



FY 2010 Special Education Leadership Overview of FERPA

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What Is FERPA?

- The Family Educational Rights and Privacy Act (FERPA) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.



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FERPA in a Nutshell

- Gives parents the right to access and amend their children's education records
- Allows parents to control the disclosure of their children's education records
- Generally prevents an education agency or institution from disclosing education records of students, or personally identifiable information contained in these records, without the written consent of the parents

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Important Terms: Education Records

- These 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.

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Important Terms: Education Records

- All records, files, documents, and other materials that contain information directly related to an individual student
- Those materials maintained by the education agency or institution or its representative
- Includes, but not limited to, handwriting, video or audio tape, and data or image in other electronic formats
- Health records maintained by an education agency or institution would generally be considered education records, and subject to FERPA

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What is an Educational Record?

- The final regulations add other situations in which students “attend” classes but are not physically present, including attendance by videoconference, satellite, Internet, or other electronic information, and telecommunications technologies.
- This change will ensure that individuals who receive instruction through distance learning and other contemporary modalities are covered as “students” and, therefore, that their records are protected under FERPA.

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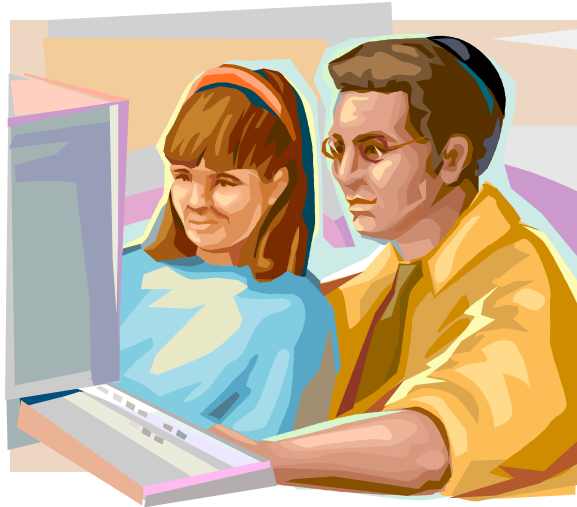
Important Terms: Parent or Eligible Student

- Parents or eligible students are afforded the right under FERPA
- “*Parent*” means natural or adoptive parent, legal guardian, or individual acting as a parent or guardian in absence of him or her
- “*Eligible Student*” means students:
 - Age 18 or above
 - Attending a postsecondary institution at any age

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Access to Records of Eligible Students

- Parents may still have access without student consent if student is a dependent for Federal income tax purposes



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What is Directory Information?

- The portion of the education record that if disclosed would not be considered harmful or an invasion of privacy.
- This may include the student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance, email address, enrollment status.



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What is Directory Information?

- School districts and postsecondary institutions may disclose directory information without consent if they have given the parent or eligible student notice of the kinds of information they designate as directory information and an opportunity to opt out of directory information disclosures.



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What is Directory Information?

- Parents may refuse to allow the school to designate any, or all, of their child's record as directory information.
- Manner of notification determined by school or LEA



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What is Directory Information?

- Public notice can be given several ways:
 - Registration packet sent home to parent
 - In the newspaper
 - School handbook
 - School System website
- FERPA requires the notice to specify how much time parents have to tell the school or school system what, if any, directory information they do not wish released.

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What is Directory Information?

- The disclosure of directory information is permissive under FERPA however, schools are not required to designate and disclose any information as directory information.



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What is Directory Information?

- Regulations clarify that once a parent or eligible student opts out of directory information disclosures, the education agency or institution must continue to honor that election after the student is no longer in attendance.



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Annual Notification

- FERPA regulations require that local education agencies give annual notification to parents and eligible students of their rights under FERPA.

http://www.gadoe.org/pea_infosys_data.aspx?PageReq=FERPAResources

- Eligible Students are students who have reached the age of 18 or are attending a postsecondary institution.

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Annual Notification

- FERPA does not require agencies to notify parents and eligible student individually.
- Agencies must provide notification where parents and eligible students are most likely to see it.
- Education institutions must make provisions to effectively inform individual with a disability or whose primary language is not English.

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Parental Rights and Notification

- Annual notification process must ensure that parents understand their rights under FERPA, including the right to file a complaint concerning a school district's failure to comply
- The right of parents to access information is limited to their own child
- Either parent has equal rights unless there is evidence of a court order or state law revoking or restricting that right

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Disclosure of Student Information – Exceptions to Parent Consent

There are exceptions to the parent consent requirement:

1. School officials with a legitimate educational interest (*defined in FERPA regulations*)
2. Other schools into which a student is transferring or enrolling
3. Specified officials for audit or evaluation
4. Appropriate parties in connection with financial aid to a student (typically applies to postsecondary institutions)

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Disclosure of Student Information – Exceptions to Parent Consent

5. Organizations conducting certain studies for or on behalf of the school
6. Accrediting organizations
7. Compliance with judicial order or lawfully issued subpoena
8. Appropriate officials in cases of health and safety emergencies
9. State and local authorities, within a juvenile justice system, pursuant to state law

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School Official

- The final regulations expand the “school officials” exception to include contractors, consultants, volunteers, and other outside service providers used by a school district or postsecondary institution to perform institutional services and functions. A contractor (or other outside service provider) that is given access to education records under this provision must be under the direct control of the disclosing institution and subject to the same conditions on use and redisclosure of education records that govern other school officials (see § 99.33). In

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Direct Control

- This means control of the outside service provider's maintenance and use of information from education records and is not intended to affect the outside party's status as an independent contractor or render that party an employee.
- i.e. "Memorandum of Understanding"

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School Officials

- The final regulations require school districts and postsecondary institutions to use “reasonable methods” to ensure that teachers and other school officials (including outside service providers) obtain access to only those education records -- paper or electronic -- in which they have legitimate educational interests.

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School Officials

- If a parent or eligible student alleges that a school official obtained access to the student's records without a legitimate educational interest, the burden is on the district or institution to show that the school official had a legitimate educational interest in the information.

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Disclosures

- School Officials
 - Law enforcement unit who are employed by the agency or institution qualify as school officials. As school officials they may be given access to personally identifiable information from those students education records in which the school has determined they have legitimate educational interest.

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School Officials

- Police officers or other non-employees to whom the school has outsourced its safety and security functions do not qualify as school officials under FERPA unless they meet each of the requirements of 99.31(a)(1)(i)(B).
- They should receive no access to students' education records without consent, unless there is a health or safety emergency, a lawfully issued subpoena or court order.

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For More Information

- ❖ FPCO website:

<http://www.ed.gov/policy/gen/fpc/index.html>

FERPA documents, sample notifications (annual notice and that regarding military recruiting), “hot topics,” court cases, and training information

- ❖ National Forum on Education Statistics

http://nces.ed.gov/forum/FERPA_links.asp

Resources, guidelines, weblinks, and best practice data management recommendations

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Questions & Answers

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