A Quick Review

What is FERPA?
The Family Educational Rights and Privacy Act is a federal law that affords parents the right to have access to their children’s educational records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records.

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”).

The FERPA statute is found at 20 USC § 1232g and the FERPA regulations are found at 34 CFR Part 99.

Education records

“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.
- Records on a student receiving services under Part B of the Individuals with Disabilities Education Act (IDEA) are “education records” subject to FERPA.
- Health records on students, including immunization records, who are not eligible students are “education records” subject to FERPA.
Exceptions to “education records” include –

- Sole possession records used as a personal memory aid.
- Law enforcement unit records.
- Student employment records.
- “Treatment records”.

**Personally Identifiable Information**

“Personally Identifiable Information” (PII) includes, but is not limited to:

- The student’s name;
- Name of the student’s parent(s) 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 (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 -

- Information not generally considered harmful or an invasion of privacy if disclosed.

- Includes, but is not limited to:
  - name, address, telephone listings, electronic mail address
  - date and place of birth
  - photographs
  - participation in officially recognized activities and sports
  - field of study
  - weight and height of athletes

Directory Information (cont.)

- Includes, but is not limited to: (cont.)
  - enrollment status (full-, part-time, undergraduate, graduate)
  - degrees and awards received
  - dates of attendance
  - most recent previous school attended
  - grade level

- Cannot generally include a student’s social security number or student ID number.

Directory Information (cont.)

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

“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.

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

Primary Rights of Parents under FERPA

- Right to consent to the disclosure of information from
  education records, except as provided by law.
- Right to inspect and review education records.
- Right to seek to amend education records.

Rights of Eligible Students under FERPA

- These rights under FERPA transfer to the student when he or
  she turns 18 years of age or enters a postsecondary
  institution at any age (“eligible student”).

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 is 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 provisions in § 99.31(a).
Rights of Students (cont.)

- § 99.31(a)(8) – The disclosure is to parents of a dependent student, as defined in § 152 of the IRS Code.
- § 99.31(a)(10) - The disclosure is in connection with a health of 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.
- Or any other provisions in § 99.31(a) that might apply.

Annual notification

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

- Schools must annually notify parents of students or 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;
  - Right to file a complaint with U.S. Department of Education

Inspection and Review

- 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 are available at the local educational agency (LEA).
- SEA may forward records to LEA to afford parents access to records they are seeking.
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.

Prior Consent (cont.)

• If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed.
• Signed and dated written consent under FERPA may include a record and signature in electronic form that:
  • Identifies and authenticates a particular person as the source of the electronic consent; and
  • Indicates such person’s approval of the information contained in the electronic consent.

Disclosure Provision Exceptions

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

• The exceptions which 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 Provision Exceptions (cont.)

- In connection with financial aid, such as a college loan.
- 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 on behalf of schools.

Disclosure Provision Exceptions (cont.)

- 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.

Enforcement Provisions

What are the Enforcement Provisions? (§§ 99.60 – 99.67)

- 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 complaints with the U.S. Department of Education.
- To be a timely complaint, it must be filed within 180 days.
§99.67 How Does the Secretary Enforce Decisions?

- If an educational agency or institution does not comply within the period of time set forth by the Family Policy Compliance Office (FPCO), the Secretary can take any legally available enforcement action in accordance with FERPA, including, but not limited to, the following enforcement actions available in accordance with part E of the General Education Provisions Act –
  - Withhold further payments under any applicable program;
  - Issue a complaint to compel compliance through a cease-and-desist order; or
  - Terminate eligibility to receive funding under any applicable program.

Changes to FERPA

The Department of Education issued Final Regulations on 12/2/2011

- Stronger enforcement
- Ensuring student safety
- Promote wise investment of taxpayer funds in educational programs
- Promote effective research

Revised FERPA Regulations: An Overview

The U. S. Department of Education (the Department) has revised its regulations governing Family Educational Rights and Privacy Act (FERPA).

This presentation will highlight changes that may affect state educational agencies (SEAs) and local educational agencies (LEAs).
Revised FERPA Regulations: An Overview

Ensuring the Effectiveness of Publicly Funded Education Programs

- The Department has indicated SEAs and LEAs must have the ability to disclose student data to evaluate the effectiveness of publicly funded education programs, ranging from early childhood through adult education, to ensure that limited public resources are invested wisely.

- The Department has amended the FERPA regulations to clarify the limited circumstances where SEAs and LEAs may disclose student information to assess the effectiveness of State and Federally funded education programs; the audit and evaluation exception and the studies exception.

