



Family Educational Rights and Privacy Act (FERPA)

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**“Too much of a good thing
can be wonderful.”**



Mae West



The world has changed

FERPA was passed in 1974:

- **Gerald R. Ford was President**
- **The Cold War was hot**
- **The first Macintosh personal computer was 10 years in the future**
- **The World Wide Web was 16 years in the future**
- **Clouds were not places to store data**
- **Pluto was a planet!**





Family Educational Rights and Privacy Act (FERPA)

- **Statute: 20 U.S.C. § 1232g**
- **Regulations: 34 CFR Part 99**
- **Family Policy Compliance Office (FPCO) in U.S. Department of Education administers FERPA.**





Individuals with Disabilities Education Act (IDEA)

- **Statute: 20 U.S.C. Chapter 33**
 - Subchapter I – General Provisions (§§ 1400-1409)
 - Subchapter II – Assistance for Education of All Children with Disabilities (§§ 1411-1419)

- **Regulations: 34 CFR Part 300**

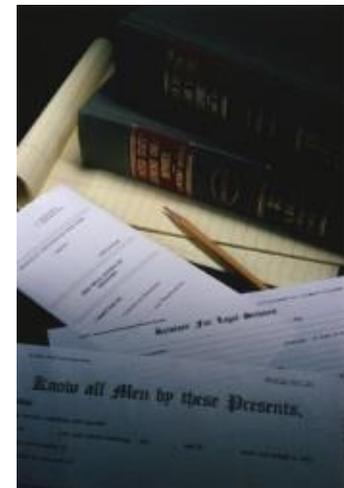
- **Latest changes to regulations:**
 - August 14, 2006– <http://www.gpo.gov/fdsys/pkg/FR-2006-08-14/pdf/06-6656.pdf>
 - December 1, 2008 -<http://www.gpo.gov/fdsys/pkg/FR-2008-12-01/pdf/E8-28175.pdf>



Part B of the Individuals with Disabilities Act (IDEA)

§ 300.610 Confidentiality of Information

“The Secretary takes appropriate action, in accordance with section 444 of GEPA [FERPA], to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part of the Act, and consistent with §§ 300.611 through 300.627.”





To which educational agencies and institutions does FERPA apply?

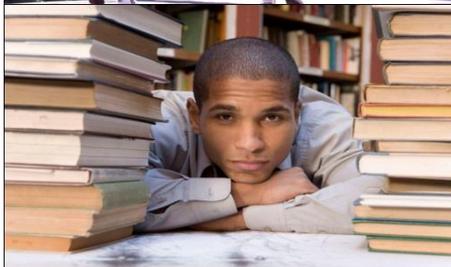
§ 99.1



Elementary



Secondary



Postsecondary

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What is FERPA?

- Gives parents and “eligible students” the right to access and seek to amend education records
- Protects personally identifiable information (PII) in education records from unauthorized disclosure
- Requires written consent before sharing PII – unless an exception applies





Transfer of Rights Under FERPA

§ 99.5

- **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”).**





Eligible Student, cont.

§ 99.5

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 these conditions:

- **§ 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.**



§ 300.625 of IDEA “Children’s rights”

If the rights accorded to parents under Part B are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding education records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the IDEA to the student and the parents.





What are education records?

§ 99.3

“Education records” are records that are –

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





Education Records

§ 99.3

Exemptions to “education records” include –

- sole possession records used as a personal memory aid; and
- law enforcement unit records.





“Education Records,” cont.

IDEA § 300.611(b) –

Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).





“Education Records,” cont.

- **Records maintained by an educational agency or institution subject to FERPA on a student receiving services under Part B of IDEA are “education records” subject to FERPA.**
- **Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records” subject to FERPA.**





Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- 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).
- Other HIPAA rules may apply.





HIPAA & FERPA, cont.

“Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records”

<http://www2.ed.gov/policy/gen/guid/fpc/doc/ferpa-hipaa-guidance.pdf>

FPCO website / “Hot Topics” / November 2008



Personally Identifiable Information (PII)

§ 99.3

“Personally identifiable information” 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;
- Other direct identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name.





Personally Identifiable Information (PII), cont.

§ 99.3

- 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.





Annual Notification of Rights

§ 99.7



- Educational agencies and Institutions must annually notify parents and eligible students in attendance of their rights under FERPA.



