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

Subpart A – General

§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.

“Personally Identifiable Information” includes:

- Student’s name
- Name of student’s parent or other family members
- Address of the student or student’s family
- Personal identifier – SSN, student ID number, biometric record
- Indirect identifiers – date and place of birth, mother’s maiden name
- Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person
“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

Cannot include SSN

“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.

“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

“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

The annual notification must also include the following:
- Procedure to inspect and review education records;
- A statement that education records may be disclosed to school officials without prior written consent, including:
  - Specification of criteria for determining who are school officials and
  - What constitutes a legitimate educational interest.
Subpart B – Inspection and Review of Education Records

§ 99.10 What rights exist for a student to inspect and review education records?

- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
- School may not destroy records if request for access is pending.

§ 99.12 What limitations exist on the right to inspect and review education records?

- If the records contain information on more than one student, the requesting student may inspect, review, or be informed of only the specific information about his or her records.
- An institution does not have to permit a student to inspect and review education records that are – Confidential letters and statements of recommendation – regarding admission, application for employment, or receipt of an honor or honorary recognition – if the student has waived his or her right to inspect and review those letters and statements.

Financial records of his or her parents

Subpart C – What are the Procedures for Amending Education Records

§ 99.20, § 99.21, § 99.22

Once a student identifies a record he or she believes to contain inaccurate or misleading information:
- Institution must decide within reasonable period of time whether to amend as requested.
- If institution decides not to amend, must inform student of right to a hearing.
- After hearing, if decision is still not to amend, student has a right to insert a statement in 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.

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

§ 99.31(a)(1)(i)(B) Authorized Disclosures Without Prior Written Consent

- The school official exception can 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) Controlling access to education records by school officials

- Regulations 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.
- 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) cont.

- 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.

Disclosure provisions, cont.

§ 99.31(c) Identification and authentication of identity.

- 2009 FERPA amendments require institutions 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.
- 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.

Disclosure provisions, cont.

- “The use of widely available information to authenticate identity, such as the recipient’s name, date of birth, SSN or student ID number, is not considered reasonable under the regulations.”
Recordkeeping

- § 99.32 What recordkeeping requirements exist concerning requests and disclosures?
- An institution must maintain a record of each request for access to and each disclosure from an education record. This record of access must:
  - Be maintained as long as record is maintained;
  - Include the parties who have requested or received information from education records; and
  - Include the legitimate interest parties had in receiving information. (See regulations for exceptions.)

Redisclosure

- § 99.33 What limitations apply to the redisclosure of information?
  - When disclosing information from education records to one of the parties listed under § 99.31, an institution should inform the receiving party that the information may not be further disclosed. (See regulations for exceptions.)

Subpart E – What are the Enforcement Provisions?

- §§ 99.60-99.67
  - The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
  - Students may file complaints with the U.S. Department of Education.

Resources for school officials:

- Family Policy Compliance Office U.S. Department of Education
  - (202) 260-3887
  - Informal requests for technical assistance: ferpa@aacrao.org

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