



FERPA 101

JeffCo

May 26, 2016

Michael Hawes

Statistical Privacy Advisor
U.S. Department of Education

The U.S. Department of Education's Role in Protecting Student Privacy

- Administering and enforcing federal laws governing the privacy of student information
- Raising awareness of privacy challenges
- Providing technical assistance to schools, districts, and states
- Promoting privacy & security best practices



FERPA PRE-TEST

- | | | |
|---|---|---|
| 1. FERPA only applies to schools that receive federal education funds. | T | F |
| 2. Once a student turns 18, the school can't share education records with the parents. | T | F |
| 3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, the school must provide the grandparent with access to the child's education records. | T | F |
| 4. Health records maintained by the school nurse are not education records. | T | F |



FERPA PRE-TEST

- | | | |
|---|---|---|
| 5. Schools are required to provide parents with a copy of their child's education records upon request. | T | F |
| 6. Designated directory information is not considered sensitive personally identifiable information and, therefore, the school may disclose the information without the consent or knowledge of the parent. | T | F |
| 7. If a parent discusses a matter about his or her child in an open school board meeting, that constitutes "consent" under FERPA for school board members or other school officials to respond. | T | F |



FERPA PRE-TEST

8. FERPA permits a parent to file a lawsuit against a school, district, or school board for violating their rights under FERPA. T F
9. Having a data sharing agreement with an outside vendor is sufficient for a school to disclose PII from education records to a vendor without consent of parents. T F
10. When a student transfers from School District A to School District B, District A can share all of the student's education records to District B without the consent of the parent, including disciplinary records and special education records. T F



The World Has Changed

When FERPA was passed in 1974:

- Average house price was \$38k
- Average income was \$11k
- Federal spending was “only” \$269B
- You could buy a PC for the low, low price of \$20k
- Disco was still cool

And...

- Education records were papers in the principal’s office

What is FERPA?

A federal privacy law that affords parents the right to—

- have access to their children's education records,
- seek to have the records amended, and
- consent to the disclosure of personally identifiable information from education records, except as provided by law.



Key Points

- FERPA protects the privacy of students by restricting access to records that contain *Personally Identifiable Information* (PII).
- FERPA does not permit the *Disclosure* of PII from education records without consent, except under certain *Exceptions*.
- FERPA requires that *Reasonable Methods* be used to protect the integrity and security of the data being maintained at the school or district.
- FERPA does permit the disclosure of certain types of PII that is previously designated as *Directory Information* by the school or district.

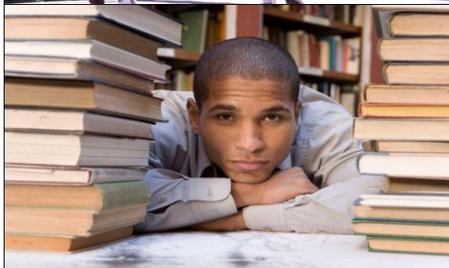
To which educational agencies and institutions does FERPA apply?



Elementary



Secondary



Postsecondary



U
S
D

D
E
P
T

O
F



Pop Quiz

A police officer shows up at the main office of a high school/university, and he asks if a certain student is attending school today. The police officer does not have a search warrant or a subpoena. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. Can the school/university tell the officer whether or not the student is attending school today?

