 access to the records education institutions have on file. Parents and students who are over 18, or in college can review records and correct or challenge records. FERPA also requires written permission from parents to share information with many exceptions, including other schools, school officials, law officials, health officials, and some 3rd party organizations that serve education (United States Department of Education, n.d.).

The congressional record shows some astonishing reasons why FERPA was enacted in the first place. Senator James Buckley gave examples as to why he proposed FERPA, one had to do with parents not even having access to the records:

“The parents of a junior high student are told their daughter won't be able to attend graduation ceremonies because she's a "bad citizen." What has she done that's bad, the parents ask? Well, the principal says, the school had a whole file on her "poor citizenship," but the parents can't know what's in that file”(120 Cong. Rec. 14580, 1974).

Senator Buckley also gave an example of where parents knew about programs, but not that actual experts opposed and were not actively involved in programs:

“A school district proposed to use a program entitled Critical Period of Intervention (CPI) for the purpose of identifying potential drug abusers among its eighth-grade students. . . . the school superintendent was informed of the potential drug abusers, who were then required to undergo attempted psychological remediation by ill-trained faculty members”(120 Cong. Rec. 14581, 1974).

An important thing to know about FERPA is that it may not apply to private schools that don't receive federal funding (Centers For Disease Control and Prevention, n.d.). Another interesting case says that student's can't enforce rights put forth in FERPA, it only talks about the federal government funding that can be withheld if a school violates FERPA (Electronic Privacy Information Center, n.d.). FERPA is not really an enforceable right for individuals. This reveals to me that even though there are privacy laws, it might be worth looking at the fine print. Supreme Court Chief Justice Rehnquist ruled about FERPA in *Gonzaga Univ. V John Doe* (2002):

“In sum, if Congress wishes to create new rights enforceable under §1983, it must do so in clear and unambiguous terms—no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action. FERPA's nondisclosure provisions contain no rights-creating

language, they have an aggregate, not individual, focus, and they serve primarily to direct the Secretary of Education's distribution of public funds to educational institutions. They therefore create no rights enforceable under §1983. Accordingly, the judgment of the Supreme Court of Washington is reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

I think that privacy laws need to give individuals rights to personal data and data privacy. Researching FERPA brings up many red flags that data privacy laws may not have real teeth as far as individual rights are concerned.

Resources

- 120 Cong. Rec. 14580-14582 (daily ed. May 14, 1974) (statement of Rep. Buckley). Centers For Disease Control and Prevention. (n.d.). *Family Educational Rights and Privacy Act (FERPA)*. Retrieved on Feb 7, 2021, from <https://www.cdc.gov/php/publications/topic/ferpa.html>
- Electronic Privacy Information Center. (n.d.). *Student Privacy Case Law*. Retrieved on Feb 7, 2021, from <https://epic.org/privacy/student/cases/>
- Gonzaga Univ. V John Doe, 536 U.S. 273 (2002).
- United States Department of Education. (n.d.). *Family Educational Rights and Privacy Act (FERPA)*. Retrieved on Feb 7, 2021, from <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>