

FERPA Compliance Training

Harvard University

April 10, 2014
Cambridge, MA

Family Educational Rights and Privacy Act (FERPA)

Also known as the Buckley
Amendment

Statute: 20 U.S.C. § 1232(g)

Regulations: 34 CFR Part 99

Primary Rights of Students under FERPA

- Right to inspect and review education records
- Right to seek to amend education records
- Right to have some control over the disclosure of information from education records

Subpart A – General

- § 99.1 *To which educational agencies and institutions do these regulations apply?*
 - FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education.
 - “Educational institutions” means: schools or other entities that provide educational services and are attended by students.
 - “Educational agencies” means: entities that are authorized to direct and control public elementary or secondary, or postsecondary, institutions.

§ 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,” cont.

- Exceptions to “education records” include
 - Sole possession records.
 - Records created and maintained by a law enforcement unit for a law enforcement purpose.
 - Employment records (unless contingent on attendance).
 - Medical records made and maintained in the course of treatment and disclosed only to those individuals providing treatment.
 - Records that only contain information about a student after he or she is no longer a student at that institution (e.g., alumni records).

Definitions, cont.

- “Personally Identifiable Information” includes:
 - Student’s name
 - Name of student’s parent or other family members
 - Address of the student or student’s family
 - Personal identifier – SSN, student ID number, biometric record
 - Indirect identifiers – date and place of birth, mother’s maiden name
 - Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person

Definitions, cont.

- “Directory information” is –
 - Information 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
 - grade level

Cannot include SSN

Definitions, cont.

- “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means (oral, written, electronic, etc.), to any party *except the party identified as the party that provided or created the record.*

Definitions, cont.

- “Record” means any information maintained in any way, including, but not limited to:
 - Handwriting
 - Video or audio tape
 - Computer media
 - Film
 - Print
 - Microfilm and microfiche

Definitions, cont.

- “Student” means any individual:
 - who is or has been in attendance at an institution; and
 - regarding whom the institution maintains education records.

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

- Institutions 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;
 - Right to file a complaint with U.S. Department of Education

Annual notification, cont.

- **The annual notification must also include the following:**
 - Procedure to inspect and review education records;
 - 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.

Annual notification, cont.

- FERPA does not specify the means of notification, other than by any means reasonably likely to inform the students. Examples include:
 - Student handbook
 - School newspaper or catalog
 - Local newspaper
 - Inclusion in student's registration packet

Subpart B – Inspection and Review of Education Records

- § 99.10 *What rights exist for a student to inspect and review education records?*
 - School must comply with request within 45 days.
 - Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
 - School may *not* destroy records if request for access is pending.

Inspection and Review, cont.

- § 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 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 –
 - Confidential letters and statements of recommendation – regarding admission, application for 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.
 - Financial records of his or her parents.

Subpart C – What are the Procedures for Amending Education Records

- § 99.20, § 99.21, § 99.22
 - Once a student identifies a record he or she believes to contain inaccurate or misleading information:
 - Institution must decide within reasonable period of time whether to amend as requested.
 - If institution decides not to amend, must inform student of right to a hearing.
 - After hearing, if decision is still not to amend, student has a right to insert a statement in the record.

Subpart D – 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 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, cont.

- § 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)*
 - *To schools in which a student seeks or intends to enroll*
 - *To Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs*
 - *In connection with financial aid*

Disclosure provisions, cont.

- **Exceptions, cont.**
 - **To organizations conducting studies on behalf of educational institutions**
 - **To accrediting organizations**
 - **To parents of a dependent student**
 - **To comply with a judicial order or subpoena (reasonable effort to notify)**
 - ***In a health or safety emergency***
 - ***Directory information***
 - **To the student**

Disclosure provisions, cont.

- **Exceptions, cont.**
 - **Results of a disciplinary hearing to an alleged victim of a crime of violence**
 - **Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies**
 - **Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies**
 - **Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State**

§ 99.31(a)(1)(i)(B) Authorized Disclosures Without Prior Written Consent

- 2009 regulations expand the school official exception to include contractors, consultants, volunteers, and other parties to whom a school has outsourced services or functions under certain circumstances:
 - The party is under the direct control of the school;
 - The party is subject to the same conditions governing the use and redisclosure of education records applicable to other school officials;
 - Clarifies the specific conditions under which schools may disclose education records to outside parties performing services or functions for the school.

99.31(a)(1)(ii)

99.31(a)(1)(ii) Controlling access to education records by school officials

- Regulations now specify the steps a school must take to ensure that a school official gains access only to education records in which the official has a legitimate educational interest.
- Some institutions permit school officials unrestricted access to education records, particularly those contained in electronic records systems.
- Regulations require schools to use "reasonable methods" to ensure an official is given access to only those education records in which the official has a legitimate educational interest.

