

NACRAO Registrar's Workshop

June 22, 2010
Grand Island, NE

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

§ 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.

- "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.

- “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;*

Definitions, cont.

- “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.*

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
- Directory information cannot include social security numbers. (See Sec. 99.37(d))

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

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

Authorized Disclosures Without Prior Written Consent

§ 99.31(a)(1)(i)(A) “Other school officials”

- FERPA permits disclosure of education records to school officials within the agency or institution if the official has been determined to have a legitimate educational interest in the records.
- Previous regulations did not directly address disclosure of education records to contractors, consultants, volunteers, and other outside parties providing services and functions or otherwise acting for an agency or institution.

Authorized Disclosures Without Prior Written Consent, cont.

- Amended 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 previously did not 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.
- Amended 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)

- 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.

99.31(a)(2)

99.31(a)(2) Disclosure to a school where student seeks or intends to enroll

- Regulations permit a school to disclose education records to another school where the student seeks or intends to enroll.
- Previous regulations did not address whether a school is permitted to disclose education records after a student has actually enrolled in another school.
- Amended 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.

§ 99.31(a)(6)

§ 99.31(a)(6) Organizations conducting studies

- FERPA states that a school may disclose education records to organizations conducting studies “for, or on behalf of” the disclosing school but does not explain what that means.
- Amended regulations clarify that a school does not have to initiate the research request or agree with or endorse the conclusions or results of the study. The school must agree with the purposes of the study and retain control over the information from the education records it discloses.

§ 99.31(a)(6)

- The school must have a written agreement with the receiving organization that:
 - Specifies the purpose, scope and duration of the study or studies and the information to be disclosed;
 - Requires the organization to use the information from education records only to meet the purpose or purposes of the study stated in the agreement;
 - Requires 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;
 - Requires organization to destroy or return all personally identifiable information when no longer needed for purposes of the study; and
 - Specifies the time period in which the information must be returned or destroyed.

§ 99.31(b)

§ 99.31(b) De-identification of information

- FERPA permits release of information without consent from education records if all personally identifiable information has been removed.
- Amended regulations provide objective standards to inform schools when information releases may be considered to be de-identified.
- These standards apply to individual, redacted records, and statistical information from education records in both student level and aggregate form.
- Amended regulations clarify the permitted use of de-identified data releases for research purposes.
 - Implement objective standards schools can use to determine when information from education records can be released as de-identified data.

§ 99.31(c)

§ 99.31(c) Identification and authentication of identity.

- Previous regulations did not address how a school must ensure that it has identified a party to whom it discloses education records.
- Amended regulations require a school 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.
- Amended 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.

§ 99.36

§ 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 require this provision to be "strictly construed."
- Amended 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.

(recordation requirements in § 99.32 apply)

Resources for school officials:

Family Policy Compliance Office U.S. Department of Education

(202) 260-3887

Informal requests for technical assistance:

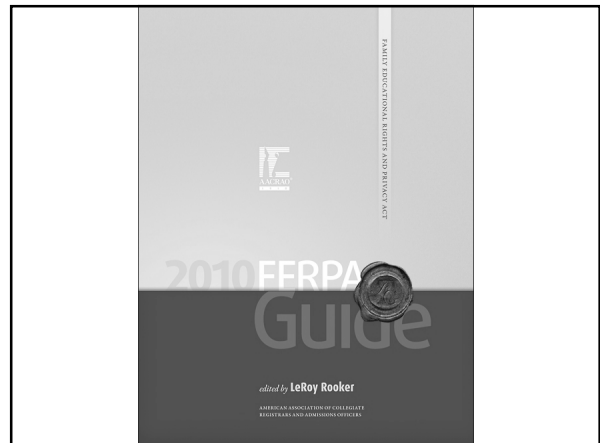
ferpa@ed.gov

ferpa@aacrao.org

Websites:

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

<http://www.aacrao.org>



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