Annual Notification of Rights, cont.

- **§ 300.612 of the IDEA regulations requires a State educational agency (SEA) to give notice that is adequate to fully inform parents about the requirements related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.**





What must an educational agency or institution include in its FERPA annual notification of rights?

§ 99.7

- 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.





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 (§ 99.4) .
- Similarly, under the IDEA, an agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce (§300.613(c)).





Right to Inspect and Review Education Records

§§ 99.10-99.12



- Schools must comply with a request to inspect and review education records 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 when a parent or an eligible student no longer lives within commuting distance.
- If the records contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about him or her.
- Schools may not destroy records if request for access is pending.



Inspection & Review of Education Records – IDEA

§ 300.613 of the IDEA regulations requires each participating agency to comply with a request for access without unnecessary delay and *before* any meeting regarding an IEP, or any hearing pursuant to § 300.507 (due process) or §§ 300.530 through 300.532 (disciplinary), or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.





Limitations on Right to Inspect and Review

- § 300.615 of the IDEA regulations state that if records contain information on more than one student, the parent may inspect, review, or be informed of only the specific information about his or her child's education records.





Copy v. Access

§ 99.10

While FERPA requires a school to provide a parent access to his or her child's education records, it is not generally required to provide *copies* of education records. However, if circumstances effectively prevent a parent from exercising his or her right to inspect and review education records, the school would be required to either provide the parent with a copy of the records requested or make other arrangements that would allow for the parent to inspect and view the requested records. For example, a school could be required to provide copies, or make other arrangements for inspection and review, if the parent did not live within commuting distance of the school.





Copy v. Access, cont.

Copies Under IDEA –

Determination of Eligibility § 300.306 – Upon completion of the administration of assessment and other evaluation measures –

(a)(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

Parent Participation § 300.322 – (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.





Copy v. Access, cont.

Copies Under IDEA –

Hearing Rights § 300.512 – A party to a hearing conducted pursuant to §§ 300.507-300.513 or to §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to –

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.





Charging Fee for Copies

§ 99.11 of FERPA and § 300.617 of the IDEA states that an educational agency or institution may charge a fee for copies of education records, unless imposing a fee effectively prevents a parent or eligible student from exercising his or her rights to inspect and review education records.





Destruction of Information

- **§ 99.10(e) of FERPA states that an educational agency or institution, or SEA or its component, shall not destroy any education records *if* there is an outstanding request to inspect and review the records.**
- **§ 300.624 of the IDEA regulations requires a public agency to inform parents when PII that is collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child.**
- **Under IDEA, information must be destroyed at the request of the parents, but permanent information of the student, such as name, address, phone number, year completed, etc., may be maintained without time limitation.**



Right to Request Amendment of Education Records

§§ 99.20-
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.





Amending Education Records, cont. – IDEA

- **§ 300.618 of the IDEA provides the same opportunity for a hearing to challenge the content of education records as FERPA provides.**
- **§ 300.621 states that a hearing held under § 300.619 must be conducted according to the procedures in FERPA.**





Prior Written Consent Requirement

§ 99.30

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:

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





Consent (cont.)

§ 99.30

- **“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.





Consent for Disclosures – IDEA

§ 300.622 of the IDEA requires –

- Parental consent before PII is disclosed to parties, other than to officials of participating agencies in order to meet IDEA requirements, unless the information is contained in education records and the disclosure is authorized by FERPA;
- Parental consent, or consent of child who has reached age of majority, must be obtained before PII is disclosed to officials providing or paying for transition services;
- Parental consent before PII is shared between the LEA of the parents' residence and an LEA where a private school is located when the parent enrolls the child in the private school.





Exceptions to General Consent Requirement

\$99.31

- School officials
- Transfer to new school
- Judicial order or subpoena
- Caseworker of student in foster care
- Directory information
- Health or safety emergency
- Law Enforcement Unit Records*



**Exemption to definition of "education records."*



School Officials

§ 99.31(a)(1)

- **School officials with legitimate educational interests (§ 99.31(a)(1))**
 - Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
 - Model notification on FPCO website :
 - <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/ps-officials.html>





School Officials, cont.

