

Family Educational Rights and Privacy Act (FERPA)

**Minnesota Collection Network
Conference**

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?FERPA?

- ◆ How do I know what is considered FERPA protected information?
- ◆ What happens if I accidentally violate FERPA?
- ◆ With whom can I share FERPA protected information?
- ◆ Am I allowed to use the last four digits of the SSN to identify a student?



Introduction

The Family Educational Rights and Privacy Act of 1974 as amended, is a federal law that protects the privacy of student education records and establishes the rights of students to inspect and review their education records. FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education.



Primary Rights of Students Under FERPA

- ◆ To inspect and review their education records
- ◆ To seek to amend their education records
- ◆ To have some control over the disclosure of information from their education records



Other Student Rights Under FERPA

- ◆ To direct concerns of a FERPA violation to the University administration
- ◆ To file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA



Eligible Student

- ◆ An individual who is or has been in attendance at the institution and
- ◆ About whom the institution has maintained education records



In attendance

§ 99.3 DEFINITIONS

Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom



Education Record

Any record, with certain exceptions, maintained by an institution that is directly related to a student or students. This record can contain a student's name or students' names, or information from which an individual student, or students, can be **PERSONALLY (INDIVIDUALLY) IDENTIFIED**



Education Record

Files, documents and materials in whatever medium (handwriting, print, computer media, e-mail, tapes, disks, film, microfilm, microfiche, video or audio tape) which contain information directly related to students and from which students can be **PERSONALLY (INDIVIDUALLY) IDENTIFIED**



Personally Identifiable Information

Includes but is not limited to:

- ◆ Name of the student, student's parent(s) or other family member(s)
- ◆ Address of the student or student's family
- ◆ A personal identifier, such as the student's social security number or student number, or biometric record
- ◆ Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name



Personally Identifiable Information

Includes but is not limited to:

- ◆ 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



What ISN'T an Education Record?

- ◆ Records/notes in sole possession of maker (“memory aids”)
- ◆ Law enforcement unit records
- ◆ Employment records when employment is not contingent on being a student

RECORDS OF INDIVIDUALS WHO ARE EMPLOYED AS A RESULT OF THEIR STATUS AS STUDENTS (WORK STUDY) ARE EDUCATION RECORDS

- ◆ Alumni records
- ◆ Doctor-patient privilege records



Education Record (Summary)

If you have a record that is:

- ◆ Maintained by your institution
- ◆ Personally identifiable to a student (directly related to a student and from which a student can be identified)
- ◆ Not one of the excluded categories of records

***THEN, YOU HAVE AN EDUCATION
RECORD AND
IT IS SUBJECT TO FERPA***



Directory Information

FERPA identifies a category of information as **directory information**, defined as information that would not generally be considered harmful or an invasion of privacy if disclosed



Directory Information

Directory information is the only information that may be released without specific written permission from the student, except in certain conditions specified by the regulations



Examples of Directory Information

- ◆ Name, address, telephone number, email address
- ◆ Date and place of birth
- ◆ Photograph
- ◆ Major field of study
- ◆ Participation in officially recognized activities and sports
- ◆ Weight and height of members of athletic teams
- ◆ Dates of attendance (semester and year)
- ◆ Enrollment status (e.g., full- or part-time)
- ◆ Degrees, honors and awards received
- ◆ Most recent previous school attended



Directory Information

- ◆ **§ 99.3 Definitions:** specifically prohibits the disclosure of a student's SSN, or any portion thereof, as directory information
- ◆ **§ 99.37(d) Use of SSNs:** prohibits the use of the SSN to identify the student to disclose or confirm directory information



Directory Information - “*Opt Out*”

- ◆ The institution must provide annual notification to students of their FERPA rights
- ◆ The institution must notify students of what information the institution has designated as directory information
- ◆ Students must be given the opportunity to request that directory information not be released. This right of non-disclosure applies to directory information only.



Directory Information - “*Opt Out*”

§ 99.37(b) Former Students:

Amended regulations require schools to honor a former student’s opt-out request made while in attendance unless it has been specifically rescinded by the former student



Directory Information

Recommended response to requests for information on students who have requested that directory information not be released:

"I have no information on that individual"



School Officials and Legitimate Educational Interest

FERPA permits the University to disclose education records to “School Officials” who have a “Legitimate Educational Interest”



School Officials

Members of an institution who act in the student's educational interest within the limits of their "need to know." These may include:

- ◆ A person employed by the University in an administrative, supervisory, academic or research, or support staff position
- ◆ A person elected to the Board of Trustees



School Officials

- ◆ Contractors, consultants, volunteers, and other outside service providers used by an institution to perform institutional services and functions that it would otherwise perform itself
- ◆ A student serving on an official University committee or assisting another school official in performing his or her tasks



Legitimate Educational Interest

A school official has a legitimate educational interest if the official is:

- ◆ Performing a task that is specified in her or his position description or by a contractual agreement or is within the scope of the usual duties performed by a person in that position
- ◆ Performing a task related to a student's education



Legitimate Educational Interest

A school official has a legitimate educational interest if the official is:

- ◆ Performing a task related to the discipline of a student
- ◆ Providing a service or benefit relating to the student or student's family, such as healthcare, counseling, job placement or financial aid



Controlling Access to Education Records by School Officials

§ 99.31(a)(1)(ii) Requires 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. Schools may choose to use methods such as:

- Physical controls (locking filing cabinets)
- Technological controls (role-based access controls for electronic records)
- Administrative policies (must be effective in ensuring compliance)



Parent Rights Relating to Educational Records

Under FERPA all rights of parents transfer to the student when the student reaches 18 years of age or attends a postsecondary institution.

Therefore, education records will not be provided to parents without the prior written consent of the student.



Disclosure to Parents and Rights of Students

§ 99.5 Clarifies that schools are permitted to disclose education records without consent to parents:

- ◆ When a student is a dependent student under the IRS tax code
- ◆ When the student has violated a law or the school's rules or policies governing alcohol or substance abuse, if the student is under 21 years old
- ◆ When the information is needed to protect the health or safety of the student or other individuals in an emergency



Outsourcing

§ 99.31(a)(1)(i)(B) Addresses disclosure of education records without consent to non-employees retained to perform institutional services and functions.

The institution must have direct control over its outside service providers' maintenance and use of education records.

Disclosure is permitted only if the institution is outsourcing a service it would otherwise provide using employees.



Identification and Authentication of Identity

§ 99.31(c)

Requires schools to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and other parties before disclosing education records



Identification and Authentication of Identity

§ 99.31(c)

- ◆ **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.
- ◆ Amended 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.**



***When in doubt,
don't give it out.***



Case Studies and Q&A