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

➢ § 99.1 To which educational agencies and institutions do these regulations apply?
   • FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education.
   • “Educational institutions” means: schools or other entities that provide educational services and are attended by students.
   • “Educational agencies” means: entities that are authorized to direct and control public elementary or secondary, or postsecondary, institutions.

§ 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).
“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.

“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-time, part-time, undergraduate, graduate)
  - degrees & awards received
  - dates of attendance
  - most recent previous school attended
  - grade level
- Directory information cannot include social security numbers.

“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
Annual notification, cont.

➢ 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.

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.

Disclosure provisions, cont.

➢ § 99.31 Under what conditions is prior consent not required to disclose information?

  • The exceptions which relate to postsecondary institutions are:
    ▪ 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
    ▪ In connection with financial aid
Disclosure provisions, cont.

- 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

- § 99.31(a)(1)(ii) Authorized Disclosures Without Prior Written Consent
  - Latest regulations expand the school official exception to 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 now 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)(10) and § 99.36 Health or Safety Emergency
  - Disclosure to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.
Health or Safety Emergency, cont.
- In making a determination whether to disclose information under this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.
- If the school determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

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.

Recordkeeping, cont.
- The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:
  - The student
  - A properly designated school official for a legitimate educational purpose
  - A party with written consent from the student
  - A party seeking directory information
  - A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed

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, except when:
    - The disclosure is to the eligible student
    - The receiving party discloses information on behalf of the educational agency or institution under § 99.31
    - The information disclosed is directory information
    - The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the institution and student
    - The disclosure is to the parents of a dependent student
    - The disclosure is the 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
    - The disclosure, as described in § 99.31(a)(16), concerns a registered sex offender

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@ed.gov
ferpa@aacrao.org
Websites:
http://www.aacrao.org

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