Revised FERPA Regulations: An Overview

Ensuring the Effectiveness of Publicly Funded Education Programs (cont.)

- Under the new regulations, the Department has stronger, more specific enforcement authority. SEAs and other entities (such as student loan guaranty agencies, student loan lenders or nonprofits) that receive Department funds and violate FERPA (regardless if they have students in attendance) are subject to Department enforcement.

Revised FERPA Regulations: An Overview

Ensuring the Safety of Students – Changes to the directory information exception

- The revised regulations permit LEAs and schools to adopt limited directory information policies that allow the disclosure of directory information to specific parties, for specific purposes, or both. It is up to individual LEAs and schools to decide whether to adopt limited directory information policies and how to implement them.

- The Department has also changed the directory information exception to make clear that parents and eligible students may not, by opting out of directory information, prevent a LEA or school from requiring a student to wear or present a student ID or badge.
Ensuring the Safety of Students – Changes to the directory information exception (cont.)

- The Department is not requiring LEAs or schools to establish policies mandating that student wear badges; these are individual decisions that LEAs and schools should make taking into account local circumstances.

Revised FERPA Regulations: An Overview

Ensuring the Safety of Students – Changes to the directory information exception (cont.)

- The Department is not requiring LEAs or schools to establish policies mandating that student wear badges; these are individual decisions that LEAs and schools should make taking into account local circumstances.

Revised FERPA Regulations: An Overview

Safeguarding Student Privacy

- Each of the Department’s initiatives emphasizes the need for all holders and users of data to understand their responsibilities under the law.
- The Department has hired a Chief Privacy Officer.
- This division will work with other Department offices to include privacy, confidentiality and data security requirements in Department policies and programs; coordinate the development and delivery of privacy training for all Department employees and contractors.

Revised FERPA Regulations: An Overview

Privacy Technical Assistance Center (PTAC)

- The Department has established a Privacy Technical Assistance Center (PTAC) which serves as a one-stop resource for the P-20 education community on privacy, confidentiality and data security. PTAC is a resource for SEAs, LEAs, the postsecondary community and other parties engaged in building and using education data systems. It is based out of the National Center for Education Statistics (NCES) and its work is overseen by the Privacy Advisory Committee.
Revised FERPA Regulations: An Overview

Stronger Enforcement

- The Department has indicated a need for stronger, more specific and clearer enforcement authority against all entities that collect, receive or maintain FERPA protected data. Every entity that receives personally identifiable information from student education records must ensure that it is used only for authorized purposes, is protected appropriately and is not redisclosed unless permitted by FERPA.

Revised FERPA Regulations: An Overview

Stronger Enforcement (cont.)

- **Authorized representative** means any entity or individual designated by a State or local educational authority or an agency headed by an official listed in §99.31(a)(3) to conduct – with respect to Federal- or State-supported education programs – any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs.

  (Authority: 20 U.S.C. 1232g(b)(1)(C), (b)(3), and (b)(5))

Revised FERPA Regulations: An Overview

Stronger Enforcement (cont.)

- The Department has expressed the need to ensure that FERPA's enforcement remedies apply directly to SEAs in the definition of an educational agency or institution for purposes of enforcement.

- The regulations expand the types of entities that are subject to the enforcement provisions to include SEAs, LEAs, Postsecondary agencies, and any other entity that is the recipient of Department funds.
Revised FERPA Regulations: An Overview

Stronger Enforcement (cont.)

In response to many comments about how to ensure the integrity of personally identifiable information, the Department has indicated that a written agreement requirement that would be applicable to State or local educational authorities permitting them to redisclose personally identifiable information from the student’s education records to organizations under the studies exception; and

A similar written agreement requirement to State and local educational authorities designating an authorized representative, other than an employee, under the audit or evaluation exception.

Revised FERPA Regulations: An Overview

Stronger Enforcement (cont.)

Several comments requested guidance to formulate requirements for State or local educational authorities to develop reasonable measures in these written agreements to ensure that their authorized representative appropriately use, protect and destroy the personally identifiable information.

Issues to be addressed with disclosure to authorized representatives include redisclosure recordkeeping requirements and requirements to return or destroy data that are applicable to organizations to which personally identifiable information from education records is disclosed to evaluate or audit education programs.

Revised FERPA Regulations: An Overview

Ensuring the Safety of Students

FERPA defines “directory information” as information contained in an education record of a student that would generally not be considered harmful or an invasion of privacy if disclosed.

