



Privacy Technical
Assistance Center

Family Educational Rights and Privacy Act (FERPA)

FERPA for Colleges & Universities

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Poll: Who's in the Audience?

Question: Which answer best describes your connection to the postsecondary community?

- I am a registrar/admissions officer
- I am a professor or dean
- I am a campus law enforcement official
- I don't work in the education field



Today's Presentation

- One hour
- Questions
- Presentation available after the webinar:
 - PTAC: www.ed.gov/ptac
 - FPCO: www.ed.gov/fpc



Poll: Prior FERPA Experience

Question: Which answer best characterizes your prior experience with FERPA?

- I'm a pro! I work with the statute and regs all the time
- I work with FERPA, but find it confusing
- I know what FERPA is, but don't work with it often
- FERPA? What's FERPA?



Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g

Regulations: 34 CFR Part 99



What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law.

When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").



Recent Amendments to the FERPA Regulations

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>

- § 99.3 – Defines “Authorized representative” and “Education program”
- § 99.31(a)(6)(ii)-(iv) – Amends the studies exception
- § 99.35(a)(2) – Amends the audit or evaluation exception
- § 99.3 & § 99.37(c) - (d) – Modifies definition of and requirements relating to “directory information”
- §§ 99.60 - 99.67 – Strengthens the enforcement provisions of FERPA
- Changes effective January 3, 2012



§ 99.3 What definitions apply to these regulations? (Partial)

“Education records” are records that are –

- 1) directly related to a student; and
- 2) maintained by an educational agency or institution or by a party acting for the agency or institution.



Education Records

Exceptions to “education records” include –

- sole possession records used as a personal memory aid;
- law enforcement unit records;
- student employment records; and,
- “treatment records.”



“Treatment Records”

- Records on an eligible student that are:
 - made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
 - made, maintained, or used only in connection with treatment of the student; and,
 - disclosed only to individual providing the treatment.

§ 99.3 “Exceptions to “Education records.”



Poll: Which of the following is NOT considered Personally Identifiable Information (PII)?

1. The student's name
2. The address of a student's parent or other family member
3. Participation in officially recognized activities and sports
4. A student's ID number
5. All of the above could be considered PII



Personally Identifiable Information (PII)

“Personally identifiable information” (PII) includes, but is not limited to:

- the student’s name;
- name of the student’s parent or other family members;
- address of the student or student’s family;
- a personal identifier, such as a social security number, student number, or biometric record; and,
- other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name.



Personally Identifiable Information (PII) (cont.)

- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.



Directory Information

“Directory information” is –

- Personally identifiable information that is not generally considered harmful or an invasion of privacy if disclosed includes but is not limited to:
 - name, address, telephone listing, electronic mail address;
 - date and place of birth;
 - photographs;
 - participation in officially recognized activities and sports;
 - field of study;
 - weight and height of athletes;
 - enrollment status (full-, part-time, undergraduate, graduate);
 - degrees & awards received;
 - dates of attendance;
 - most recent previous school attended; and
 - grade level.



Directory Information (cont.)

- “Directory information” cannot include a student’s social security number and generally may not include a student’s ID number.
- However, a student’s ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems may be treated as “directory information” but *only* if the identifier cannot be used to access education records, except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal ID, password, or other factor known or possessed only by the authorized user.



Directory Information (cont.)

- **New!** “Directory information” may include a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.



Rights of Students

§ 99.5 What are the rights of students?

- When a student becomes an eligible student, the rights accorded to, and consent required of, parents under FERPA transfer from the parents to the student.
- Nothing in FERPA prevents an educational agency or institution from disclosing education records, or PII from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a).



Rights of Students (cont.)

- §99.31(a)(8) – The disclosure is to parents of a dependent student, as defined in section 152 of the IRS Code.
- §99.31(a)(10) – The disclosure is in connection with a health or safety emergency.
- §99.31(a)(15) – The disclosure is to a parent of a student at a postsecondary institution regarding the student’s violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, if the school determines that a student under the age of 21 has committed a disciplinary violation with respect to that use or possession.
- Any other provision in § 99.31(a) that might apply.



Pop Quiz: Which of the following is **NOT** required as part of the annual notification?

1. The right to inspect and review education records
2. The right to amend education records
3. The right to consent to disclosures, with certain exceptions
4. The right to file a complaint with U.S. Department of Education



§ 99.7 What must an educational agency or institution include in its annual notification?

Colleges & universities must annually notify students in attendance of their rights under FERPA, including:

- right to inspect and review education records;
- right to request amendment of education records;
- right to consent to disclosures, with certain exceptions;
and,
- right to file a complaint with U.S. Department of Education.



