

A Transgender Advocate's Guide to Updating and Amending School Records

Frequently Asked Questions on FERPA

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The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq.) is a federal law that protects the privacy of student educational records. FERPA gives parents certain rights with respect to their children's educational records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. (34 C.F.R. § 99.4-5).

Under FERPA, students, current or former, have a right to seek to amend their school records if said records are "inaccurate, misleading, or in violation of the student's rights of privacy." (34 C.F.R. § 99.7(a)(2)(ii)). Transgender students wishing to change their name and gender marker on their educational records can seek such an amendment under this federal law.

What are my rights under FERPA?

Under federal law, you (or your parents or guardians if you are under 18) have the right to request that your school change your name and gender marker on your records if you feel they are incorrect, misleading, or violate your privacy. (34 C.F.R. § 99.7(a)(2)(ii)).

FERPA states that no educational institution shall be granted funding if it does not provide parents and/or students a hearing process through which they can challenge the content of school records, insure that the records are not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, and receive an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein. (34 C.F.R. §§ 99.7(a)(2)(ii), 99.21).

Can I request this change if I'm under 18?

If you are under 18, your parent or legal guardian must be the one to make the request. That right transfers to you once you turn 18, or if and when you enter a postsecondary educational institution (higher than high-school level). (34 C.F.R. § 99.4-5).

Can I request this change if I've already graduated?

Yes. Once you are over 18 or enrolled in a postsecondary educational institution, you have the right to request a change to your records. (34 C.F.R. § 99.7(2)(ii)). Many transgender students wish to amend their secondary educational records after graduation to ensure that anyone who requests those records (for example, college admissions offices or potential employers) see only the correct name and gender marker on their transcript.

How are my records inaccurate or misleading?

Federal policies and regulations make it possible to change your name and gender marker on federal identity documents such as U.S. passports, U.S. consular birth certificates, Veteran's Health Administration cards, and Social Security Administration records. Additionally, most states allow amendments or corrections to gender markers on driver's licenses, state IDs, and

birth certificates. When a transgender person completes the legal requirements to change identity documents to reflect who they are on official state and federal government documents, it can be misleading for a school to maintain the former records.

How does refusing to change my records violate my privacy?

You have the right to keep your transgender status private. But by keeping your former name and gender marker on your educational records, your school is essentially outing you to anyone who looks at them. As the Court of Appeals for the Second Circuit has stated, it is "beyond a doubt" that transgender status is "excruciatingly private and intimate" for those who wish to keep it private. *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999).

Why should schools change a transgender student's records?

As stated above, the legislature's intent in passing FERPA was to protect students' privacy rights. The guarantee of FERPA is to give students an opportunity to amend educational records that contain information that is misleading, inaccurate, or violates those privacy rights. If an institution refuses to comply with FERPA's mandates, it runs the risk of having its education-related federal funding withheld or terminated. When a school refuses to amend transgender students' records, it risks having its federal funding withdrawn, because it is willfully leaving misleading, inaccurate, and privacy-violating information in those documents.

Beyond FERPA, there are practical and ethical reasons why schools should duly amend transgender students' records. By not correcting a student's gender marker on their school records, the school is essentially disclosing that student's transgender status to anyone who sees their records. This has the potential to place the student in harm's way; exposure of transgender status is directly linked to high rates of discrimination, harassment, and even violence. These risks are present in nearly every aspect of life as an out transgender or gender non-conforming person. Of

the 6,450 transgender and gender-nonconforming respondents to the 2011 National Transgender Discrimination Survey (NTDS):

- 90% reported experiencing harassment, mistreatment or discrimination on the job or taking actions like hiding their transgender status to avoid it.
- 47% said they had experienced an adverse job outcome, such as being fired, not being hired, or being denied a promotion because of their status as transgender or gender non-conforming.
- 53% reported being verbally harassed or disrespected in a place of public accommodation.
- 19% reported having been refused a home or apartment, and 11% reported being evicted, because of their status as transgender or gender non-conforming.
- 22% of respondents who had interacted with police reported police harassment.
- 19% of respondents reported being refused medical care due to their transgender or gender non-conforming status.

Only a transgender person should be able to decide when, if at all, to disclose their transgender status.

