



FERPA 101

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FERPA PRE-TEST

1. Does FERPA only apply to schools that receive federal education funds?
2. Once a student turns 18, may the school share education records with the parents?
3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, must the school provide the grandparent with access to the child's education records?
4. Are health records maintained by the school nurse considered to be education records?



FERPA PRE-TEST

5. Must schools provide parents with a copy of their child's education records upon request?
6. Must a school disclose student information that has previously been designated as directory information to a third party that requests access?
7. If a parent chooses to discuss a matter about his or her child in an open school board meeting, does that constitute "consent" under FERPA for school board members or other school officials to respond?



FERPA PRE-TEST

8. Does FERPA permit a parent to file a lawsuit against a school, district, or school board for violating their rights under FERPA?
9. Is having a data sharing agreement with an outside vendor sufficient for a school to disclose PII from education records to a vendor without consent of parents?
10. When a student transfers from School District A to School District B, can District A share all of the student's education records to District B without the consent of the parent, including disciplinary records and special education records?



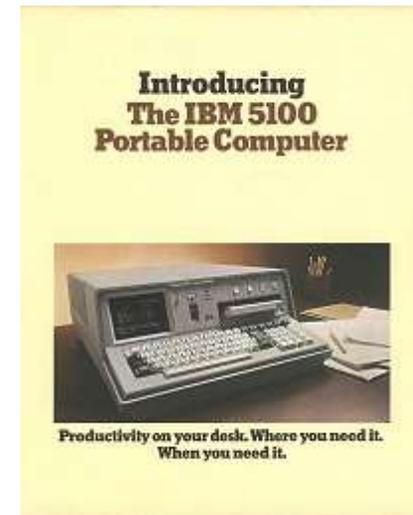
The world has changed

When FERPA was passed in 1974:

- Average house price was \$38k
- Average income was \$11k
- Federal spending was “only” \$269B
- You could buy a PC for the low, low price of \$20k

And...

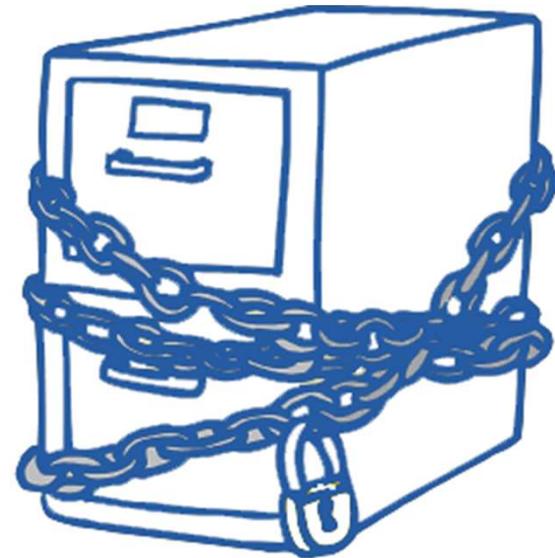
- Disco was still cool
- Education records were mostly papers in the principal's office



What is FERPA?

A federal privacy law that affords parents the right to:

- have **access** to their children's **education records**,
- seek to have the records **amended**, and
- **consent** to the **disclosure** of **personally identifiable information** from education records, **except** as provided by law.



The Three C's of FERPA

- In many ways, FERPA is not prescriptive. It is general in the ways it requires educational agencies to protect student information.
- It can be best summed up with 3 "C"s
 - FERPA is **Complex**
 - FERPA is **Conceptual**
 - FERPA is **Contextual**



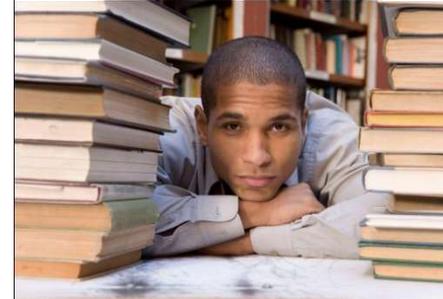
To which educational agencies and institutions does FERPA apply?