§ 99.31(a)(1)

- **Outsourcing services under school official exception (§ 99.31(a)(1)(i)(B))**
 - **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.**
 - **May consider utilizing non-employees as members of its threat assessment team, as counselors, nurses, and security staff.**
 - **If these outside parties meet the conditions for outsourcing, they may have access to education records.**



School Officials, cont.

§ 99.31(a)(1)

- **Conditions for outsourcing institutional services or functions to outside parties:**
 - **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;**





School Officials, cont.

§ 99.31(a)(1)

- **Conditions for outsourcing institutional services or functions to outside parties, cont.:**
 - **Is subject to the requirements in § 99.33(a) that the PII from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and**
 - **Meets the criteria specified in the institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.**



Transfer to a New School/College/University

§ 99.31(a)(2) &
§ 99.34

- To schools in which a student seeks or intends to enroll.
 - A school that discloses education records under this provision must make a reasonable attempt to notify the parent or eligible student of the disclosure, unless
 - the disclosure is initiated by the parent or eligible student, or
 - the school's annual notification of rights includes a notice that it forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll.





Transfer to a New School/College/University, cont.

- **A former school may disclose to another school where a student has *already* enrolled, if the disclosure is for purposes related to the student’s enrollment or transfer.**
- **A school may (or may not) release a portion or all of a student’s education records, under the “seeks or intends to enroll” exception in FERPA, at its discretion.**
- **However, the Elementary and Secondary Education Act (ESEA) requires that each State that receives funds under the ESEA to have a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, to any private or public elementary school or secondary school in which the student enrolls or seeks to enroll.**



Transfer to a New School/College/University, cont.

- A parent or eligible student does not have the right to prevent a school from transferring the student's education records or from communicating information about the student to the student's new school.
- LEAs should include a notice in their annual notification of rights under FERPA that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll (34 CFR §§ 99.7 and 99.34(a)(ii)).





Judicial Orders & Subpoenas

§ 99.31(a)(9)

- 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 the parent or student an opportunity to seek protective action.
- Some judicial orders and subpoenas are exempt from FERPA's notification requirement.

Subpoena
United States District Court
Anne Anderson, et al.
W.S. Grace & Co., et al.
Keeper of the Records
United States Geological Survey
330 Causeway Street, Suite 1201
Boston, Massachusetts 02114-2128
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
6. 35th floor
Monday
June 14, 2022
9:00 a.m.
YOU ARE ALSO COMMANDED to bring with you the following documents or objects:
SEE ATTACHED SCHEDULE
Admitted to the Bar
June 11, 2022
This subpoena shall remain in effect until the date specified herein or until the date of the trial or until the date of the hearing.
OFFICIAL'S NAME AND ADDRESS
Carl W. Perkins
Polly, Susan & Elliot
One Post Office Square
Boston, MA 02109 (617)482-1200
** You may not be needed on the date indicated; please call Carl Perkins
Eric O'Brien, tel. 617-482-1200 to discuss scheduling.



Judicial Orders & Subpoenas, cont.

§ 99.31(a)(9)

- ***Ex Parte* Orders – School may, without consent or knowledge of student or parent, disclose PII from education records to the U.S. Attorney General or his designee in response to an *ex parte* order in connection with the investigation or prosecution of terrorism crimes specified in §§ 2332b(g)(5)(B) and 2331 of title 18, U.S. Code. See 34 CFR § 99.31(a)(9)(ii)(C).**
- **Notification and recordation requirements in FERPA do not apply.**



Judicial Orders & Subpoenas, cont.

§ 99.31(a)(9)

- ***Law Enforcement Subpoenas*** – School may disclose PII from education records to the entity or persons designated in a subpoena issued for a law enforcement purpose.
- 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 or agency issues such an order, the notification and recordation requirements in FERPA do not apply.



Judicial Orders & Subpoenas, cont.

§ 99.31(a)(9)

- ***Grand Jury Subpoenas*** – School may disclose PII from education records to the entity or persons designated in a Federal grand jury subpoena.
- The court may order the institution not to disclose to anyone the existence or contents of the subpoena or the response.
- If court orders, the notification and recordation requirements in FERPA do not apply.