99.31(a)(1)(ii) cont.

- Schools may choose to use methods such as:
 - Physical controls (locked filing cabinets)
 - Technological controls (role-based access controls for electronic records)
 - Administrative policies (must be effective in ensuring compliance)
- Clarifies that a school is responsible for ensuring that it is taking measures to permit only those officials with a legitimate educational interest to access education records.

Disclosure to a School Where Student Seeks or Intends to Enroll

99.31(a)(2)

- Regulations permit a school to disclose education records to another school where the student seeks or intends to enroll.
- 2009 regulations clarify that the authority to disclose or transfer education records to a student's new school continues after actual enrollment so long as the disclosure is in connection with the student's enrollment.
 - Ensures that a school may supplement, update, or correct records sent during the student's application or transfer period.

Disclosure provisions, cont.

§ 99.31(c) Identification and authentication of identity.

- 2009 FERPA amendments require institutions to use *reasonable* methods to identify and authenticate the identity of parents, students, school officials, and other parties before disclosing education records.
- Identification means determining who is the intended or authorized recipient of the information.
- Authentication means ensuring that the recipient is who he or she claims to be.
- Regulations permit use of PINs, passwords, personal security questions; smart cards and tokens; biometric indicators; or other factors *known or possessed only by the authorized recipient*.

Disclosure provisions, cont.

- "The use of widely available information to authenticate identity, such as the recipient's name, date of birth, SSN or student ID number, is not considered *reasonable* under the regulations."
- "Single-factor authentication of identity...may not provide reasonable protection for access to all types of education records or under all circumstances." (See *Federal Register Vol.73, No. 237, page 74848*)

Recordkeeping

- § 99.32 *What recordkeeping requirements exist concerning requests and disclosures?*
- An institution must maintain a record of each request for access to and each disclosure from an education record. This record of access must:
 - Be maintained as long as record is maintained;
 - Include the parties who have requested or received information from education records; and
 - Include the legitimate interest parties had in receiving information.

Recordkeeping, cont.

- The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:
 - The student
 - A properly designated school official for a legitimate educational purpose
 - A party with written consent from the student
 - A party seeking directory information
 - A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed

Redisclosure

- § 99.33 *What limitations apply to the redisclosure of information?*
 - When disclosing information from education records to one of the parties listed under § 99.31, an institution should inform the receiving party that the information may not be further disclosed. (See regulations for exceptions).

Conditions applying to § 99.31(a)(10)

§ 99.36 Health or safety emergency

- FERPA permits disclosures if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- Previous regulations required this provision to be “strictly construed.”
- 2009 regulations removed the strict construction requirement.
- Amended regulations permit a disclosure when a school, taking into account the totality of circumstances, determines there is an articulable and significant threat to the health or safety of the student or other individuals.
- Provides better balance of safety and privacy interests.

Directory Information

- **§ 99.37 What conditions apply to disclosing directory information?**
- **An institution may disclose directory information if it has given public notice to students in attendance of:**
 - What items the institution has designated as directory information.
 - A student’s right to refuse to let the institution designate any or all of the information as directory information.
 - The time within which a student must notify the school in writing that he or she does not want any or all of the information designated as directory information.

Directory Information, cont.

- **FERPA does not define “public notice” – left to the individual school to decide.**
- **Means of notice could include:**
 - Student handbooks or catalog
 - School or local newspaper
 - Student’s registration packet
- **School may choose to include notice regarding directory information with the annual notification required by § 99.7.**
- **Notice to former students is not necessary.**

§ 99.37(c)

- (1) provides specific notice that an opt-out from directory information does not prevent a school from identifying a student by name or from disclosing an electronic identifier or institutional email address in the classroom
- (2) student may not prevent an educational institution from requiring the student to wear or present a student ID or badge.

§ 99.37 cont.

§ 99.37(d) Limited disclosure of directory information

2012 regulations provide that an educational institution **may** specify in its annual public notice to eligible students that disclosures of directory information will be limited to specific parties, for specific purposes or both.

§ 99.37(e) Prohibition on use of SSNs to identify students when disclosing or confirming directory information

- 2009 regulations clarify that SSNs may not be used to identify a student when disclosing or confirming directory information.
- The use of an SSN to identify a student in order to disclose or confirm directory information creates an improper disclosure of the student’s SSN.

Subpart E – What are the Enforcement Provisions?

- **§§ 99.60-99.67**
 - **The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.**
 - **Students may file complaints with the U.S. Department of Education.**



AACRAO 2012 FERPA Guide
Order Here:
<http://www4.aacrao.org/publications/catalog.php>

LeRoy S. Rooker
Senior Fellow
AACRAO
One Dupont Circle, NW
Washington, DC 20036-1135
(202) 293-9161 x. 1059
ferpa@aacrao.org