Elementary



Secondary



Postsecondary



U.S. Department of Education Funding



Pop quiz

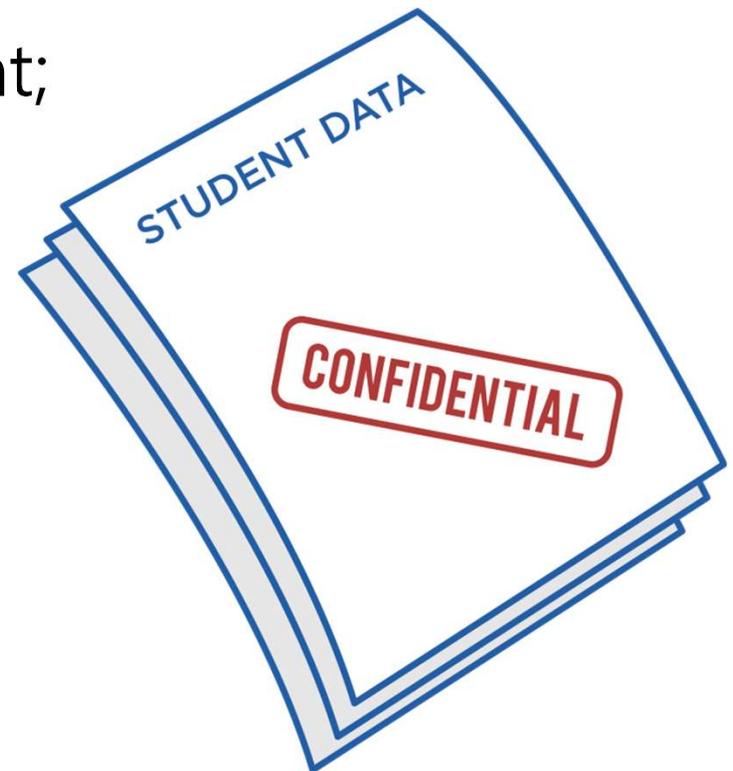
A police officer shows up at the main office of a high school and asks if a certain student is attending school today. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. The police officer does not have a court order.

Can the school tell the officer whether or not the student is attending school today?

Just what is an education record?

“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 exemptions

Exemptions to “education records” include, but are not limited to:

- Sole possession records used as a personal memory aid;
- Law enforcement unit records;
- Peer-graded papers before they are collected and recorded by teacher.



What about the Health Insurance Portability and Accountability Act (HIPAA)?

Records that are subject to FERPA are not subject to the HIPAA Privacy Rule (see page 82483, *Federal Register*, Vol. 65, No. 250, December 28, 2000).

- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records.”



Law enforcement units & records

“Law enforcement unit” means any individual, office, department, division, or other component of a school that is officially authorized or designated by the school to:

- Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization other than the school itself; or
- Maintain the physical security and safety of the school.



Law enforcement units & records

Examples include:

- Unit of commissioned police officers
- Unit of non-commissioned security guards
 - Fully equipped police units
 - Smaller security office
 - Vice-principal or other school official
 - Local off-duty police officer
 - School Resource Officer



Law enforcement units & records (cont.)

- Law enforcement unit records means those records, files, documents, and other materials that are:
 - Created by a law enforcement unit;
 - Created for a law enforcement purpose; and
 - Maintained by the law enforcement unit.



So what's the answer then?

The secretary would have to log into the student information system to confirm the student was in attendance. That attendance record is an education record.

Without a court order or an imminent threat, this could not be disclosed.

But.....



Photo/Video Guidance issued in 2018

A photo or video is part of an education record when it is *directly related* to a student. It is context specific considering the following factors...

- Used for disciplinary action or other official purposes
- Depictions of activities that:
 1. Resulted in disciplinary action
 2. Shows a violation of the law
 3. Shows an occurrence of student injury, attack, illness or health emergency
- Intent to make a specific student the subject
- Audio or visual record contains content that includes PII from a student's education record.



When Videos and Photos are NOT Education Records

- Students in the background
- Photos or videos without a focus on a specific student
- Records maintained by a law enforcement unit of an educational agency or institution for a law enforcement purpose
 - however, if unit provides a copy to the school, that copy may become an education record



Videos and Photos that are Records of Multiple Students

- A video can be the education record of multiple student (e.g. fights)
- In such an instance, educational agencies and institutions are required to allow a parent or eligible student, upon request, the opportunity to inspect and review the record without the consent of the other parent/ eligible student.
 - a) Prior to providing access institutions are required to redact or segregate when reasonable if it does not destroy the meaning of the video
 - b) Schools cannot charge for the redaction or segregation
 - c) Copies are allowed but not required



Pop quiz

John is a high school teacher. He wants to post the results of a math test so he runs a report that has the names, scores, gender and race/ethnicity of the students.

John wants to preserve the privacy of his students so he deletes the column with student name.

Does this remove the personally identifiable information?