Student in Foster Care

Uninterrupted Scholars Act (USA)

New exception to the general consent requirement passed by Congress January 2013 (not yet in FERPA regulations):

- Permits disclosure of PII from education records of children *placed in foster care* to “agency caseworker or other representative” of a State or local child welfare agency (CWA) who has the right to access a student’s case plan under State or tribal law.
- Disclosure permitted when the CWA is “legally responsible ... for the care and protection of the student.”
- Provisions for tribal organizations as well.





Student in Foster Care, cont.

- **The CWA can disclose (or re-disclose) the records to “an individual or entity engaged in addressing the student’s education needs.”**
- **This individual or entity must be authorized to receive the records and the disclosure (or re-disclosure) must be consistent with State law.**





Student in Foster Care, cont.

- **Uninterrupted Scholars Act amended the notification requirement in FERPA's subpoena or judicial order exception (§ 99.31(a)(9)). Notification is not required when the parent is a party to a court order proceeding involving child abuse, neglect, or dependency.**





Directory Information

§ 99.31(a)(11)

- **Directory Information (§ 99.31(a)(11) and § 99.37)**
 - Defined as information in a student's education records that would not generally be considered harmful or an invasion of privacy.
 - Name, address, telephone number, e-mail address, photograph, date and place of birth, grade level, 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 most recent school attended.
 - Can never include an SSN.
 - Generally may not include student ID number, except under specified circumstances.



Directory Information, cont.

§ 99.37

- Public notice must be given to parents of students in attendance and eligible students in attendance concerning “directory information” providing an opportunity to opt out.
- Parents and eligible students 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.
- 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.





Directory Information (cont.)

§ 99.3

- **“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.**





Health and Safety Emergencies

§ 99.31(a)(10)
& § 99.36



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

- 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.
- School must record pertinent information when it discloses PII.



Health and Safety Emergencies, cont.

§ 99.31(a)(10)
& § 99.36

- 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.





Threat Assessment Teams

§ 99.31(a)(1)

Threat assessment team –

- A group of officials that convene to identify, evaluate, and address threats or potential threats to school security.
- Review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals.
- Assist in determining whether a health or safety emergency exists in order to know whether a disclosure may be made under the FERPA emergency exception.
- More common in university settings but also being instituted in elementary and secondary schools.



Threat Assessment Teams, cont.

§ 99.31(a)(1)

- Threat assessment teams may include officials who can assist in making decisions –
 - School administrators, deans, counselors, school law enforcement unit officials.
 - Outside medical and mental health professional and local law enforcement officers.
- Information on establishing a threat assessment program and other resources for emergency situations:

<http://www.ed.gov/admins/lead/safety/edpicks.jhtml?src=ln>





Threat Assessment Teams, cont.

§ 99.31(a)(1)

- **Disclosing PII from education records to threat assessment team members who are not employees –**
 - **Must qualify as “school officials” with “legitimate educational interests.”**
 - **Must meet requirements for “outsourcing” institutional service or function. See § 99.31(a)(1)(i)(B).**
 - **Must only use PII from education records for purposes for which it was disclosed, i.e., to conduct threat assessments.**
 - **May not redisclose PII from education records. See § 99.33(a).**
 - **While not a requirement, school may wish to have a written agreement with members of team specifying privacy requirements and responsibilities.**



Law Enforcement Units & Records

§ 99.8

- **“Law enforcement unit” (LEU) 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.**



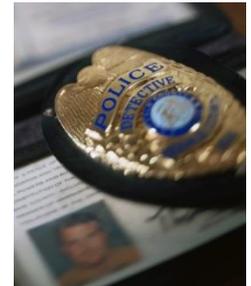


Law Enforcement Units & Records, cont.

§ 99.8

- **LEU 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.





Personal Knowledge or Observation

- FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records.
- This general rule does not apply where a school official learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education records.





Public Disclosure of Information Under IDEA

- Under § 300.602(b)(3), the State must not report to the public or the Secretary any information on performance (under the State's Performance Plan) that would result in the disclosure of PII about individual children, or where the available data are insufficient to yield statistically reliable information.





Recordkeeping

§ 99.32

- **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 PII from the student's education records without consent under § 99.33. Exceptions apply.**





Enforcement Provisions

- **§§ 99.60 – 99.67 Enforcement provisions of FERPA**
- **Parents and eligible students may file complaints under FERPA with the Family Policy Compliance Office.**
- **Complaint must be timely (180 days).**
- **If an educational agency or institution does not comply with FERPA, the Secretary has several enforcement options available including terminating eligibility to receive funding under any applicable program.**



Family Policy Compliance Office

- FPCO provides technical assistance to educational agencies and institutions about FERPA.
- FPCO investigates complaints filed by parents and eligible students alleging violation of FERPA rights.
- FPCO works with educational agencies and institutions to bring them into voluntary compliance with FERPA before taking certain enforcement actions.





