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,” 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).
“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.

“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 or student number, or biometric record;
- Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;

“Personally identifiable information” includes, but is not limited to:
- 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” 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

Directory information cannot include social security numbers.

“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

“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.

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.

- 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

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.

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

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, except when:
    - The disclosure is to the eligible student
    - The receiving party discloses information on behalf of the educational agency or institution under § 99.31
    - The information disclosed is 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.

Redisclosure, cont.

- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the institution and student
- The disclosure is to the parents of a dependent student
- The disclosure is the 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
- The disclosure, as described in § 99.31(a)(16), concerns a registered sex offender

Directory Information

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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.

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.

Resources for school officials:

Family Policy Compliance Office U.S. Department of Education
(202) 260-3887
Informal requests for technical assistance:
ferpa@ed.gov
ferpa@aacrao.org
Websites:
http://www.aacrao.org