# Table of Contents

**Preface** .............................................................................................................. i  
**Acknowledgements** ....................................................................................... v  
**FERPA at-a-Glance** ......................................................................................... vii  

## Chapter One

### Introduction

- Historical Background ......................................................................................... 1  
- 2009 Amendments .................................................................................................. 3  
- 2012 Amendments .................................................................................................. 4  
- Essence of The Act .................................................................................................. 5  
- To Whose Records Does The Act Apply? .................... .............................. 5  
- To What Records Does The Act Apply? ................................................................ 5  
- To Which Institutions Does The Act Apply? ....................................................... 6  
- Enforcement and Penalties ................................................................................... 6  
- Conflict with State Law ......................................................................................... 6  
- The “Musts” and “Mays” in FERPA .................................................................... 6  

## Chapter Two

### Definition of Terms ......................................................................................... 7  

## Chapter Three

### Compliance: Requirements, Procedures, and Strategies .......................... 13  
- Notice to Students of Their Privacy Rights ......................................................... 13  
- Notification to Students of the Institution’s Directory Information; Student’s Right to Non-Disclosure ......................................................................................... 14  
- Students’ Access to Their Education Records ................................................... 14  
- Limitations on the Students’ Rights to Inspect Their Education Records ........ 15  
- Students’ Waiver of Right to Review Confidential Letters of Recommendation .......................................................................................... 15  
- Retention and Destruction of Education Records .............................................. 16  
- Disclosure of Education Record Information ................................................. 16  
  - With Written Consent .......................................................................................... 16  
  - Exceptions to Written Consent Requirement .................................................... 16  
  - Release of Personally Identifiable Information ............................................. 17  
  - Release of Directory Information ..................................................................... 17  
  - Release of Non-Directory Information ............................................................. 17  

## Chapter Four

### FERPA Issues: Analysis & Application ........................................................ 21  
- Disclosure to Parents ............................................................................................ 18  
- Challenging the Contents of Education Records ................................................ 18  
  - A FERPA Hearing Request: Policy and Procedures ........................................... 19  
  - Right to Challenge Information in Records ..................................................... 19  
  - Hearings to Challenge Records ......................................................................... 19  
  - Records of Requests and Disclosures ............................................................... 19  
  - Conflict with State or Local Laws ....................................................................... 20  

### Analysis & Application

- FERPA Issues: ....................................................................................................... 21  
  - Academic Standing ............................................................................................. 21  
  - Access to Education Records ........................................................................... 21  
    - Student ........................................................................................................... 21  
    - Third Party ..................................................................................................... 21  
    - School Officials ............................................................................................... 21  
    - Legitimate Educational Interest ...................................................................... 21  
  - Admissions Files .................................................................................................. 22  
  - Admitted vs. Enrolled/In Attendance Students ............................................... 22  
  - Agents/Contractors ............................................................................................ 22  
  - Alumni Records .................................................................................................. 22  
  - Annual Notification and FERPA Policy ............................................................. 22  
  - Athletes (Student-Athletes) ............................................................................. 23  
  - Campus Security/Police Records ...................................................................... 23  
  - Challenging Student Records ........................................................................... 23  
  - Charging a Fee for Copying/Search/Retrieval ................................................ 23  
  - Computer Access to Records ........................................................................... 24  
  - Conducting Studies ........................................................................................... 24  
  - Contractors/Agents ............................................................................................ 24  
  - Deceased Students ............................................................................................. 24  
  - Destruction and Retention of Records ............................................................. 25  
  - Directory Information ......................................................................................... 25  

AACRAO 2012 FERPA GUIDE
Notifying the Student........................................... 50
Complying with the Subpoena................................... 50