PII is:

Personal Information



PII is:

Personally
Identifiable
Information

*A one-handed
pirate, with an
irrational fear of
crocodiles and
ticking clocks*

PII is:

Personally
Identifiable
Information



Personally Identifiable Information (PII)

- **Direct Identifiers**

- e.g., Name, SSN, Student ID Number, etc.
(1:1 relationship to student)

- **Indirect Identifiers**

- e.g., Birthdate, Demographic Information
(1:Many relationship to student)

- ***“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.”* (§ 99.3)



What John Pulls from his SIS

Name	Race/Ethnicity	Gender	Pirate Status	# of Hooks	GPA
	W	M	Y	1	2.0
	A	F	N	0	3.5
	B	M	N	0	3.8
	W	F	N	0	2.0
	H	M	N	0	3.3



Still Personally Identifiable?

Name	Race /Ethnicity	Gender	Pirate Status	GPA
	W	M	Y	2.0
	A	F	N	
	B	M	N	
	W	F	N	



What about now?

Name	Race /Ethnicity	Gender	GPA
	W	M	2.0
	A	F	3.5
	B	M	3.8
	W	F	2.0
	H	M	3.3



So is what John did ok?

No.

While the student's name is a direct identifier, gender and race/ethnicity are also considered to be personally identifiable information.



What rights do parents and eligible students have?

- Right to inspect and review education records;
- Right to request amendment of education records;
- Right to consent to disclosures, with certain exceptions; and
- Right to file a complaint with U.S. Department of Education regarding an alleged violation of FERPA.



Definition of “parent”

- Under FERPA:
 - “Parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
 - Includes custodial and noncustodial parents.



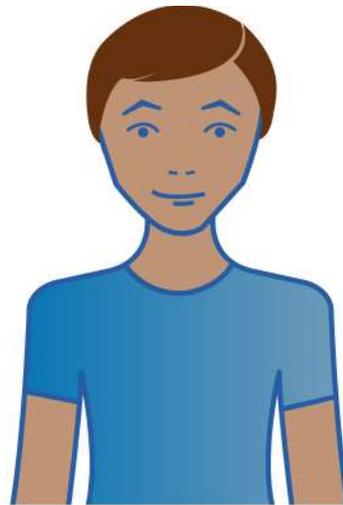
Rights of parents (custodial and noncustodial)

FERPA affords full rights to a parent, unless the school has been provided with evidence that there is a court order or State law that specifically revokes these rights.



Transfer of rights under FERPA

When a student turns 18 years old, or attends a postsecondary institution at any age they become an “eligible student” and, the rights under FERPA transfer from the parents to them.



Requirements for the inspection and review of education records

What rights exist for a parent or eligible student to inspect and review education records?

- School must comply with request within 45 days.
- Schools are generally required to give copies only if failure to do so would effectively deny access, or make other arrangements to inspect and review – example would be a parent or student who does not live within commuting distance.
- School may not destroy records if request for access is pending.



What are the procedures for amending education records?

- Parent or eligible student should identify the portion of the record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent or eligible student of right to a hearing.
- After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.



Prior written consent requirement

In order for a school to disclose education records, a parent or eligible student provide a signed and dated written consent. 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.



What are some of the exceptions to the general consent requirement?

- Directory information*
- To school officials with legitimate educational interests (defined in annual notification);
- To schools in which a student seeks or intends to enroll*
- To authorized representatives of specific federal agencies and state and local educational authorities conducting an audit, evaluation, or enforcement of federally- or state-supported education programs
- To organizations conducting studies for specific purposes on behalf of schools or school districts;

*Subject to Certain conditions (explained in more detail later on)



What are some of the exceptions to the general consent requirement? (cont.)

- In a health or safety emergency*
- To accrediting organizations to carry out their accrediting functions;
- To parents of a dependent student;
- To comply with a judicial order or subpoena (generally requires reasonable effort to notify parent or eligible student at last known address);

*Subject to certain conditions (Explained in more detail later on)



What are some of exceptions to the general consent requirement? (cont.)

- To child welfare agency or tribal organization for those children in foster care, in order to address the student's education needs*
- To state and local officials pursuant to a state statute in connection with serving the student under the juvenile justice system*

*Subject to certain conditions (Explained in more detail later on)



Exception: Directory information



Information in a student's education records that would not generally be considered harmful or an invasion of privacy if disclosed.

Exception: Directory information

- May include:
 - ✓ name, address, phone number, and e-mail address
 - ✓ photograph
 - ✓ date and place of birth
 - ✓ most recent school attended
 - ✓ grade level and major field of study
 - ✓ dates of attendance (e.g., year or semester)
 - ✓ participation in officially recognized sports and activities
 - ✓ height and weight of athletes
 - ✓ degrees, honors, and awards received
- Can *never* include Social Security Number
- Can't disclose non-directory information with directory information



Exception: Directory information (cont.)

