

What's Mine Is Not Yours! School Districts Reminded Of FERPA's Sole Possession Exception

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Many school districts throughout this upcoming school year will likely be faced with requests for student records from various sources. Student records are protected by one of the strongest privacy protection laws in the nation, the Family Educational Rights and Privacy Act (FERPA). All educational institutions that are recipients of federal education funds are required to adhere to FERPA's strict regulations prohibiting the release of student information. While FERPA safeguards the release of student education records, parents essentially have an unhindered right to inspect and review the education records of their children. FERPA broadly defines education records as "records, files, documents, and other materials" that are "maintained by an educational agency or institution, or by a person acting for such agency or institution." As such, it is critical for school districts to understand what constitutes as an education record under FERPA, in order to avoid succumbing to sometimes onerous requests for student education records. In a recent decision, an Alaska school district successfully argued that the "sole possession" exception applied against a FERPA due process claim brought on behalf of a student's parent. The Alaska Department of Education and Early Development (DEED) found in favor of a school that refused to hand over personal notes, claiming that the notes were not part of the student's educational records. The DEED reasoned that FERPA's "sole possession" exception – which allows school officials to keep private personal notes that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person – applied to the school's refusal to hand over the documents because of the nature of the notes. Here, the DEED found that the notes were used to aid memory to provide feedback to staff regarding the implementation of the student's individualized education plan, rather than remarking on specific services provided to the student. *See Anchorage Sch. Dist.* 69 IDELR 260 (SEA AK 2017). This case serves as an important reminder that when school districts are faced with requests for student education records, not all documents requested are required to be handed over under FERPA. Rather, school districts should determine what, if any, FERPA exceptions apply.

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