Family Educational Rights and Privacy Act (FERPA)

FERPA 101 Presentation
Hawaii Postsecondary

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Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g

Regulations: 34 CFR Part 99
What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law.

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”).
Q: If my son (age 17) graduates early and moves on to a postsecondary institution, then he controls the rights to his records, correct?

A: Correct. However, the great majority of parents of 17 year olds want to remain a part of their academic lives – so FERPA does permit schools to disclose education records to parents of eligible students under several exceptions to the general consent rule. The main exception that typically applies permits schools to disclose a student’s education records to parents if that student is a dependent for IRS tax purposes. This is the case whether your son wants the school to disclose the information to you, her parent, or not.
“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.
Exceptions to “education records” include –

- sole possession records used as a personal memory aid;
- law enforcement unit records;
- student employment records; and
- “treatment records.”
“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; and
- other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden 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.


**Directory Information**

“Directory information” is –

- Personally identifiable information that is 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; and
  - grade level.
“Directory information” cannot generally include a student’s social security number or student ID number.

“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.
A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A reporter from the local newspaper calls the school/college and informs the school/college that he is writing an article about the success of Hispanic students. The reporter asks the school/college for the name and contact information for all the Hispanic students who made the honor roll/dean’s list for the current school year. Are the names and contact information for all the Hispanic students who made the honor roll for the current school year “directory information”?

NO
Rights of Parents

§ 99.4 What are the rights of parents, custodial or 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.
§ 99.5 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 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 the conditions in § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a).
§ 99.7 What must an educational agency or institution include in its annual notification?

Schools must annually notify parents of students and 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; and
- right to file a complaint with U.S. Department of Education.
The annual notification must also include the following:

- procedure to inspect and review education records; and

- 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.
Disclosure to Police Officer

- 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?

TECHNICALLY, NO
Law Enforcement Unit Maintaining Records (PS)

- A student is expelled from a university and barred from campus. A copy of his disciplinary record is sent to the university’s law enforcement unit so that campus police 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?

NO
A student is disciplined for a conduct that posed a significant risk to the safety or well-being of other students. He leaves the school and enters another institution without requesting a transfer. The new schools finds out that he attended the first school and calls for information. Can the old school tell the new school about the disciplinary action?

YES
The college’s disability office wants to share information on a student about his or her condition with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

FERPA
§ 99.10 What rights exist for an 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.
§ 99.11 May an educational agency or institution charge a fee for copies of education records?

- Yes – unless imposing a fee effectively prevents a parent or eligible student from exercising his or her right to inspect and review education records.

§ 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 parent or eligible student may inspect, review, or be informed of only the specific information about his or her child’s records.
What are the Procedures for Amending Education Records?

§ 99. 20, § 99.21, § 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.
Question: Are grade amendments required by FERPA?

A: No. A school is not required by FERPA to afford a student or parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student.

FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices. It was not intended to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations.
Disclosure Provisions

§ 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). § 99.31(a)(1)

  School officials with legitimate educational interests can include a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions, provided the outside party –

  - performs an institutional service or function for which the agency or institution would otherwise use employees;
Disclosure Provisions (cont.)

- is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records; and,
- an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests (physical or technological access controls or administrative policy for controlling access).

- To schools in which a student seeks or intends to enroll. § 99.31(a)(2)
Disclosure Provisions (cont.)

- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs.

- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
  - determine eligibility for the aid;
  - determine the amount of the aid;
  - determine the conditions of the aid; or
  - enforce the terms and conditions of the aid.
Disclosure Provisions (cont.)

- To a victim of an alleged perpetrator of a crime of violence or non-forcible sex offense. (Only the final results of the disciplinary proceeding, regardless of whether the postsecondary institution concluded that a violation was committed.)

- To anyone if the disclosure is in connection with a disciplinary proceeding at a postsecondary institution if it determines that the student is an alleged perpetrator of a crime of violence or non-forcible sex offense and with respect to the allegation against him or her the student has committed a violation of the institution’s rules or policies.
Disclosure Provisions (cont.)

- To organizations conducting studies on behalf of schools.
- 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.
Recordkeeping

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

- 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 personally identifiable information from the student’s education records without consent under § 99.33.
§ 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.
§ 99.36 What conditions apply to disclosure of information in health or safety emergencies?

- 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.