Chapter Five

Training Materials................................................. 51
Frequently Asked Questions.................................... 51
Key Terms/Concepts in FERPA................................. 52
  How Do You Determine
  What is an Education Record?................................. 52
  What Does FERPA Say About Parents?.................... 52
Written Authorization by Student to
  Share Grades with Parents.................................... 53
The Student’s Rights of Non-Disclosure
  Under FERPA.................................................. 53
FERPA-Related College/Registrar Websites............... 53
  A FERPA Brochure........................................... 54
  FERPA Basics for Faculty/Instructional Staff ............ 57
  FERPA Basics for Staff...................................... 59
  A FERPA Workshop/Presentation.......................... 62
An Abbreviated
  FERPA Workshop Presentation............................. 73
FERPA Case Studies with Answers............................ 76
True/False Quiz.................................................. 86
  A FERPA Final Exam.......................................... 87
  A FERPA Audit............................................... 97
True/False Quiz Answer Key.................................... 101
  FERPA Final Exam Answer Key............................. 102

Chapter Six

Sample Forms..................................................... 105
  Sample Form 1: Permission to Release
    Education Record Information—Version A.............. 107
  Sample Form 2: Permission to Release
    Education Record Information—Version B .............. 108
  Sample Form 3: Permission to Release
    Education Record Information—Version C.............. 109
  Sample Form 4: Authorization of
    Grade Disclosure........................................... 110
  Sample Form 5: Consent to
    Send Grades to Parents.................................... 111
  Sample Form 6: Authorization to Disclose
    Education Records to Parents/Opt Out of
    Directory Information...................................... 112
  Sample Form 7: Consent to Return Graded
    Assignments in a Public Manner.......................... 113
  Sample Form 8: Request to Opt Out of
    Directory Information—Version A........................ 114
  Sample Form 9: Request to Opt Out of
    Directory Information—Version B....................... 115
  Sample Form 10: Request to Opt Out of
    Directory Information—Version C...................... 116
  Sample Form 11: Request for Revocation of
    Non-Disclosure of Directory Information.............. 117
  Sample Form 12: Request to
    Review Education Records................................ 118
  Sample Form 13: Request to
    Inspect and Review Education Records.................. 119
  Sample Form 14: Request to
    Amend or Remove Education Records.................... 120
  Sample Form 15: Request for
    Formal Hearing to Amend or
    Remove Education Records—Version A.................. 121
  Sample Form 16: Request for Formal
    Hearing to Amend or
    Remove Education Records—Version B.................. 122
  Sample Form 17: Code of Responsibility for
    Security and Confidentiality of Data..................... 123
  Sample Form 18: Student Worker—
    Statement of FERPA Understanding...................... 124
  Sample Form 19: Request for
    Computer Access to Student Records in the
    Student Information System (SIS)......................... 125
  Sample Form 20: Agreement for Accessing
    Private Electronic Student Data by Staff ................ 126
  Sample Form 21: Staff Login Notice for
    Accessing Private Electronic Student Data............ 127
  Sample Form 22: Request to Change SSN
    to Another Personal Identifier........................... 128
  Sample Form 23: Notice of Intent to
    Comply with a Subpoena................................ 129
  Sample Form 24: Agent/Contractor Agreement.......... 130
  Sample Form 25: Authorization to Release
    Grades/Transcripts for Dual-Enrolled Students....... 131
  Sample Form 26: Notification of Student Privacy
    Rights under FERPA (Email Version).................... 132
  Sample Form 27: Transcript Notice of FERPA
    Redisclosure Limitation.................................. 133
  Sample Form 28: Student Dependent Status/
    Consent to Disclosure to Parents....................... 134
  Sample Form 29: Student Dependent Status............. 135
  Sample Form 30: Student-Athlete’s
    Authorization to Disclose Information
    in Education Records Pursuant to FERPA.............. 136
  Sample Form 31: NCAA
    Student-Athlete Statement................................ 137

AACRAO 2012 FERPA GUIDE
# Appendices

**Appendix A**  
The Family Educational Rights and Privacy Act of 1974 as Amended ............................... 141

**Appendix B**  
Family Educational Rights and Privacy Act Regulations ............................. 151

**Appendix C**  
FERPA Section-by-Section Analysis ................................................................. 173  
2009 Amendments .......................................................................................... 173  
2012 Amendments ......................................................................................... 184

**Appendix D**  
Model Notification of Rights under FERPA for Postsecondary Institutions ...................... 187

**Appendix E**  
FPCO Letters .................................................................................................. 191