Annual Notification

The annual notification must also include the following:

- the procedure to inspect and review education records;
and,
- a statement that education records may be disclosed to school officials without prior written consent, including:
 - specification of criteria for determining who are school officials; and,
 - what constitutes a legitimate educational interest.



Inspection and Review of Education Record

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

- School must comply with request within 45 days.
- Schools are generally required to give copies, or make other arrangements for access, only if failure to do so would effectively deny access – example would be a student who does not live within commuting distance.
- School may not destroy records if request for access is pending.



§ 99.12 What limitations exist on the right to inspect and review education records?

- If the records contain information on more than one student, the requesting eligible student may inspect, review, or be informed of only the specific information about his or her records.
- An institution does not have to permit a student to inspect and review education records that are –
 - financial records of the student’s parents; or
 - confidential letters and statements of recommendations relating to admission to an educational institution, application of employment, or receipt of an honor or honorary recognition, if the student has waived his or her right to inspect and review those letters and statements.



What are the Procedures for Amending Education Records?

§99. 20, §99.21, §99.22

- Eligible student should identify the portion of the record believed to contain inaccurate or misleading information.
- School must decide within a reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform eligible student of right to a hearing.
- After hearing, if decision is still not to amend, eligible student has a right to insert a statement in the record.



Disclosure of Personally Identifiable Information From Education Records by an Educational Agency or Institution

§ 99.30 Under what conditions is prior consent required to disclose information?

- Except for specific exceptions, a student shall provide a signed and dated written consent before a postsecondary institution may disclose education records. The consent must:
 - specify the records that may be disclosed;
 - state the purpose of disclosure; and,
 - identify the party or class of parties to whom the disclosure may be made.



Consent (cont.)

- “Signed and dated written consent” under FERPA may include a record and signature in electronic form that –
 - identifies and authenticates a particular person as the source of the electronic consent; and,
 - indicates such person’s approval of the information contained in the electronic consent.



Disclosure Provisions

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

The exceptions which relate to postsecondary institutions are:

- To school officials with legitimate educational interests (defined in annual notification). § 99.31(a)(1)

School officials with legitimate educational interests can include a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions, provided the outside party –

- performs an institutional service or function for which the agency or institution would otherwise use employees;



Disclosure Provisions (cont.)

- is under the direct control of the agency or institution with respect to the use and maintenance of education records;
 - is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records; and,
 - an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests (physical or technological access controls or administrative policy for controlling access).
- To schools in which a student seeks or intends to enroll.
§ 99.31(a)(2)



Disclosure Provisions (cont.)

- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs. § 99.31(a)(3) and § 99.35
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
 - determine eligibility for the aid;
 - determine the amount of the aid;
 - determine the conditions of the aid; or
 - enforce the terms and conditions of the aid. § 99.31(a)(4)



Disclosure Provisions (cont.)

- To a victim of an alleged perpetrator of a crime of violence or non-forcible sex offense. (Only the final results of the disciplinary proceeding, regardless of whether the postsecondary institution concluded that a violation was committed.) § 99.31(a)(13)
- To anyone if the disclosure is in connection with a disciplinary proceeding at a postsecondary institution if it determines that the student is an alleged perpetrator of a crime of violence or non-forcible sex offense and with respect to the allegation against him or her the student has committed a violation of the institution's rules or policies. § 99.31(a)(14)



Disclosure Provisions (cont.)

- To organizations conducting studies on behalf of schools. § 99.31(a)(6)
- To accrediting organizations. § 99.31(a)(7)
- To parents of a dependent student. § 99.31(a)(8)
- To comply with a judicial order or subpoena (reasonable effort to notify). § 99.31(a)(9)
- In a health or safety emergency. § 99.31(a)(10) & § 99.36
- Directory information. § 99.37



Recordkeeping

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

- An educational agency or institution must maintain a record of each request for access to and each disclosure from an education record, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under § 99.33.



Redisclosure

§ 99.33 What limitations apply to the redisclosure of information?

- When disclosing information from education records to one of the parties listed under the exceptions to the general consent rule (§ 99.31), a school should inform the receiving party that the information may not be further disclosed, except when:
 - the disclosure is to the parent or eligible student;
 - the receiving party discloses information on behalf of the school under § 99.31;
 - the disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and parent/student;
 - the disclosure is to the parents of a dependent student; or,
 - the information disclosed is directory information.



Audit or Evaluation

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

- Federal, State, and local officials listed under §99.31(a)(3) may have access to records only --
 - in connection with an audit or evaluation of Federal or State supported education programs, or
 - for the enforcement of or compliance with Federal legal requirements which relate to those programs.