- See “Addressing Emergencies on Campus”; “FERPA and Disclosures Related to Emergencies and Disasters”; “FERPA and H1N1”; and “Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools.”
Health or Safety Emergencies

- If school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

- Must record the following information when it discloses personally identifiable information from education record under the health or safety emergency exception:
  - the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
  - the parties to whom the agency or institution disclosed the information.
§ 99.37 What conditions apply to disclosing directory information?

- School may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance concerning “directory information.” See § 99.37 for requirements concerning your public notice.

- Student ID Badge – Parent or eligible student 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 that exhibits information that has been properly designated by the school as directory information in the public notice under § 99.37.

- Limited Directory Information Policy – School may now adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, for both. Must specify this limited policy in the public notice to parents and eligible students and must limit directory information disclosures to those specified in the public notice.
Applicants vs. Matriculated Students

- Quiz: Under FERPA, “education records” means those records that are:

1. Directly related to a student and RECEIVED by the University
2. Directly related to a student and MAINTAINED by the University
3. ANY personally identifiable information received by the University
4. Transcripts received by the University which contain only limited PII
Applicants vs. Matriculated Students

Quiz: Under FERPA, “education records” means those records that are:

1. Directly related to a student and RECEIVED by and educational agency or institution
2. Directly related to a student and MAINTAINED by an educational agency or institution
3. Personally identifiable information received by an educational institution
4. Transcripts received by an institution which contain only limited PII
When is a student considered “in attendance” under FERPA?

- Neither the statute nor the regulations offer guidance which provide further clarification as to when a student is considered “in attendance” for the purposes of FERPA.

- Institutions should determine this based on “reasonable basis of fact”

- Applications of individuals who are not attending an institution are generally not “education records” because the individuals are not “students” at the institutions.

- However: State law may govern the confidentiality of that information provided by applicants!
Applicant materials aren’t *necessarily* part of FERPA protected records because they are not necessarily part of a student record.
When does an applicant become a student?

A. When an institution receives an application containing transcripts and personally identifiable information.

B. When an institution accepts the application and begins the enrollment process

C. When an institution maintains records or personally identifiable information regardless of if the student has been in attendance

D. When an institution maintains records or personally identifiable information and the student has been in attendance.
When does an applicant become a student?

A. When an institution receives an application containing transcripts and personally identifiable information.

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C. When an institution maintains records or personally identifiable information regardless of if the student has been in attendance.

D. When an institution maintains records or personally identifiable information and the student has been in attendance.
Sensitive Documents

- Name, DOB, and SSN and PII are all part of a student’s education record, however remember that if this is only APPLICANT materials it is generally not subject to FERPA protections. (unless some of the application materials came from other schools that the student attended.)

  Other federal, state, or local law may protect these records though!
Student Definition in Statute:
20 U.S.C. § 1232g

“includes any person with respect to who an educational agency or institution maintains education records or personally identifiable information, but does not include a person who as not been in attendance at such agency or institution”
Student Definition in Statute:

34 CFR § 99.3

“student, except as otherwise specifically provided in this part, means any individual who as been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.”
Dual Enrolled Students

- True or False?
  - FERPA prohibits the sharing of information between the two institutions a dually enrolled student attends.

False: FERPA not only permits the sharing of information between the institutions, but also allows postsecondary institutions to share information to PARENTS of high school students who are dependents for Federal income tax purposes.
Dual Enrolled Students

- True or False?
  - FERPA requires consent of the parent or student to share/disclose the information as previously mentioned.

- False: Two schools may share education records without the consent of either the parents or the student under § 99.34. AND: If the student is under 18, the parents still retain the right under FERPA to inspect and review ANY education records maintained by the high school INCLUDING records that the college or university disclosed to the high school.
Student retains the rights to the education record under FERPA, however the school is authorized to provide student records to an individual who has power of attorney for the student, because POA is considered consent of the student.
University Obtaining Transcripts

- A student applies to a four-year institution. The university attempts to obtain an official transcript from the student’s high school or community college, as the case may be. The applicant’s previous school refuses to disclose an official transcript because the student owes money. Does the previous high school/community college have to disclose the student’s transcripts or other education records to the new institution?

NO
Guidance Documents & FERPA Regulations

- Addressing Emergencies on Campus

- Joint FERPA-HIPAA Guidance

- FERPA & Disclosures Related to Emergencies & Disasters

- Balancing Student Privacy & School Safety


- New Amendments to FERPA Regulations (Effective 1/3/12)

- New Model Notifications