The refusal to correct a transgender student's school records can also be emotionally harmful. When an organization or agency is unwilling to issue identification that reflects a person's gender identity, it is making a value judgment on the legitimacy of that gender identity. There is no reason for a transgender student to suffer such indignity.

What does FERPA require my school to do?

If you wish simply to review your educational records, FERPA requires that schools honor a request to review those records within 45 days of receiving the request. (34 C.F.R. § 99.10(b)). Some states have laws similar to FERPA that require schools to provide access within a shorter period of time. You should consult a local attorney to find out how long schools have to respond in your state.

FERPA requires that schools provide parents with an opportunity to inspect and review educational records, but not to receive copies, except in limited circumstances. (34 C.F.R. § 99.10(d)). FERPA also requires your school to give you a formal hearing regarding a requested amendment should you request such a hearing. (34 C.F.R. § 99.20(c)).

How do I exercise my rights under FERPA?

If you have a trusted faculty member or administrator, it may be best to approach them first with this request. You may want to bring some helpful materials, including publications from Lambda Legal's Transgender Rights Toolkit, in order to help your school understand how important it is to be able to update your educational records.

Some school districts have been very open to assisting transgender students in updating their records. Other schools may be less familiar with transgender issues, and may need extra support in updating policies and procedures to support transgender students and be in line with best practices. The Gay, Lesbian & Straight Education Network (GLSEN) has drafted a great model policy for school districts to follow, and both Connecticut and Massachusetts have issued excellent guidelines on how schools should comply with nondiscrimination laws. If an informal approach is unsuccessful, we recommend sending your school administrators a letter like the one featured on our [website](#), which outlines the legal and practical reasons why your school should amend your educational documents.

Unfortunately, school districts are not always immediately cooperative, even when presented with compelling arguments. Often, we hear a school district say "We can't do that" or, in the same vein, "Our lawyer says we can't do that." If this is your school district's response, remember: There are no laws preventing your school district from making this change. The school district may have an established policy of not making name or gender marker changes, but remember that FERPA requires a school district to allow students to seek to amend misleading or inaccurate information on their educational documents. A transgender student's former name and gender marker inaccurately reflect that student's gender, and could be misleading to anyone likely to see those records. Thus, any policy that prohibits a school from changing a student's name or gender marker would be in direct conflict with FERPA.

What is the procedure for a FERPA hearing?

After you request a formal hearing, a third party who does not have a direct interest in the outcome of the hearing must conduct the hearing within a reasonable time; you will be notified of the time, date, and place. (34 C.F.R. § 99.22(a-b)). At the hearing, you have the ability to present evidence to prove your records are incorrect or misleading. (34 C.F.R. § 99.22(d)). The decision must be based solely on the evidence presented, must be in writing, and must include a summary of the evidence and the reasons for the decision. (34 C.F.R. § 99.22(e)).

If your hearing is successful, the school district will amend your records accordingly and notify you that the change has taken place in writing. (34 C.F.R. § 99.21(b)(1)).

What happens if my hearing is unsuccessful?

If your hearing is unsuccessful, you have the right to place a statement in your records commenting on the contested information, which your school must add to your records and disclose alongside pertinent parts of your record to any interested parties. (34 C.F.R. § 99.21(b)(2), (c)).

What if my school district doesn't reply at all?

According to FERPA, your school district "shall decide whether to amend the records as requested within a reasonable time"

after they receive the request. (34 C.F.R. § 99.20(b)). But sometimes institutions do not understand their obligations fully and ignore FERPA requests for amendments and hearings.

If you believe your school is violating FERPA by not responding to your request, or for any other reason, you can file a written complaint with the Family Policy Compliance Office at the following address: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, D.C., 20202. (34 C.F.R. § 99.63). Your complaint must contain “specific allegations of fact giving reasonable cause to believe that a violation” of FERPA has occurred and must be submitted within 180 days of the alleged violation. (34 C.F.R. § 99.64(a, c)). The Office will then investigate to find out if a violation has occurred. (34 C.F.R. § 99.64(b)). The violation does not have to be a part of the school’s written policy, but can be based on their actions. (34 C.F.R. § 99.64).

For more information:

Contact Lambda Legal at 212-809-8585, 120 Wall Street, Suite 1900, New York, NY 10005-3904. If you feel you have experienced discrimination, call our Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.