The decision of who should be made an authorized representative and what information is necessary to disclose should only be made after thorough deliberation. The written agreement between the parties must designate the individual or entity as an authorized representative.
Ensuring the Safety of Students (cont.)

The written agreement must specify the information to be disclosed and that the purpose for which the information is disclosed to the authorized representative who is to carry out an audit or evaluation of Federal or State supported education programs, or to enforce or comply with Federal legal requirements that relate to those programs.

Revised FERPA Regulations: An Overview

Ensuring the Safety of Students (cont.)

The written agreement must require the authorized representative to destroy or return to the State or local education authority or agency headed by an official listed in §99.31(a)(3), personally identifiable information from education records when the information is no longer needed for the purpose specified and identify the time period in which the information must be returned or destroyed.

Revised FERPA Regulations: An Overview

Ensuring the Safety of Students (cont.)

The written agreement must establish policies and procedures consistent with FERPA and other Federal and State confidentiality and privacy provisions to protect personally identifiable information from education records from further disclosure (except back to the disclosing entity) and unauthorized use, including limiting use of personally identifiable information to only authorized representatives with legitimate interests.
Ensuring the Safety of Students (cont.)

Many comments requested specific guidance as to the definition of reasonable methods to ensure security of personally identifiable information in data transfers. The regulation emphasizes that the State or local educational authority or an agency headed by an official listed in §99.31(a)(3) is responsible for using reasonable methods to ensure that any entity designated as its authorized representative complies with FERPA.

Ensuring the Effectiveness of Publically Funded Education Programs

States need accurate information to make administrative decisions about where resources are needed most and which investments are having the most impact. SEAs must have the ability to enter into agreements with researchers to conduct studies that can be used to improve instruction across districts within their own State.

The agreements:
1. Must specify the purpose, scope, and duration of the study or studies and the information to be disclosed;

The agreements: (cont.)
2. Require the organization to use personally identifiable information from education records only to meet the purpose or purposes of the study stated in the written agreement;
3. Require the organization to conduct the study in a manner that does not permit personal identification of parents and students by anyone other than representatives of the organization with legitimate interests; and
Ensuring the Effectiveness of Publicly Funded Education Programs (cont.)

The agreements: (cont.)

4. Require the organization to destroy or return all personally identifiable information when the information is no longer needed for the purposes for which the study was conducted and specifies the time period in which the information must be returned or destroyed.

Revised FERPA Regulations: An Overview

Enforcing Decisions

§99.67 How Does the Secretary Enforce Decisions?

(a) If an educational agency or institution or other recipient of Department funds under any program administered by the Secretary does not comply during the period of time set under §99.66(c), the Secretary may take any legally available enforcement action in accordance with the Act, including, but not limited to, the following enforcement actions available in accordance with part D of the General Education Provisions Act –

Revised FERPA Regulations: An Overview

Enforcing Decisions (cont.)

(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease and desist order; or

(3) Terminate eligibility to receive funding under any applicable program.
Enforcing Decisions (cont.)

(c) If the Office (Department) finds that a third party, outside the educational agency or institution violates §99.31(a)(6)(ii)(B), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation of §99.31(a)(6)(ii)(B) access to personally identifiable information from education records for at least five years.

Revised FERPA Regulations: An Overview

Enforcing Decisions (cont.)

(d) If the Office finds that a State or local educational authority, a Federal agency headed by an official listed in §99.31(a)(3), or an authorized representative of a State or local educational authority or a Federal agency headed by an official listed in §99.31(a)(3), improperly rediscloses personally identifiable information from education records, then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the improper redisclosure access to personally identifiable information from education records for at least five years.

Revised FERPA Regulations: An Overview

Enforcing Decisions (cont.)

(e) If the Office finds that a third party, outside the educational agency or institution improperly rediscloses personally identifiable information from education records in violation of §99.33 or fails to provide the notification required under §99.33(b)(2), then the educational agency or institution from which the personally identifiable information originated may not allow the third party found to be responsible for the violation access to personally identifiable information from education records for at least five years.
Revised FERPA Regulations: An Overview

The changes to FERPA as indicated earlier have the focus to make research information more available to measure the effectiveness of government financed education programs. Many critics of the new regulations fear that longstanding student data protection has been undermined. The response of the Department has been that the rules will strengthen its enforcement powers and hold those who use student information accountable.

Thank You for Your Participation.

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