EXERCISE TWO: Education Records

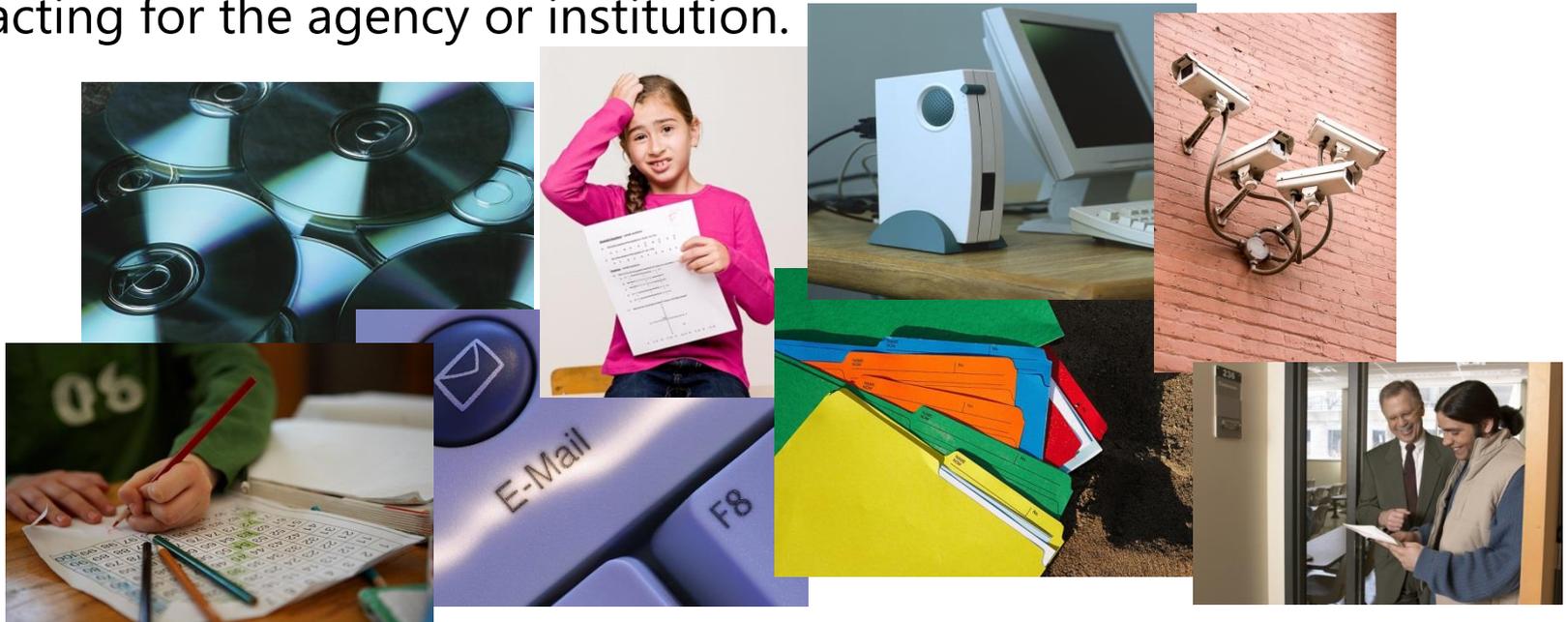
Indicate whether the following are education records protected under FERPA

- | | | | |
|---|------------|-----------|--------------|
| 1. Student homework | yes | no | maybe |
| 2. Immunization records | yes | no | maybe |
| 3. Disciplinary records | yes | no | maybe |
| 4. Emails between students and/or teachers | yes | no | maybe |
| 5. Surveillance video | yes | no | maybe |
| 6. IEP | yes | no | maybe |
| 7. Private teacher notes on student | yes | no | maybe |
| 8. Peer graded tests | yes | no | maybe |
| 9. Attendance records | yes | no | maybe |
| 10. Health records | yes | no | maybe |

Just what is an Education Record?

“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;
- Peer-graded papers before they are collected and recorded by teacher.



What about Health Insurance Portability and Accountability Act (HIPAA)?

Records that are subject to FERPA are not subject to the HIPAA Privacy Rule (see page 82483, *Federal Register*, Vol. 65, No. 250, December 28, 2000).

- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records.”
- Other HIPAA Rules may apply.

So what's the answer then?

To confirm the student was in attendance the secretary would have to log into the student information system to see if they are present. That attendance record is *ALSO* an education record. Without a court order or an imminent threat, this could not be disclosed.

But.....

Pop Quiz

John is an high school teacher. He wants to post the results of a math test so he runs a report that has the names, scores, gender and race/ethnicity of the students. John wants to preserve the privacy of his students so he deletes the column with student name.

What is personally identifiable information (PII)?



Name



Mother's maiden name



Address



Date of birth



Social Security Number



Parent's 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.

So is what John did ok?

No. While the student's name is a direct identifier, gender and race/ethnicity are also considered to be personally identifiable information.

What rights do parents and eligible students have?

- 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.



Definition of “parent”

- Under FERPA: “Parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
- Includes custodial and noncustodial parents unless a school is provided with evidence that there is a court order or State law that specifically provides to the contrary.

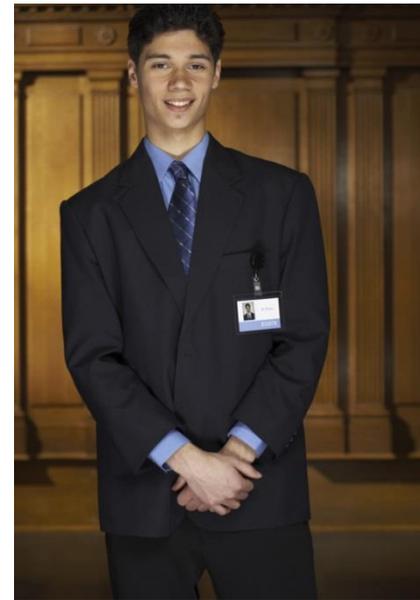
Rights of Parents (Custodial and Noncustodial)

- 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



Transfer of Rights Under FERPA

- 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”).



