

Student Data



Privacy Technical  
Assistance Center



# South Dakota Districts FERPA Basics & Scenarios

September 2013



# Setting the Context – When was FERPA originally enacted?

- 1996
- 1982
- 1974
- 1965





# What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's *education records*, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law.

When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").



# Confidentiality under FERPA

- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requirement for written consent before sharing PII
- Exceptions from the consent requirement for:
  - “Studies”
  - “Audits and Evaluations”
  - Health and Safety emergencies
  - “Seeks or Intends to Enroll”
  - And others purposes as specified in §99.31



## **§ 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.





# Personally Identifiable Information (PII)



“Personally identifiable information” includes, but is not limited to:

- the student’s name;
- name of the student’s parent or other family members;
- address of the student or student’s family;
- a personal identifier, such as a social security number, student number, or biometric record; and
- other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name.



# Rights of Parents

## § 99.4 What are the rights of parents, custodial or noncustodial?

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights.



# Rights of Students

## § 99.5 What are the rights of students?

- When a student becomes an eligible student, the rights accorded to, and consent required of, parents under FERPA transfer from the parents to the student.
- Nothing in FERPA prevents an educational agency or institution from disclosing education records, or PII from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in § 99.31(a)(8), § 99.31(a)(10), § 99.31(a)(15), or any other provision in § 99.31(a).



## **§ 99.7 What must an educational agency or institution include in its annual notification?**

Schools must annually notify parents of students and eligible 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; and
- right to file a complaint with U.S. Department of Education.



# Inspection and Review of Education Record



## § 99.10 What rights exist for an 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.



# **Inspection and Review (cont.)**

## **§ 99.11 May an educational agency or institution charge a fee for copies of education records?**

- Yes – unless imposing a fee effectively prevents a parent or eligible student from exercising his or her right to inspect and review education records.

## **§ 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 parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.



# What are the Procedures for Amending Education Records?

§ 99. 20, § 99.21, § 99.22

- Parent or eligible student should identify portion of 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.



# Annual Notification



The annual notification must also include the following:

- procedure to inspect and review education records; and
- 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.



**Sneak Preview:**

**New FERPA Video for Parents!**



# Access to Student Records: Directory Information

- Directory information
  - May be released without prior consent
  - State and local laws specify what types of information are considered directory info
- Under **FERPA**, parents must be informed of what is considered directory information and given the opportunity to withhold its release
  - [FERPA Model Notice for Directory Information](#)



# Directory Information



“Directory information” is –

- Personally identifiable information that is 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; and
  - grade level.



# Directory Information (cont.)

- “Directory information” cannot generally include a student’s social security number or student ID number.
- “Directory information” may include a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.



# **FERPA Regulatory Changes — Directory Information**

- Definition of directory information
  
- Conditions for disclosure
  - Student ID cards and badges
  - Limited directory information



**OK... Great. But I'm sharing  
only Directory Information.  
That's allowed, correct??**





## **Quiz Time – Choose the “best” answer.**

- I can share directory information data as long as districts specify the data that is going to be shared, with whom, and for what purpose(s) in an annual notification to parents.
- I can share directory information as long as the specific data to be shared fits into statutorily defined research data sets defined by state law.
- I can share directory information as long as I have a formal notice on the SLDS website that data may be shared for research purposes.



## Quiz Time – Choose the “best” answer.

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# Health and Safety Emergencies

## § 99.36 What conditions apply to disclosure of information in health or safety emergencies?



- Disclosure to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.
- See “Addressing Emergencies on Campus”; “FERPA and Disclosures Related to Emergencies and Disasters”; “FERPA and H1N1”; and “Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools.”





# Health or Safety Emergencies

- If 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.
- Must record the following information when it discloses personally identifiable information from education record under the health or safety emergency exception:
  - the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
  - the parties to whom the agency or institution disclosed the information.



# Frequently Asked Question

Our district has a parent who as opted out of “directory information” as part of our annual notification process. They informed us that the student should not have a photo taken and not be required to wear a badge. Are we in violation of FERPA should we require the student to wear a badge?



## Frequently Asked Question #2

Our district has a parent who as opted out of “directory information” as part of our annual notification process. They informed us that the student should not have a photo taken and not be required to wear a badge. Are we in violation of FERPA should we require the student to wear a badge?

**Answer: No. The recently enacted changes to FERPA allow districts the latitude to require that students wear an ID badge. Districts can require their students to wear ID badges and are not required to allow the student/parent to opt out of the badge under FERPA provisions.**



# Directory Information: Reporter Request

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A reporter from the local newspaper calls the school/college and informs the school/college that he is writing an article about the success of Hispanic students. The reporter asks the school/college for the name and contact information for all the Hispanic students who made the honor roll/dean's list for the current school year. Are the names and contact information for all the Hispanic students who made the honor roll for the current school year "directory information"?

**NO**





# Directory Information: Disability

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A non-profit organization that has programs for special needs children asks the school for directory information on students who have a certain disability. Can the names and contact information for these students be disclosed to the organization as directory information?

**NO**





# Teacher as Witness

- A teacher personally witnesses an incident, such as one student bullying another. Can the teacher call the victim's parents and tell them what she observed and who she saw bullying their child?

**YES**





## ***Question: Are grade amendments required by FERPA?***

A: No. A school is not required by FERPA to afford a student or parent the right to seek to change substantive decisions made by school officials, such as grades or other evaluations of a student.

FERPA was intended to require only that educational agencies and institutions conform to fair recordkeeping practices. It was not intended to override the accepted standards and procedures for making academic assessments, disciplinary rulings, or placement determinations.



# Sharing Disciplinary Action

- A student is disciplined for a conduct that posed a significant risk to the safety or well-being of other students. He leaves the school and enters another institution without requesting a transfer. The new school finds out that he attended the first school and calls for information. Can the old school tell the new school about the disciplinary action?

**YES**





# Student Health Records

- The school nurse at a middle school wants to share information with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

**FERPA**





# ED/PTAC Resources available

- Case Studies
  - [H.S. Feedback Report](#)
  - [Head Start Program](#)
  - [FPCO Enforcement of FERPA](#)
  - [PTAC Technical Assistance](#)
- Data Sharing
  - [Data Sharing Agreement Checklist](#)
  - [Guidance for Reasonable Methods](#)
- Data Security
  - [Data Security Checklist](#)
  - [Data Governance Checklist](#)
  - [Cloud Computing](#)
  - [Identity Authentication Best Practices](#)
  - [Data Breach Response Checklist](#)



# Additional ED/PTAC Resources:

- [Disclosure Avoidance FAQs](#)
- [Identification of Data Types & Uses](#)
- [De-identified Data Case Study](#)
- [FERPA 101 professional training video](#)
- [FERPA 201 \(Data Sharing\) professional training video](#)
- [FERPA 301 \(Postsecondary\) professional training video](#)



# Contact Information

## Family Policy Compliance Office

Telephone: (202) 260-3887

Email: [FERPA@ed.gov](mailto:FERPA@ed.gov)

FAX: (202) 260-9001

Website: [www.ed.gov/fpco](http://www.ed.gov/fpco)

## Privacy Technical Assistance Center

Telephone: (855) 249-3072

Email: [privacyTA@ed.gov](mailto:privacyTA@ed.gov)

FAX: (855) 249-3073

Website: [www.ptac.ed.gov](http://www.ptac.ed.gov)