

Overdose Fatality Review Teams: Educational Records

How can we obtain educational records after a person dies?

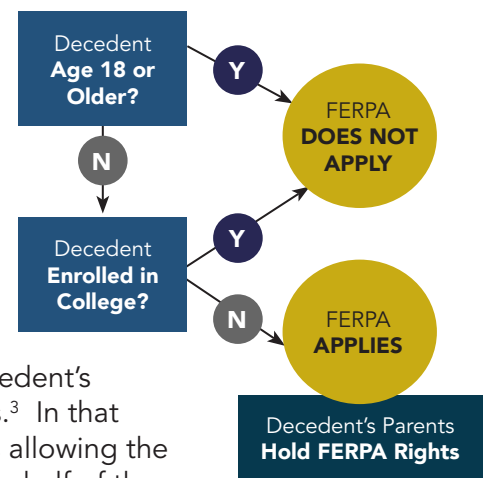
Response

If the decedent meets the U.S. Department of Education definition of “eligible student,” the privacy protections afforded by the Family Educational Rights and Privacy Act (FERPA) lapse or expire upon the death of the student.¹

An “eligible student” is a student who is:

1. Over age 18; or
2. Under age 18 but enrolled in an institute of higher learning (e.g., college, university, community college).²

In situations where neither (1) nor (2) are true at the time of death, the decedent’s privacy rights under FERPA are held by his or her parents until their deaths.³ In that situation, the OFR team would need a consent form signed by the parents allowing the team to access the records or to have the parents request the records on behalf of the OFR team.



Additional Discussion

Under federal law, educational records are covered by FERPA, which sets out the circumstances under which such records may be used and disclosed.⁴

In order to obtain the educational records of a decedent, an OFR team must determine the answers to the following two questions:

- Did the decedent’s privacy rights in the records expire upon death?
- If not, does any individual hold the privacy rights from whom consent to disclose can be obtained?

The OFR must answer these two questions with respect to federal law, state law (if any such law exists), and educational institution policy (if any such policy exists).

Regardless of whether FERPA applies, state law may continue to protect the confidentiality of educational records after death. Moreover, to the extent it is not prevented by state law, an educational institution may have institutional protections in place that prevent disclosure of the records (e.g., school policy that prohibits the school from releasing student records without the consent of the student or the student’s next of kin).

PRACTICE TIP

Given the age of most decedents reviewed by an OFR team, FERPA will not apply to restrict access to educational records. State law or institutional policy may still impede access.

¹ <https://studentprivacy.ed.gov/faq/does-ferpa-protect-education-records-students-are-deceased>.

² 34 C.F.R. § 99.3.

³ <https://studentprivacy.ed.gov/faq/does-ferpa-protect-education-records-students-are-deceased>.

⁴ 20 U.S.C. § 1232g; 34 C.F.R. Part 99.