




MONTANA ASSOCIATION OF SCHOOL BUSINESS OFFICIALS

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Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools - October 2007

 [PDF \(313 KB\)](#)

School officials are regularly asked to balance the interests of safety and privacy for individual students. While the *Family Educational Rights and Privacy Act (FERPA)* generally requires schools to ask for written consent before disclosing a student's personally identifiable information to individuals other than his or her parents, it also allows schools to take key steps to maintain school safety. Understanding the law empowers school officials to act decisively and quickly when issues arise.

Health or Safety Emergency

In an emergency, *FERPA* permits school officials to disclose without consent education records, including personally identifiable information from those records, to protect the health or safety of students or other individuals. At such times, records and information may be released to appropriate parties such as law enforcement officials, public health officials, and trained medical personnel. *See* 34 CFR § 99.31(a)(10) and § 99.36. This exception is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records.

Law Enforcement Unit Records

Many school districts employ security staff to monitor safety and security in and around schools. Some schools employ off-duty police officers as school security officers, while others designate a particular school official to be responsible for referring potential or alleged violations of law to local police authorities. Under *FERPA*, investigative reports and other records created and maintained by these "law enforcement units" are not considered "education records" subject to *FERPA*. Accordingly, schools may disclose information from law enforcement unit records to anyone, including outside law enforcement authorities, without parental consent. *See* 34 CFR § 99.8.

While a school has flexibility in deciding how to carry out safety functions, it must also indicate to parents in its school policy or information provided to parents which office or school official serves as the school's "law enforcement unit." (The school's notification to parents of

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their rights under *FERPA* can include this designation. As an example, the U.S. Department of Education has posted a model notification on the Web at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>.)

Law enforcement unit officials who are employed by the school should be designated in its *FERPA* notification as "school officials" with a "legitimate educational interest." As such, they may be given access to personally identifiable information from students' education records. The school's law enforcement unit officials must protect the privacy of education records it receives and may disclose them only in compliance with *FERPA*. For that reason, it is advisable that law enforcement unit records be maintained separately from education records.



Security Videos

Schools are increasingly using security cameras as a tool to monitor and improve student safety. Images of students captured on security

videotapes that are maintained by the school's law enforcement unit are not considered education records under *FERPA*. Accordingly, these videotapes may be shared with parents of students whose images are on the video and with outside law enforcement authorities, as appropriate. Schools that do not have a designated law enforcement unit might consider designating an employee to serve as the "law enforcement unit" in order to maintain the security camera and determine the appropriate circumstances in which the school would disclose recorded images.

Personal Knowledge or Observation

FERPA does not prohibit a school official from disclosing information about a student if the information is obtained through the school official's personal knowledge or observation, and not from the student's education records. For example, if a teacher overhears a student making threatening remarks to other students, *FERPA* does not protect that information, and the teacher may disclose what he or she overheard to appropriate authorities.

Transfer of Education Records

Finally, under *FERPA*, school officials may disclose any and all education records, including disciplinary records and records that were created as a result of a student receiving special education services under Part B of the *Individuals with Disabilities Education Act*, to another school or postsecondary institution at which the student seeks or intends to enroll. While parental consent is not required for transferring education records, the school's annual *FERPA* notification should indicate that such disclosures are made. In the absence of information about disclosures in the annual *FERPA* notification, school officials must make a reasonable attempt to notify the parent about the disclosure, unless the parent initiated the disclosure. Additionally, upon request, schools must provide a copy of the information

disclosed and an opportunity for a hearing. See 34 CFR § 99.31(a)(2) and § 99.34(a).

Contact Information

While the education agency or institution has the responsibility to make the initial, case-by-case determination of whether a disclosure is necessary to protect the health or safety of students or other individuals, U.S. Department of Education staff members are available to offer assistance in making this determination. For further information about *FERPA*, contact the Department's Family Policy Compliance Office.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-5920
202-260-3887

For quick, informal responses to routine questions about *FERPA*, parents may also e-mail the Family Policy Compliance Office at FERPA.Customer@ED.Gov.

For inquiries about *FERPA* compliance training, e-mail FERPA.Client@ED.Gov.

Additional information and guidance may be found at FPCO's Web site at: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

Calendar of Events

March 5 – Region 2&4 Workshop – Helena
March 6-7 – MASBO Board – Helena
March 13-14 – Ed & Local Govt. Committee – Helena
March 26 – Region 3 Workshop – Sidney
March 27 – Region 6 Workshop – Miles City
March 31 – Region 1 Workshop – Missoula

April 2 – Region 5 Workshop - Billings
April 17-18 – Rev & Transp. Committee – Helena

June 12-13 – Ed & Local Govt. Committee – Helena

June 18-20 – MASBO Summer Conference – Great Falls

Oct. 15-17 – MCEL – Billings

Nov. 7-10 – ASBO - Denver



Contest to Reward Organized Teachers

(Article from January 2008 issue of "School Planning & Management")

Think you have an organized educator in your school or district? If so, here's an opportunity for that person to share his or her tips with others and win \$1,000 for the classroom and some free gifts in the process. Seat Sack, Inc., manufacturers of the Seat Sack, the blue pouch that fits over the back of a student's chair and designed to hold a variety of school items, is sponsoring a national contest called "Let's Get Organized!" The idea behind the contest is to collect and share with others the many tips, suggestions, and techniques that teachers all over the country have about the subject of classroom organization. Teachers are being asked to submit their favorite classroom organization tips via e-mail or regular mail and may submit as many suggestions as they wish. Prizes include \$1,000, \$500 and \$250 Visa Cards for first-, second-, and third-place winners, respectively. In addition, each of the winners will receive Seat Sacks for their classes, along with other valuable merchandise.