**Appendix F**  
Addressing Emergencies on Campus .............................................................. 325

**Appendix G**  
FPCO Guidance Brochures ............................................................................. 333  
Balancing Student Privacy and School Safety:  
A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities ... 333  
Parents Guide to the Family Educational Rights and Privacy Act: Rights Regarding  
Children's Education Records ....................................................................... 335

**Appendix H**  
Definition of Dependent .................................................................................. 337  
Internal Revenue Code of 1954, Section 152 .................................................. 337  
Tax Reform Act of 1976 .................................................................................. 339

**Appendix I**  
HIPAA/FERPA Guidance .................................................................................. 341  
Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA)  
To Student Health Records ............................................................................ 341  
Don’t Tie Yourself in FERPA/HIPAA Knots ..................................................... 350

**Appendix J**  
Electronic Signature Regulations ...................................................................... 353  
Federal Guidelines for Accepting “Signed and Dated Written Consent” in Electronic Format .......................................................... 353  
U.S. Department of Education Standards for Electronic Signatures in Electronic Student Loan Transactions .................................................. 358

**Appendix K**  
Solomon Amendment Regulations ................................................................. 365

**Appendix L**  
Anti-Terrorism Related Amendments & SEVIS Guidance ................................... 371  
FPCO “Dear Colleague” Letter on the USA Patriot Act ..................................... 371  
FPCO Letter to AACRAO on SEVIS ................................................................. 375  
ICE Sample Information Request Form for Foreign Students ............................ 378

**Appendix M**  
State Laws Relating to FERPA ......................................................................... 379  
State Security Breach Notification Laws ......................................................... 379  
The 2009 Florida Statute .................................................................................. 380  
The 2008 Virginia Law ...................................................................................... 381

**Appendix N**  
Model University-Vendor Contracts ............................................................... 383  
FERPA Guidance for Reasonable Methods and Written Agreements .................. 383  
CSG-NACUA Shared Services Working Group Model Contract ........................ 389  
Google - University of Washington Contract .................................................. 396

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**Bibliography** ............................................................................................................. 407

**Index** .......................................................................................................................... 409
Preface

The primary purpose of this AACRAO publication is to provide guidance and suggested implementation procedures for complying with the Family Educational Rights and Privacy Act of 1974, as Amended (subsequently referred to as “The Act” or FERPA). The publication has been updated to include the new changes to the FERPA Regulations which became effective in January 2012. Unlike the 2009 changes, which were the first extensive modification since 1988, the 2012 amendments were not extensive, but still very significant. They were made to encourage record sharing in an effort to enhance educational accountability. As a result, State Educational Authorities and State Educational Agencies (SEAs) are able to use education records, including those provided by postsecondary institutions, in connection with research designed to evaluate outcomes of, or in efforts to improve, education programs. The publication is intended to 1) assist school officials in understanding their roles and responsibilities for implementing The Act, 2) provide guidance in how to respond to many of the FERPA questions that arise on a daily basis, and 3) provide many practical training tips that can be used on a daily basis in training other institutional employees on FERPA.

A Preliminary Caution

As with most publications dealing with legal issues, federal legislation, interpretations and new regulations can amplify and change what is included in this publication. For example, the tragedy at Virginia Tech brought to light the need for clarification of FERPA’s “health and safety” exception, as well as the need to provide guidance on the interplay between FERPA and HIPAA. Similarly, the increased use of technology, including for creating fraudulent documents, has led to changes in the FERPA definition of a “disclosure.” Such issues have impacted and will continue to affect the need for clarification and/or modification of the law. As such, these guidelines are, by definition, interpretive. They are not to be construed as law and are intended for use along with The Act and its published regulations. While consulting this document, the reader should be aware of any applicable privacy or public information laws of your state, which may be at variance with FERPA (see “Conflict with State Law” on page 6).

FERPA applies to all levels of education in the United States, but there are significant differences in how the law applies to postsecondary institutions as compared to K–12 schools. This publication applies to postsecondary education only.