Inspection and Review of Education Record

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 only if failure to do so would effectively deny access, or make other arrangements to inspect and review – example would be a parent or student who does not live within commuting distance.
- School may not destroy records if request for access is pending.

What are the Procedures for Amending Education Records?

- 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.

Prior Written Consent Requirement

Except for specific exceptions, a parent or eligible student shall provide a signed and dated written consent before a school may disclose education records. The consent must include:

- specify records that may be disclosed;
- state purpose of disclosure; and
- identify party or class of parties to whom disclosure may be made.



What are the exceptions to general consent?

- To school officials with legitimate educational interests (defined in annual notification);
 - To schools in which a student seeks or intends to enroll;
 - To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
 - To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
 - To accrediting organizations;
 - To parents of a dependent student;
- (continued)



What are exceptions to general consent? (cont.)

- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency;
- To child welfare agency or tribal organization for those children in foster care; and
- Directory information.



Community-Based Organization

A community-based organization that has programs for children with special needs approaches you regarding their programs and asks for the name, address, and telephone number of parents with students in your school who have a disability in order to contact parents regarding their programs. You like the programs offered by the organization and believe the programs may be of benefit to the students with disabilities in your school and their parents.

Can the names and contact information for these students be disclosed to the organization?



Directory Information Exception



Information in a student's education records that would not generally be considered harmful or an invasion of privacy if disclosed

Directory Information Exception

- May include:
 - ✓ name, address, phone number, and e-mail address
 - ✓ photograph
 - ✓ date and place of birth
 - ✓ Most recent school attended; grade level and major field of study
 - ✓ dates of attendance (e.g., year or semester)
 - ✓ participation in officially recognized sports and activities; height and weight of athletes,
 - ✓ degrees, honors, and awards received, and
- Can never include social security number
- Can't disclose non-directory information with directory information

Directory Information Exception

- Annual notice must be given to parents of students in attendance and eligible students in attendance
- Parents may choose to “opt-out” of the disclosure of directory information on their child.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.

Military Recruiters

- ESEA has a provision required schools to disclose directory type information of secondary school students to Military recruiters upon request (Name, Address, Telephone Number)
- Schools must provide a public notice of this practice and allow parents an opportunity to opt out
- If Name, Address, Telephone number are considered directory information a single opt out for Directory Information and Military Recruiter Access may suffice
- For more information visit familypolicy.ed.gov

Classroom Volunteers

Mr. Lemke is a parent volunteer in your resource classroom for students with learning disabilities. Mr. Lemke has a child with a disability enrolled in the school although not in your class. Mr. Lemke's assignment is to work with a small group of students on math skills. You provide Mr. Lemke with the math achievement scores, classroom test reports, and other math related information from the special education records of each individual student he is assisting.

Is it permissible for you to share the individual math test scores and other related information with Mr. Lemke without the consent or knowledge of the parents of the students?

School Official Exception

- Schools may disclose PII from education records without consent if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

School Official Exception, Cont.

- Outsourcing services under school official exception
 - Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
 - If these outside parties meet the conditions for outsourcing, they may have access to education records.

School Official Exception, Cont.

- Conditions for outsourcing:
 - Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
 - PII from education records may be used only for the purposes for which the disclosure was made
 - Meets the criteria specified in the school, LEA, or institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.



Scenario: Dominica Moves to Las Vegas

Dominica attended your school and recently moved to Las Vegas with her family. Dominica is a student with a learning disability. Dominica's family is trying to enroll her in a Las Vegas high school and is having a hard time because the new high school wants Dominica's special education records from your school and you do not want to send the new school Dominica's records without the consent of the parents who are not returning your calls.

Do you need to obtain consent from Dominica's parents before disclosing her records to Las Vegas school?

Exception: Disclosure to Officials of Another School

- Consent is not required to disclose personally identifiable information from education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for the purposes related to the student's enrollment or transfer.

Parents of a Dependent Student Exception

- Consent is not required if the disclosure is to parents, as defined in §99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

Health or Safety Emergencies Exception

- Disclosure is necessary to protect the health or safety of the student or others.
- There is an articulable and significant threat to the health or safety of a student or other individuals.
- Appropriate parties typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
- Must be related to an actual, impending, or imminent emergency.
- School makes determination on case-by-case basis.



