**The Helping Families Initiative and**

**the Family Educational Rights and Privacy Act (FERPA)**

The Helping Families Initiative (HFI) is a collaboration between the district attorneys and the school superintendents in the State of Alabama to enforce the Mandatory School Attendance Act *(Code of Alabama §16-28).* The statute specifically requires school superintendents and principals to report violations of the Act to the district attorney within 10 days of the event. In turn, the district attorneys are mandated to “vigorously enforce” the Act.

The Helping Families Initiative accomplishes a substantial part of the District Attorney’s statutory obligations by identifying and addressing the root causes of student’s poor attendance or behavior before it becomes necessary to file petitions in court against the student and the parents or guardians. HFI is a secondary and tertiary prevention effort designed to help secure regular attendance and proper conduct of students, thus eliminating the need to access the authority of the courts and improving the likelihood of student success. HFI is successful as demonstrated during fifteen years of actions in Alabama.

Two kinds of data access are needed for HFI to function effectively:

1. Regular automated weekly reports containing a limited data set (including attendance and discipline infractions) are needed for students enrolled in school whose behaviors meet the criteria set for program admission.
2. Administrative-level read-only access to electronic records for each student being served is essential for effective and timely intervention. Login privileges are assigned to the Case Officers responsible for the direct service to students and families and is not shared with any other individual in the district attorney’s office.

This read-only access is used only to provide needed data to effectively serve families identified for assessment without the labor-intensive exchanges of information between HFI and the school system staff. This enhances the limited information received by the reports allowing HFI staff to access details on discipline infractions for students receiving intervention, monitor attendance for students served, verify accuracy of demographic info, and provide information for effective service plan development.

HFI seeks to provide early intervention before the child is formally included in the juvenile justice system. Real-time access to information is vital.

Two more statutes – one state and one federal - offer further clarification on data sharing:

§13A-10-1 of the Code of Alabama defines government records and specifically includes education records. The Section goes on to define responsibilities of those in possession of the records and the consequences of failure to disclose records when requested.

FERPA (34 CFR Part 99.31) defines what conditions apply to disclosure of information as permitted by State statute concerning the juvenile justice system.

\*excerpts from the applicable laws are attached.

Under FERPA, prior consent is not required to provide the juvenile justice system (in this context, the District Attorney) access to student data for the purpose of effectively serving students prior to adjudication. Notification to parents and students of the intent to report under the Mandatory School Attendance Act §16-28 may already be included in the Code of Student Conduct providing another layer of transparency. If not already included, it can be easily remedied.

FERPA consistently makes references to the *juvenile justice system*, not the Juvenile Court. Just as in the adult Criminal Justice System, juvenile justice includes prosecution services (District Attorney’s Office in Alabama), the courts, law enforcement, and, corrections – in the case of juveniles - the Department of Youth Services.  HFI is a program of the District Attorney’s Office and an integral part of the juvenile justice system.

Sometimes local school board attorneys are concerned about liability in sharing this information. As noted above, the information is required to be shared by the School Mandatory Attendance Act. (*Alabama Code §16-28-12.)*

Furthermore, quoting from the United States Supreme Court Decision Gonzaga University vs. Doe: “FERPA’s confidentiality provisions create no rights enforceable for [civil action].” The Secretary of Education may withhold funds to an educational institution which uses prohibited policies or practices; however, this is “two steps removed from the interests of individual students and parents” and clearly does not create individual entitlement. This is especially important as “recipient institutions can avoid termination of funding so long as they ‘comply substantially’ with the Act's requirements.” (*Gonzaga Univ v. Doe §53US 273, 122SCT).*

**ATTACHMENT - Applicable Laws Excerpts**

Alabama Code 16-28-2

The purposes of this article are to secure the prompt and regular attendance of pupils and to secure their proper conduct, and to hold the parent, guardian or other person in charge or control of a child responsible and liable for such child's nonattendance and improper conduct as a pupil, and to effect these purposes the chapter shall be liberally construed and the courts and those charged with the enforcement of its provisions are vested with a wide discretion in its administration.

Alabama Code 16-28-3

(a) Except as otherwise provided in subsection (b), every child between the ages of six and 17 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year except that, prior to attaining his or her 16th birthday every child attending a church school as defined in [Section 16-28-1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000002&refType=LQ&originatingDoc=I6c77b7c0390e11e79423e1ebe978b85f&cite=ALSTS16-28-1) is exempt from the requirements of this section, provided such child complies with enrollment and reporting procedure specified in [Section 16-28-7](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000002&refType=LQ&originatingDoc=I6c77b7c1390e11e79423e1ebe978b85f&cite=ALSTS16-28-7). Admission to public school shall be on an individual basis on the application of the parents, legal custodian, or guardian of the child to the local board of education at the beginning of each school year, under such rules and regulations as the board may prescribe.  The parent, legal custodian, or guardian of a child who is six years of age, may opt out of enrolling their child in school at the age of six years by notifying the local school board of education, in writing, that the child will not be enrolled in school until he or she is seven years of age.

(b)(1) If a child withdraws from a public school, upon verification of enrollment in a Southern Association of Colleges and Schools or any entity with accreditation status as determined by one of the agencies identified on the United States Department of Education's list of Recognized National and Regional Accrediting Agencies or their affiliates accredited and recognized online school which has been authorized by the Alabama State Department of Education to provide instruction in lieu of in-person instruction, the child shall be counted as a transfer student.

(2) If a child returns to a public school, semester exams shall be given to the child to determine grade placement.