History and Contents of This Publication

The Family Educational Rights and Privacy Act (FERPA) was enacted by the United States Congress in 1974. In response, the AACRAO Guide to Postsecondary

In this original edition, AACRAO was assisted by representatives of the following associations in developing a comprehensive and concise set of recommended institutional guidelines and procedures for postsecondary institutions implementing this law: the American Council on Education, the National Association of College and University Attorneys, The College Board, and Educational Testing Service.

In 1984, the 1984 AACRAO FERPA Guide was published, and it contained, for the first time, the format and content that is found in subsequent editions.

In 1988, new FERPA regulations brought about significant changes, of which the most prominent was the identification of two types of parental statuses: custodial and non-custodial. These new regulations outlined the role and rights of both types of parents under FERPA. The AACRAO Board of Directors responded to this change by appointing a committee to revise the 1984 Guide. This committee surveyed a randomly selected group of 500 AACRAO member institutions to assess current knowledge, procedures, and attitudes regarding FERPA. Their responses enabled the committee to identify key areas and topics that needed to be discussed and included in the next FERPA publication. This publication became the 1995 edition of The Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended. The 1995 Guide followed the outline of the 1984 publication, expanded the appendices and added a bibliography.

The 1998 edition followed the same format. It also provided updated information on events, policies, rulings, and legislation that had affected FERPA since the 1995 publication of the Guide. Following this publication, significant changes occurred with the issuance of the 2000 FERPA regulations, including: disclosure of records information when the student has been found in violation of substance abuse policies; disclosure of results from disciplinary hearings; and clarifying conditions under which an institution may disclose records in defending itself. In response, the AACRAO Executive Board appointed a committee of records administrators who had direct responsibility for administering FERPA on their campuses, and who also had extensive experience with FERPA, to develop the 2001 FERPA Guide. It addressed the 2000 FERPA regulations and followed the same general format of previous Guides, while adding a new Chapter 6 which included training materials that practitioners could use on their campuses for training others about their responsibilities under FERPA.

By 2006 numerous social, political, and technological factors were influencing the implementation of The Act. The 2006 Guide discussed these and incorporated the changes made to the FERPA regulations since 2001. In addition, a few of the topics and issues contained in the 2006 edition included: e-signatures as they apply to FERPA; dual enrolled students; U.S. Supreme Court cases: Falvo and Gonzaga; Miami/OSU federal court case; the Solomon Amendment; the Patriot Act; SEVIS; Graham-Leach-Bliley; and the Digital Millennium Copyright Act. A new enhancement in the 2006 Guide was the inclusion of a CD-ROM containing a digital version of FERPA training materials and forms.

The 2010 Guide provided updates based on the FERPA regulations that were published in December 2008 and became effective in January 2009, in particular the clarifications and expansion of exceptions made for disclosure without consent. While the scope of each chapter remained the same as the 2006 version, they were updated to reflect all the changes in the 2009 regulations.

What’s New in this Publication?

This most recent revision of the Guide (2012) provides updates based on the recently revised FERPA regulations that were published in December 2011 and became effective in January 2012. Each chapter has been updated to reflect the changes in the 2012 regulations. Additional resources have been added in various appendices to better aid administrators with compliance. Where applicable, section citations to the regulations preceded by the section symbol “§” (e.g. §99.32) have been added to the relevant text to aide readers in locating the source of the provision. Lastly, revised format and index make it easier to find topics being researched.

Chapter 1 contains a summary of the changes to FERPA that are discussed throughout this edition of the Guide.

Some noteworthy items in the 2012 edition include:

- A copy of the FERPA regulations in Appendix B, with the 2009 amendments underlined, and the 2012 amendments highlighted in gray.
- A section-by-section analysis of the 2009 and 2012 amendments in Appendix C.
An abbreviated PowerPoint presentation in Chapter 5 to provide staff training when limited time is available.

Additional FPCO opinion letters in Appendix E.

New appendix items, including Addressing Emergencies on Campus (Appendix F), U.S. Department of Education Standards for Electronic Signatures (Appendix J) and Model University-Vendor Contracts (Appendix N).

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This publication is the culmination of their combined efforts.