Health and Safety Emergencies

§ 99.36 What conditions apply to disclosure of information in health or safety emergencies?

- Disclosure to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.
- “Appropriate parties” may include parents of an eligible student.
- See “Addressing Emergencies on Campus”; “FERPA and Disclosures Related to Emergencies and Disasters”; and other guidance documents on FPCO’s website.



Health or Safety Emergencies (cont.)

- If school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- If, based on the information available at the time, there is a rational basis for the determination, the Department will not substitute its judgment for that of the school's in evaluating the circumstances and making its determination.
- Must record (see § 99.32(a)(5)) the following information when it discloses personally identifiable information from education record under the health or safety emergency exception:
 - the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and,
 - the parties to whom the agency or institution disclosed the information.



Threat Assessment Teams

- Some schools implement a threat assessment team that utilizes the expertise of representatives from law enforcement agencies in the community.
- May disclose education records to assessment team members who are not employees of the institution if they qualify as “school officials” with “legitimate educational interests” under § 99.31(a)(1)(i)(B).
- To receive education records under the “school official” exception, members of the threat assessment team must be under the direct control of the institution with respect to the maintenance and use of PII from education records.
- Team members can only disclose PII from education records to outside parties only with consent or under one of the exceptions to consent, such as the health or safety emergency exception.
- Information on establishing a threat assessment program and other resources for emergency situations:
<http://www.ed.gov/admins/lead/safety/edpicks.jhtml?src=ln>



§ 99.37 What conditions apply to disclosing directory information?

- School may disclose directory information if it has given public notice to students in attendance concerning “directory information.” See § 99.37 for requirements concerning your public notice.
- **New!** Student ID Badge – Student may not use the right to opt out of directory information disclosures in order to prevent a school from requiring him/her to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that has been properly designated by the school as directory information in the public notice under § 99.37.
- **New!** Limited Directory Information Policy – School may now adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, for both. Must specify this limited policy in the public notice to students and must limit directory information disclosures to those specified in the public notice.



§§ 99.60-99.67 What are the Enforcement Provisions?

- The Family Policy Compliance Office (FPCO) is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Eligible students may file timely complaints (180 days) with FPCO.
- Amended enforcement provisions so that if an SEA or another entity that receives Department funds and has access to PII from student education records violates FERPA (regardless if they have students in attendance) FPCO may bring an enforcement action against that entity.
- Enforcement actions include the 5-year rule as well as withholding payment, cease and desist orders, and compliance agreements.



Privacy Technical Assistance Center

- **Mission:** To be a “one-stop” resource for agencies responsible for collecting education data in the areas of privacy, confidentiality, and security assistance
- **Audience:** Local Educational Agencies, Postsecondary Institutions, and State Educational Agencies
- **Resources:** Regional Meetings, Presentations, Issue Briefs, Trainings, Webinars, Technical Assistance Site Visits, Help Desk



Available Resources on PTAC's Website

- Technical Briefs, Issue Briefs, and White Papers
- Case studies
- Security Checklists
- Frequently Asked Questions
- Webinars, Presentations, and Training Materials



Guidance Documents & FERPA Regulations on FPCO's Website

- Addressing Emergencies on Campus
<http://www2.ed.gov/policy/gen/guid/fpc/pdf/emergency-guidance.pdf>
- Joint FERPA-HIPAA Guidance
<http://www2.ed.gov/policy/gen/guid/fpc/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters
<http://www2.ed.gov/policy/gen/guid/fpc/pdf/ferpa-disaster-guidance.pdf>
- New Amendments to FERPA Regulations (Effective 1/3/12)
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- Unofficial version of FERPA regulations showing changes:
<http://www2.ed.gov/policy/gen/guid/fpc/pdf/2012-final-regs.pdf>
- New Model Notifications Postsecondary:
<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/ps-officials.html>



FPCO ListServ

To sign up for the FPCO Announcement ListServ, go to:

<http://www2.ed.gov/policy/gen/guid/fpc0/tps/index.html>

1. Click "Postsecondary" Training Partner Services.
2. Type word "privacy" in both User Name and Password pop-up box.
3. Once in Training Partner Services page, click "Register for Listserv."
4. Follow direction and enter your contact information and click "ADD" button.
To remove your contact information, follow directions above and click "Remove."



How Did We Do?

Question: How helpful did you find today's webinar?

- Very helpful!
- Somewhat helpful.
- Not at all helpful.



Contact Information



Privacy Technical
Assistance Center

Family Policy Compliance Office

- Telephone: (202) 260-3887
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- Website: www.ed.gov/fpco

Privacy Technical Assistance Center

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