

2013 AACRAO Transfer Conference

FERPA and Reverse Transfer: What can I do (and not do)?

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➤ “It’s our understanding that some other schools are proceeding with reverse transfer based on the belief that FERPA allows schools to disclose education records for this purpose without the student’s consent, under the following conditions (34 CFR § 99.31):

- School officials with legitimate educational interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Organizations conducting certain studies for or on behalf of the school.

Is this permissible under FERPA?”

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 (partial)

- **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.

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.

§99.3 Definitions

- “Disclosure” is defined as permitting 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.

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 (partial):
 - 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
 - To organizations conducting studies on behalf of educational institutions.

Disclosure provisions, cont.

- §99.31(a)(1)(i)(A) The disclosure is to other school officials, including teachers, *within the agency or institution* whom the agency or institution has determined to have legitimate educational interests.
- §99.31(a)(2) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled *so long as the disclosure is for purposes related to the student’s enrollment or transfer*

Disclosure provisions, cont.

- §99.31(a)(3)(iv) The disclosure is, *subject to the requirements of §99.35*, to authorized representatives of State and local educational authorities.
- §99.35(a)(1) Authorized representatives of the officials or agencies headed by officials listed in §99.31(a)(3) may have access to education records *in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal legal requirements that relate to those programs.*

Disclosure provisions, cont.

- **§99.31(a)(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:**
 - (A) Develop, validate, or administer predictive tests;
 - (B) Administer student aid programs; or
 - (C) Improve instruction.

Based on the review we have just completed, what can we conclude is the correct response to the inquiry with which we began this discussion?

§ 99.30 – Signed Consent

What are some ways that this can be accomplished?

- Include in the institutions application for admission, consent language to permit the disclosure of degree qualifying records back to the previous institution.
- For currently enrolled students, contact the student, perhaps via your institutional email, to see if the student wants the records disclosed to the previous institution for the purpose of degree granting.

Resources for school officials:

Family Policy Compliance Office U.S. Department of Education

(202) 260-3887

Informal requests for technical assistance:

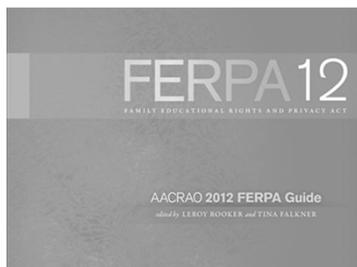
ferpa@ed.gov

ferpa@aacrao.org

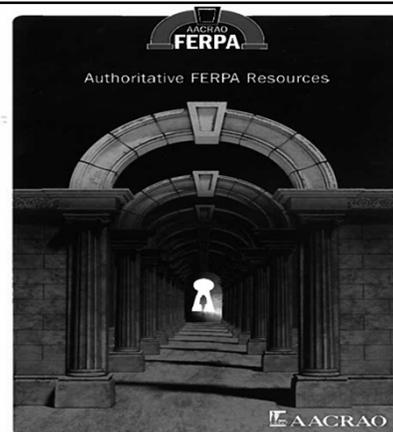
Websites:

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

<http://www.aacrao.org>



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