Enforcement Provisions

- **§ 300.626 of the IDEA provides that the SEA must have in effect policies and procedures, including sanctions, to ensure that the confidentiality provisions in §§ 300.611 – 300.625 are followed.**
- **An organization or individual may file a signed written complaint under procedures described in §§ 300.151 – 300.153 alleging a violation of Part B of IDEA, including the Confidentiality of Information provisions. Such complaints are filed with, and resolved by, the State educational agency (SEA).**



“This is all so very confusing.”





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>
- FERPA regulations:
<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- Model Notification for Elementary/Secondary Schools:
<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/lea-officials.html>
- Guidance for Parents:
<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/parents.html>



FPCO ListServ

- To sign up for the FPCO GovDelivery Announcement ListServ, please visit our website page for school officials at <http://familypolicy.ed.gov/ferpa-school-officials>.





Contact Information

**Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520**

Telephone: (202) 260-3887

Websites: www.ed.gov/fpco



**For informal requests for technical assistance, go to the
“Contact Us” page on <http://familypolicy.ed.gov>.**



STOP HERE!





How Much Do You Really Know About FERPA?





FERPA POP QUIZ

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
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 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
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



Which Are Education Records?

Indicate whether the following are education records protected under FERPA

1.	Student homework	yes	no	maybe
2.	Classroom tests	yes	no	maybe
3.	State assessment results	yes	no	maybe
4.	Immunization records	yes	no	maybe
5.	Disciplinary records	yes	no	maybe
6.	Emails between students	yes	no	maybe
7.	Emails between students and teachers	yes	no	maybe
8.	Surveillance video	yes	no	maybe
9.	IEP	yes	no	maybe
10.	private teacher notes on student	yes	no	maybe
11.	Law enforcement unit records	yes	no	maybe
12.	Test protocols	yes	no	maybe
13.	Peer graded tests	yes	no	maybe
14.	Attendance records	yes	no	maybe
15.	Health records	yes	no	maybe



Which of the following are NOT considered PII?

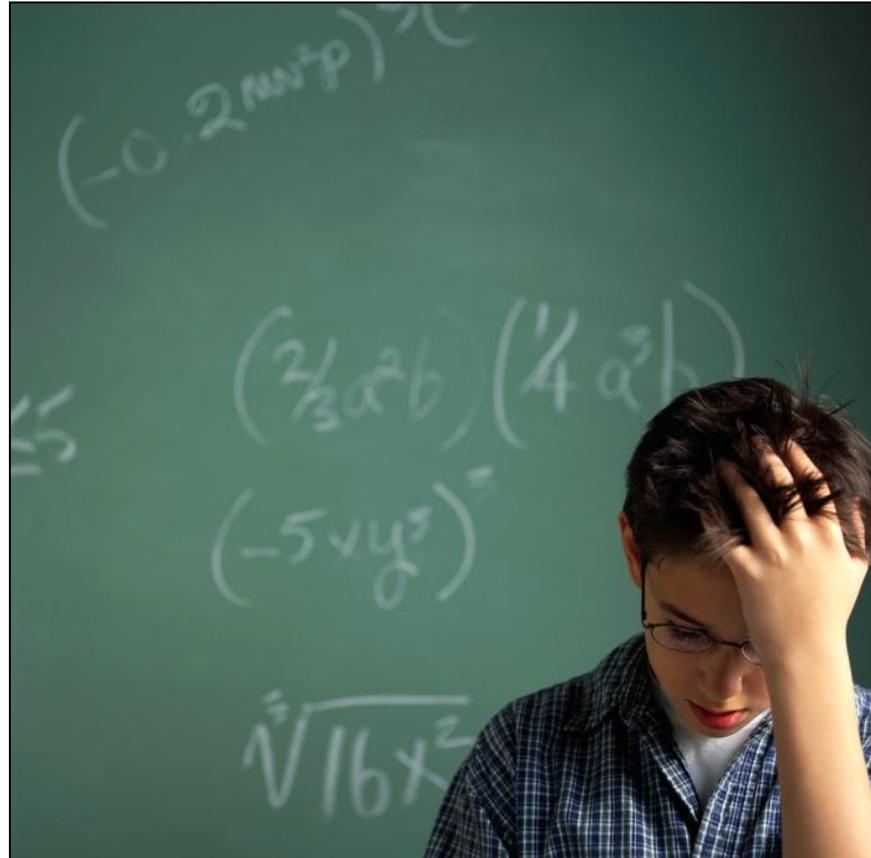
- *Name*
- *Social Security Number*
- *Address*
- *Month of Birth*
- *Telephone Number*
- *Shoe Size*
- *Job Title*
- *Email Address*
- *Office Number*
- *Racial/Ethnic Group*
- *Pet's Name*
- *Criminal Record*
- *School Attended*
- *1st Grade Teacher*
- *License Plate*
- *Mother's Maiden Name*
- *Bank Account Number*
- *Favorite Movie*
- *Performance Rating*
- *Grades*
- *Test Scores*