- Annual notice must be given to parents of students in attendance and eligible students in attendance
- Parents may choose to “opt-out” of the disclosure of directory information on their child.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.



Opt Outs have Consequences

- Opting out of Directory Information may have consequences
 - Yearbook
 - Honor Roll
 - Degree Verification



Exception: School official

- Schools may disclose PII from education records without consent if the disclosure is to other school officials within the school, including teachers, whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.



Exception: School official (cont.)

Outsourcing services under school official exception:

- Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
- If these outside parties meet the conditions for outsourcing, they may have access to education records.



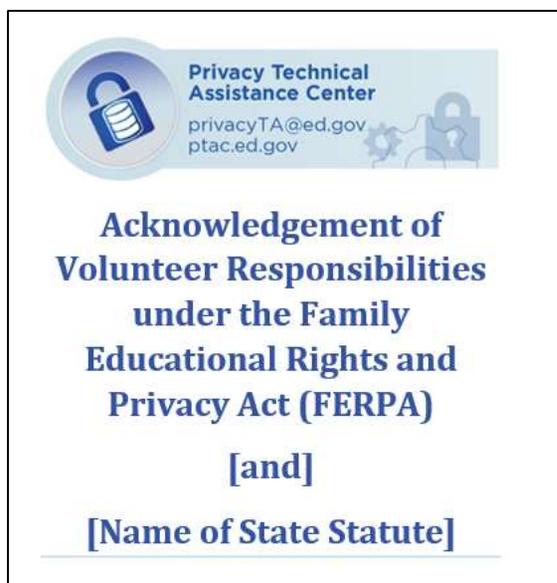
Exception: School official (cont.)

Conditions for outsourcing:

- Performs an institutional service or function for which the agency or institution would otherwise use its employees;
- Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- PII from education records may be used only for the purposes for which the disclosure was made, and may not be redisclosed without the authorization of the educational agency or institution and in compliance with FERPA;
- Meets the criteria specified in the school, LEA, or institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.



Do you use volunteers?



- Do they know the rules?
- Are they sharing information from education records at the bus stop?
- Provide them training with this [video](#).
- Use this brochure to explain the [rules](#).



Considerations for your School or District

- What is in your annual notice?
 - Does it cover what you are doing under this exception?
- How do you manage access control in your organization?
 - Just because someone may have access to the SIS does not mean they have legitimate educational interest.



Exception: Disclosure to officials of another school

- Consent is not required to disclose personally identifiable information from education records 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 the purposes related to the student's enrollment or transfer.



Exception: Parents of a dependent student

- Consent is not required if the disclosure is to parents, as defined in §99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.



Exception: Health or safety emergency

- Disclosure is necessary to protect the health or safety of the student or others.
- There is an articulable and significant threat to the health or safety of a student or other individuals.
- Appropriate parties typically means local, state, or federal law enforcement, trained medical personnel, public health officials, and parents.
- Must be related to an actual, impending, or imminent emergency.
- School makes determination on case-by-case basis.



Exception: Health or safety emergency (cont.)

- Department will not substitute its judgment if there is a rational basis for decision to disclose under health or safety emergency exception.
- Limited to period of time of the emergency.
- Must record pertinent information when it discloses PII.



Pop quiz: Judicial order or subpoena

- Does FERPA require schools to disclose information from education records pursuant to a judicial order or subpoena?

Yes

No



Exception: Judicial orders & subpoenas

- School may disclose PII from education records necessary to comply with a judicial order or lawfully issued subpoena.
- School must make a reasonable effort to notify the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.
- Some judicial orders and subpoenas are exempt from FERPA's notification requirement.



Uninterrupted Scholars Act

Exception to the general consent rule passed by Congress January, 2013, P.L. 112-278.

- Disclosure permitted to: “agency caseworker or other representative” of a state or local child welfare agency (CWA) or tribal organization who has the right to access a student’s case plan.
- Disclosure permitted when: the CWA or tribal organization is “legally responsible ... for the care and protection of the student.”



FERPA Test

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2. Once a student turns 18, the school can't share education records with the parents. T F
3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, the school must provide the grandparent with access to the child's education records. T F
4. Student health records maintained by the school nurse are not education records. T F
5. FERPA permits a parent to file a lawsuit against a school, district, or school board for violating his or her rights under FERPA. T F

FERPA Test (cont.)

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8. If a parent discusses a matter about his or her child in an open school board meeting, that constitutes "consent" under FERPA for school board members or other school officials to respond by disclosing PII from the child's education records. T **F**

FERPA pre-test (cont.)

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My Information

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