The deadline for entries to the contest is August 15, 2008. Complete information about this contest can be found at www.seatsack.com.

School Activities and Gambling Laws

(From Gene Huntington, Administrator of the Gambling Control Division of the Montana Department of Justice)

Legalized gambling has grown so fast that many young people may not remember a time when they would not see poker tournaments on multiple television channels. In less than twenty years, casino gambling has gone from being **legal** only in Nevada and New Jersey, to being **illegal** only in Utah and Hawaii. In Montana, all gambling was illegal until 1972 when the new constitution gave the legislature the authority to authorize specific forms of gambling.

Over the years, Montana law has changed so that today, whenever someone can wager on something and win something of value, the state is going to regulate how that wagering and winning can be conducted. Even though gambling has become widely accepted as entertainment, the Gambling Control Division tries to constantly remind Montanans that there are rules and restrictions that apply to almost all forms of gambling.

For schools, gambling is most common in the form of raffles, including "50/50" raffles at sporting events. Under Montana law, nonprofit organizations must submit an accounting of these types of raffles to their county commissioners within 30 days of the raffle. If, on the other hand, the raffle benefits a for-profit organization, the organizers of the raffle must get a permit from the county commissioners. Schools may find that some county commissions are not aware of this requirement or may choose to waive the reporting requirement. If your county commissioners do not require a report, the school district should consider a policy that

requires some accountability and oversight for any raffle.



An accounting would involve a simple report of how many tickets were sold, how much money was collected, what prizes were awarded and any expenses that were paid. Also, to ensure accountability, school districts may want to consider specific policies about handling cash.

Typically, the Gambling Control Division does not directly regulate raffles but it can become involved when there is fraud or when good intentions go astray. One of the most common problems is when a raffle advertises a big prize but organizers cannot sell enough tickets to pay for the prize.

Here are a few other points that may be useful for districts:

- It is illegal to allow someone under 18 years of age to participate in a gambling activity, except for buying and selling raffle tickets for charitable and scholastic organizations (23-5-158 MCA).

- To offer bingo, a license is required from the Gambling Control Division and participants must be 18 years old to play.
- You can play bingo for entertainment as long as no money is bet or there is no charge to play.
- Activities that do not charge participants to play or are contests of skill are not generally considered gambling.
- Casino nights that offer card games, bingo and keno can be offered with a permit from the Gambling Control Division. Card tournaments may not, however, be part of such a casino night. Casino nights must be for benefit of a charitable or scholastic cause and anyone participating must be 18 years old. Many groups get casino night permits for graduation parties where most of the participants will be 18 years old or older.
- If your school building is on an Indian reservation, state law does not apply and gambling can only be conducted with authorization of the tribal gaming commission.
- Gambling winnings are reportable as income for tax purposes, if an individual wins more than \$600 and the amount of the prize is at least 300 times the cost of the ticket. The IRS requires the district to provide a form W-2G, and If the prize exceeds \$5,000 withholding is required. The IRS publication 3079 provides a good explanation of the tax implications of raffles.

You can find additional information on gambling law and rules on the Department of Justice website:

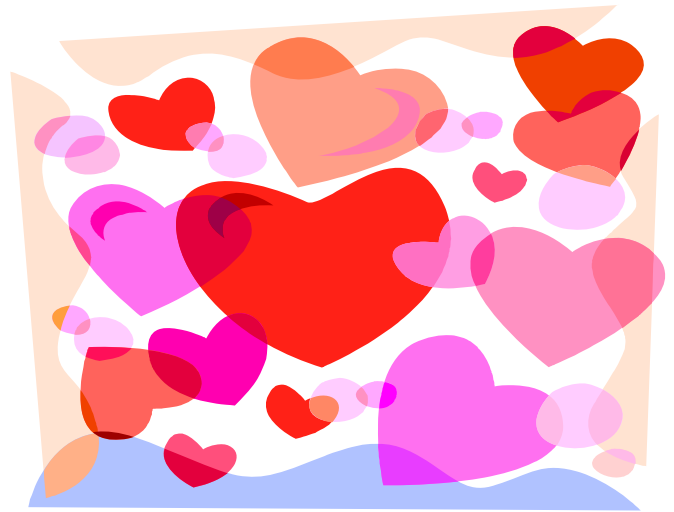
<http://doj.mt.gov/gaming/default.asp>.

If you have specific questions, call the Gambling Control Division at (406) 444-1971.

What's New at MASBO?

If you have not done so, please check out our website at www.masbo.com. The new Forum directory has 13 Forums, along with a Miscellaneous Forum, where members are posting topics and replying to questions. This is a great opportunity to send and receive answers to your questions regarding personnel issues, pupil transportation, payroll, food service, etc. So far we have 126 members who have joined.

There are also 15 schools we have signed up for the P-Card program. They include: Bridger, Ennis, Hamilton, Harlem, Havre, Highwood, Joliet, Noxon, Plains, Poplar, Shepherd, St. Regis, Victor, West Yellowstone, and Wolf Point. You may want to contact any of the business managers from the above-listed schools and obtain feedback regarding their use of P-Cards.



“MASBO IS DEDICATED TO TRAINING AND SUPPORTING THE PEOPLE RESPONSIBLE FOR BUSINESS OPERATIONS OF MONTANA SCHOOLS. THE GOAL IS TO ENABLE MEMBERS TO MANAGE THE BUSINESS IN ORDER TO SUPPORT EDUCATION FOR MONTANA CHILDREN”

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