Scenarios

Why Are FERPA & IDEA Confidentiality Provisions So Complicated?





Scenarios, cont.

A school routinely locks their filing cabinets containing student records, including IEPs, psychological reports, and other testing information. Do FERPA and/or IDEA require that these filing cabinets be locked?



Scenarios, cont.

For ease in communication concerning IEP meetings, a school's special education office sends out meeting notices/agendas/invitations via email, listserve, or posts them on a share drive for all of the invitees to see. Is this permissible under FERPA and IDEA?



Scenarios, cont.

Special education teachers in a school send out notifications to general education teachers informing them of the names of students have an IEP. A statement says: “These are the students on my caseload. If any of these students are yours, please highlight their name and return the sheet to me indicating that you have read their IEP.” Does FERPA permit this type of disclosure?



Scenarios, cont.

A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A community-based organization that has programs for special needs children asks the school for directory information on students who have a certain disability. Can the names and contact information for these students be disclosed to the organization as directory information?



Scenarios, cont.

A student attended school in Virginia, but recently moved to Arkansas with her family. She is a student with a learning disability. Her family is trying to enroll her in a Little Rock school but is having a hard time because the new school wants the student's special education records directly from her previous school in Virginia. The parents owe money to the school in Virginia.

Does the previous school have to disclose the student's special education records to the Little Rock school – or can it refuse to transfer the records until the debit is paid?

Does the previous school need to obtain consent from the parents before disclosing her records to the Little Rock school?



Scenarios, cont.

A teacher personally witnesses an incident, such as one student bullying another. Can the teacher call the victim's parents and tell them what she observed and who she saw bullying their child?



Scenarios, cont.

A police officer shows up at the main office of your high school and asks if Paul Smith 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. Additionally, Mrs. Jones, an 9th grade teacher, was in the office when the police officer made the request and told the officer that she overheard two other students talking about the gang violence episode.

Would FERPA permit you to tell the officer whether or not the student is attending school today?

Is it OK for Mrs. Jones to share with the officer the names of the other two students and what she heard?



Scenarios, cont.

A student is expelled from school. A copy of his disciplinary record is sent to the school district's law enforcement unit so that school security can keep the student off campus. The law enforcement unit maintains that record and discloses it to a reporter in response to a State open records request. Is that permissible under FERPA?



Scenarios, cont.

When a student turns 18 years old, the rights under FERPA transfer from his parents to the student. Can the high school still disclose information from the student's education records to his parents absent consent of the student? If yes, how?



Scenarios, cont.

**A student who is under 18 is still in high school but is also taking classes at the local college. Have FERPA rights transferred to the student?
Can her parents see the records at the local college?**



Scenarios, cont.

The school nurse at a middle school wants to share information with teachers and administrators. Which law, FERPA, IDEA, or the HIPAA Privacy Rule, protects the privacy of student health records?



Where Do I Go for Help?





Contact Information

Family Policy Compliance Office

Telephone: (202) 260-3887

Email: FERPA@ed.gov

Website: www.ed.gov/fpco

Office of Special Education Programs

Telephone: (202) 245-7629

Website:

<http://www2.ed.gov/about/offices/list/osers/osep/index.html>