

FERPA 101 – The Basics

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FERPA Basics

**Family Educational Rights and Privacy Act of
1974, as amended**

Applicable State Laws

- Relationship between State Open Records Laws and FERPA.

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Background

- Passed in 1974; amended several times since then. Major amendments in 2009. Some additional amendments became effective in 2012.
- Designed to protect the privacy of education records, to provide information to parents (primary/secondary education) or to students (higher education), and ensure accuracy of education records.
- Intended that students' rights be broadly defined and exceptions narrowly construed.
- There is some institutional flexibility.
- Few legal cases - issue is typically access, not improper disclosure.
- Applies to all institutions that receive funds under any program administered by the Secretary of Education

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Definitions:

- “Educational institutions” – schools or other entities that provide educational services, and are attended by students.
- “Educational agencies” – entities that are authorized to direct and control public elementary, secondary or postsecondary institutions.
- “Eligible Student:”
 - 18 years of age or enrolled in higher education.
 - Must be enrolled.
 - Applies only to that segment of the institution in which the student is enrolled.

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Definitions (cont.):

- “Education Records” - anything related to the student and maintained by the institution/agent (broadly defined) with exceptions (narrowly defined):
 - Records in the sole possession of the maker.
 - Law enforcement records.
 - Employment records.
 - Medical/psychological treatment records.
 - Alumni records.
- “Directory Information” - information not considered harmful or an invasion of privacy if disclosed.
 - 2009: Clarified a bit on new regulations re: SSN’s and SIN’s

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Definitions (cont.):

- “Parent” - either parent (custodial or non-custodial).
- “Personally Identifiable Information:”
 - Personal identifiers
 - Indirect identifiers
 - Information that is reasonably linked/linkable to a specific student

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Basic rights of students under the Act:

- Inspect and review of their records (with a few exceptions)
- Request to amend an inaccurate/misleading record (has limitations).
- Consent to disclosure (with exceptions).
- File a complaint with DOE.
- To know that school officials may access education records and criteria for determining the legitimate need to know.
- Obtain a copy of the institution's policy.

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Institutional notice requirements

- At least annually.
- Reasonable effort to reach students.
- Must include at least the following:
 - Provisions to inspect/review educational records.
 - Right to amend an incorrect record/procedures.
 - Provisions on consent to disclosure.
 - Criteria/examples of “school officials.”
 - Definition of “Directory Information.”

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Inspection and review

- Can review everything, except:
 - Information about other students.
 - Financial records of parents.
 - Confidential letters of recommendation with access right waived (after 1/1/75).
- Cannot destroy records once requested.
- Can charge a reasonable fee.
- Need to understand interplay with state law.

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Amending the record.

- Reasonable procedures outlined in the Act.

Right to consent to disclosure.

- Must have a signed release. Note: use of e-signatures.
- When is prior consent not required? (may release, but not required – so can, but not compelled)
 - Verification of education records; authentication expectations (2009 amendments clarified)
 - School officials with legitimate educational interest – “need to know.” (2009 amendments provided some further clarification)

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- **When is prior consent not required? (cont.)**
 - Disclosure to another institution where student seeks to enroll or is enrolled (2009 amendments clarified release to another institution).
 - Disclosure to DOE, state/local education authorities conducting an audit, evaluation, or enforcement of education programs (2009 amendments clarified re-disclosure to another third party).
 - Disclosure to state/local officials in conjunction with legislative requirements.
 - Disclosure in connection with the receipt of financial aid.

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- **When is prior consent not required? (cont.)**
 - Disclosure to organization conducting studies to improve instruction, etc. (2009 amendments clarified information re. the purpose of the studies and the role of the institution)
 - Disclosure to accrediting organizations.
 - Disclosure to parents of dependent students.
 - To comply with a judicial order or lawfully issued subpoena.
 - Disclosure for health/safety emergency (2009 amendments clarified what constitutes such circumstances).

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- **When is prior consent not required? (cont.)**
 - Disclosure of Directory Information – note “No” release requirement. (2009 amendments clarified around what “no release” really means practically)
 - Disclosure to the alleged victim, information from disciplinary proceedings . (2009 amendments clarified releasing information to the alleged victim)

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- **When is prior consent not required? (cont.)**
 - Disclosure to parents of any student under the age of 21, a violation of Federal, State, local or institutional laws/regulations related to substance abuse. (Note: any state law restrictions)
 - Exception for the Sex Crimes Prevention Act (Megan's Law)
 - Disclosure to the student.

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FERPA rights (and the right to privacy) end at death.

Record-keeping requirements.

Right to file a complaint with the DOE.

- 2009 Amendments: Clarification of DOE's authority to investigate claims
- 2009 Amendments: Recommendations regarding safeguarding standards.

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2012 Regulatory Changes – Foundation:

“The Department intends these clarifications to promote Federal initiatives to support the robust use of data by State and local educational authorities to evaluate the effectiveness of Federal or State supported education programs. The provision of postsecondary student data to P-12 data systems is vital to evaluating whether P-12 schools are effectively preparing students for college.”

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2012 Regulatory Changes - Key Points:

- Redefine "education program" to be any program that is principally engaged in the provision of education--from early childhood to adult ed--whether or not it is administered by an educational authority.
- Redefine "authorized representative" to include any state functionary, regardless of whether they are under the direct control of the state educational authority.
- Amends current regulations by allowing officials to enter into "research" agreements with colleges, and re-disclose the information they gather.
- Removes the requirement that officials named above should be able to invoke federal, state, or local statutory authority to conduct an audit before they are allowed non-consensual access to personally identifiable information.
- Provides additional flexibility to manage release of Directory Information.

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Resources

Family Policy Compliance Office (DOE)

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

National Assoc of College & University Attorneys

<http://www.nacua.org/>

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Resources

AACRAO

<http://www.aacrao.org/>

Publications (order on website)

- The AACRAO 2012 FERPA Guide
 - The FERPA Quick Guide (2013)
 - The Registrar's Guide (Evolving Best Practices)
- FERPA Chapter has lots of resource information

Compliance Information (website)

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