Health or Safety Emergency Exception, cont.

- Must be articulable and significant threat.
- School must make determination on case-by-case basis.
- Department will not substitute its judgment if there is a rational basis for decision to disclose under health or safety emergency exception.
- Limited to period of time of the emergency.
- Must record pertinent information when it discloses PII.



POP QUIZ: Judicial Order or Subpoena

Does FERPA require schools to disclose information from education records pursuant to a judicial order or subpoena?

Yes or No?

United States District Court
Anne Anderson, et al.
v.
W.S. Grace & Co., et al.

Case No. 82-1672-B
Type of Case: CIVIL CRIMINAL
Reason: DISCOVERY DOCUMENTS or DEEDS

TO: Keeper of the Records
United States Geological Survey
133 Causeway Street, Suite 1201
Boston, Massachusetts 02114-1286

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above-entitled case.

United States District Court
J. W. McCormack Post Office and Courthouse
Boston, Massachusetts

Courtroom 4, 15th Floor
Monday, June 16, 1982
9:00 A.M.

YOU ARE ALSO COMMANDED to bring with you the following documents or objects:

SEE ATTACHED SCHEDULE

ATTENT: A TRUE COPY

Donald W. Perkins
U.S. District Judge

This subpoena shall remain in effect until the day specified hereon to appear at the court or by an officer acting on behalf of the court.

Signature: [Signature]
Date: June 11, 1982

U.S. District Court
Case No. 82-1672-B
J. W. McCormack Post Office and Courthouse
Boston, MA 02114-1286

**You may not be needed on the date indicated; please call Carl Perkins' Erin O'Brien tel 617-482-1290 or discuss scheduling.



Judicial Orders & Subpoenas Exception

- School may disclose PII from education records necessary to comply with a judicial order or lawfully issued subpoena.
- School must make a reasonable effort to notify the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.
- Some judicial orders and subpoenas are exempt from FERPA's notification requirement.

Judicial Orders & Subpoenas Exception, Cont.

- Issuing court or agency may, for good cause shown, order the institution not to disclose to anyone the existence or contents of the subpoena or the response.
- If court issues such an order, the notification and recordation requirements in FERPA do not apply.

Law Enforcement Units & Records

- “Law enforcement unit” means any individual, office, department, division, or other component of a school that is officially authorized or designated by the school to –
 - Enforce any local, State, or federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization other than the school itself; or
 - Maintain the physical security and safety of the school.

Law Enforcement Units & Records, Cont.

- Examples include –
 - Unit of commissioned police officers
 - Unit of non-commissioned security guards
 - Fully equipped police units
 - Smaller security office
 - Vice-principal or other school official
 - Local off-duty police officer
 - School Resource Officer (SRO)



Law Enforcement Units & Records, Cont.

- Law enforcement unit records means those records, files, documents, and other materials that are –
 - Created by a law enforcement unit;
 - Created for a law enforcement purpose; and
 - Maintained by the law enforcement unit.
- LEU records do not mean –
 - Records created by an LEU for a law enforcement purpose that are maintained by another component of the school;
 - Records created and maintained by an LEU exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the school.



FERPA Final Exam

- | | | |
|--|---|---|
| 1. FERPA only applies to schools that receive federal education funds. | T | F |
| 2. Once a student turns 18, the school can't share education records with the parents. | T | F |
| 3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, the school may provide the grandparent with access to the child's education records. | T | F |
| 4. Health records maintained by the school nurse are not education records. | T | F |



FERPA Final Exam

- | | | |
|---|---|---|
| 5. Schools are required to provide parents with a copy of their child's education records upon request. | T | F |
| 6. Designated directory information is not considered sensitive personally identifiable information and, therefore, the school may disclose the information without the consent or knowledge of the parent. | T | F |
| 7. If a parent discusses a matter about his or her child in an open school board meeting, that constitutes "consent" under FERPA for school board members or other school officials to respond. | T | F |



FERPA Final Exam

8. FERPA permits a parent to file a lawsuit against a school, district, or school board for violating their rights under FERPA. T F
9. Having a data sharing agreement with an outside vendor is sufficient for a school to disclose PII from education records to a vendor without consent of parents. T F
10. When a student transfers from School District A to School District B, District A can share all of the student's education records to District B without the consent of the parent, including disciplinary records and special education records. T F



CONTACT INFORMATION

United States Department of Education,
Privacy Technical Assistance Center



(855) 249-3072
(202) 260-3887



privacyTA@ed.gov



<http://ptac.ed.gov>



(855) 249-3073