(3) This subsection does not and should not be interpreted to create on-line schools.  However, if a student chooses to attend an accredited, state authorized on-line school, that student’s former school should not be penalized by the student being classified as a dropout.

Alabama Code 16-28-12

(a) Each parent, guardian, or other person having control or custody of any child required to attend school or receive regular instruction by a private tutor who fails to have the child enrolled in school or who fails to send the child to school, or have him or her instructed by a private tutor during the time the child is required to attend a public school, private school, church school, denominational school, or parochial school, or be instructed by a private tutor, or fails to require the child to regularly attend the school or tutor, or fails to compel the child to properly conduct himself or herself as a pupil in any public school in accordance with the written policy on school behavior adopted by the local board of education pursuant to this section and documented by the appropriate school official which conduct may result in the suspension of the pupil, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars ($100) and may also be sentenced to hard labor for the county for not more than 90 days.  The absence of a child without the consent of the principal teacher of the public school he or she attends or should attend, or of the tutor who instructs or should instruct the child, shall be prima facie evidence of the violation of this section.

(b) Each local public board of education shall adopt a written policy for its standards on school behavior.  Each local public school superintendent shall provide at the commencement of each academic year a copy of the written policy on school behavior to each parent, guardian, or other person having care or control of a child who is enrolled.  Included in the written policy shall be a copy of this section.  The signature of the student and the parent, guardian, or other person having control or custody of the child shall document receipt of the policy.

(c) Any parent, guardian, or other person having control or custody of any child enrolled in public school who fails to require the child to regularly attend the school or tutor, or fails to compel the child to properly conduct himself or herself as a pupil in accordance with the written policy on school behavior adopted by the local board of education and documented by the appropriate school official which conduct may result in the suspension of the pupil, shall be reported by the principal to the superintendent of education of the school system in which the suspected violation occurred.  The superintendent of education or his or her designee shall report suspected violations to the district attorney within 10 days.  Any principal or superintendent of education or his or her designee intentionally failing to report a suspected violation shall be guilty of a Class C misdemeanor.  The district attorney shall vigorously enforce this section to ensure proper conduct and required attendance by any child enrolled in public school.

**Section 13A-10-1**

**Definitions.**

The following definitions apply in this article only unless the context otherwise requires:

(1) FIREMAN. Any officer of a fire department, a member of a volunteer fire department, or any other person vested by law with the duty to extinguish fires.

(2) GOVERNMENT. The state, county, municipality, or other political subdivision thereof, including public county and city boards of education, the youth services department district, the Alabama Institute for Deaf and Blind, and all educational institutions under the auspices of the State Board of Education.

(3) GOVERNMENTAL FUNCTION. Any activity which a public servant is legally authorized to undertake on behalf of a government or the fire control activities of a member of a volunteer fire department.

(4) GOVERNMENTAL RECORD. Any record, paper, document, or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government. Any educational attendance, membership, or financial report, or a student's school transcript.

(5) PEACE OFFICER. Any public servant vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

(6) PROPERTY. Any real or personal property, including books, records, and documents.

(7) PUBLIC SERVANT. Any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant, or otherwise in performing a governmental function.

***(Acts 1977, No. 607, p. 812, §4501; Acts 1987, No. 87-804, p. 1578; Act 2006-423, §1.)***

##### Section 13A-10-2

#### Obstructing governmental operations.

(a) A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by any other independently unlawful act, he:

(1) Intentionally obstructs, impairs or hinders the administration of law or other governmental function; or

(2) Intentionally prevents a public servant from performing a governmental function.

(b) This section does not apply to the obstruction, impairment or hindrance of the making of an arrest.

(c) Obstructing governmental operations is a Class A misdemeanor.

##### Section 13A-10-4

#### Failing to file required report.

(a) A person commits the crime of failing to file a required report if, knowing that he is required by law to submit a written report to a designated public servant, he intentionally fails to submit the report within the time provided by law.

(b) Failure to submit a report within 10 days after receipt of proper notification that the report legally is due shall constitute prima facie evidence of:

(1) Knowledge of a legal duty to submit the report; and

(2) Intentional failure to submit the report.

(c) This section applies to the failure to submit a specific report only when a separate statutory provision makes such failure subject to the operation of this section.

(d) Failing to file a required report is a violation.

##### *(Acts 1977, No. 607, p. 812, §4515.)*

##### Section 13A-10-12

#### Tampering with governmental records.

(a) A person commits the crime of tampering with governmental records if:

(1) He knowingly makes a false entry in or falsely alters any governmental record; or

(2) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes or otherwise substantially impairs the verity or availability of any governmental record; or

(3) Knowing he lacks the authority to retain a governmental record he refuses to deliver up the record in his possession upon proper request of a person lawfully entitled to receive such record for examination or other purposes.

(b) Tampering with governmental records is a Class A misdemeanor.

##### *(Acts 1977, No. 607, p. 812, §4555.)*

**FERPA source: ed.gov**

**§99.31   Under what conditions is prior consent not required to disclose information?**

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:

(1)(i)(A) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(B) A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—

(*1*) Performs an institutional service or function for which the agency or institution would otherwise use employees;

(*2*) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and

(*3*) Is subject to the requirements of §99.33(a) governing the use and redisclosure of personally identifiable information from education records.

(5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically—

(A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student whose records are released; or

(B) Allowed to be reported or disclosed pursuant to State statute adopted after November 19, 1974, subject to the requirements of §99.38.

*Note: Alabama’s School Mandatory Attendance Act §16-28 originally dates from 1927.*

**§99.38   What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?**

(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under §99.31(a)(5)(i)(B).

(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.