



Privacy Technical
Assistance Center

Family Educational Rights and Privacy Act (FERPA)

FERPA 101: FERPA Basics

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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").



§ 99.1 Applicability of FERPA

§ 99.1 To which educational agencies and institutions do these regulations apply?

- FERPA applies to schools that receive funds under any program administered by the Secretary of Education.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.



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.”



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 generally include a student’s social security number or student ID number.
- 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 Parents

§ 99.4 What are the rights of parents, custodial or noncustodial?

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights.



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).



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

Schools must annually notify parents of students and eligible 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:

- 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 parent or eligible student who does not live within commuting distance.
- School may not destroy records if request for access is pending.



Inspection and Review, cont.

State educational agencies (SEAs) are required to afford parents and eligible students access to education records they maintain on students.

- Applies to records even if a copy of the records is available at the local educational agency (LEA).
- SEA may forward records to LEA to afford parents access to records they are seeking.



Inspection and Review (cont.)

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

- Yes – unless imposing a fee effectively prevents a parent or eligible student from exercising his or her right to inspect and review education records.

§ 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 parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.



What are the Procedures for Amending Education Records?

§ 99.20, § 99.21, § 99.22

- Parent or eligible student should identify portion of record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent or eligible student of right to a hearing.
- After a hearing, if decision is still not to amend, parent or 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 parent shall provide a signed and dated written consent before a school may disclose education records. The consent must:
 - specify records that may be disclosed;
 - state purpose of disclosure; and
 - identify party or class of parties to whom disclosure may be made.



Disclosure Provisions

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

- The exceptions which generally relate to LEAs are:
 - to school officials with legitimate educational interests (defined in annual notification);
 - to schools in which a student seeks or intends to enroll;
 - to authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs.



Disclosure Provisions (cont.)

Exceptions, cont.

- to State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
- to organizations conducting studies for specific purposes on behalf of schools;
- to accrediting organizations;
- to parents of a dependent student;
- to comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
- in a health or safety emergency; and
- directory information.



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.



Audit or Evaluation (cont.)

- The information must be:
 - protected in a manner that does not permit disclosure of PII to anyone; and
 - destroyed when no longer needed for the purposes listed above.
- Except that those officials and agencies listed in § 99.31(a)(3) may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in accordance with the requirements of § 99.33(b).
- Section 99.33(b) states that a party that receives PII from an educational agency or institution may make further disclosures on behalf of the agency or institution if the disclosures meet requirements of § 99.31 and the recordation requirements in § 99.32(b).



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.
- See “Addressing Emergencies on Campus”; “FERPA and Disclosures Related to Emergencies and Disasters”; “FERPA and H1N1”; and “Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools.”



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.
- Must record 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.



§ 99.37 What conditions apply to disclosing directory information?

- School may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance concerning “directory information.” See § 99.37 for requirements concerning your public notice.
- New! Student ID Badge – Parent or eligible student may not use the right to opt out of directory information disclosures in order to prevent a school from requiring a student 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 parents and eligible 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.
- Parents and 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.



Responses to Questions Received

- Q.1. In our county, school nurses are employed by the health department and contracted to the school districts. Is it a violation of FERPA if the school nurse gives a list of students' names, phone numbers, and health treatment information (dental, eye, mental health, etc.) to the county health department so that the department can call parents and encourage follow-up for their children?

- A.1. It's not clear what is meant by "employed by the health department and contracted to the school" – if the school nurse is employed by the health department and simply placed in the school to provide services, then under FERPA he or she cannot have access to students' education records without parental consent and cannot share that information with the health department without consent, unless the disclosure meets one of the exceptions in FERPA (§ 99.31). If, on the other hand, the school nurse is under contract to the school, then the nurse can be considered a "school official" under FERPA. See § 99.31(a)(1)(i)(B) – "A contractor, consultant, volunteer or other party to whom [a school] has outsourced institutional services or functions may be considered a school official" if certain conditions are met. As a school official/contractor, the nurse is not generally permitted to share information with the health department without consent. See <http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf>.



Responses to Questions Received, cont.

- Q.2. Under FERPA, may a school nurse share medical information about students with other teachers and school administrators? (Related question: Which law – FERPA or the HIPAA Privacy Rule – governs records on health care delivered through a school operated health center?)
- A.2. At the elementary/secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered “education records” subject to FERPA – not the HIPAA Privacy Rule. A school nurse may share information on students with other school officials if these school officials have a legitimate educational interest in the records. Typically, if there is a health condition about which other teachers and school administrators need to be aware in order to provide a safe and healthy environment for the student, then the school could include such a criteria for what it considers to be a “legitimate educational interest.” See <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>. (Health records maintained by a postsecondary health clinic are typically considered “treatment records” under FERPA and are not subject to the HIPAA Privacy Rule.)



Responses to Questions Received, cont.

- Q.3. If there is a public records request for documents that are not considered “education records” under FERPA, must PII about the student be redacted? (Assuming the school district has no directory information policy that would allow disclosures.)

- A. 3. It is not clear what type of information on a student would *not* be an “education record” under FERPA, but if a record clearly does not fit the definition of “education records” – that is, directly related to a student and maintained by a school – then the record is not protected by FERPA and would not have to be redacted. See 2008 FERPA regulations discussion about de-identified records, starting on page 74833 of this PDF version of the *Federal Register* notice – <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>.



Guidance Documents & FERPA Regulations

- Addressing Emergencies on Campus
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- Joint FERPA-HIPAA Guidance
<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- Balancing Student Privacy & School Safety
<http://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html>
- Current FERPA Regulations <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- New Amendments to FERPA Regulations (Effective 1/3/12)
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- New Model Notifications
LEAs: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>
Post: <http://www2.ed.gov/policy/gen/guid/fpco/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 either “Local and State” or “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.”



Contact Information



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