

Family Educational Rights and Privacy Act (FERPA)

Matthew Teaford, EEO Officer
Mat-Su Borough School District

Matthew.Teaford@matsuk12.us

(907) 746-9214

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- This presentation is not intended to provide legal advice and should not be relied upon in lieu of consultation with an attorney.
- The presentation has been prepared for information purposes only and is adapted from guidance available from the U.S. Department of Education.

FERPA

- Statute: 20 U.S.C. sec. 1232g
- Regulations: 34 CFR Part 99

What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives parents the right to

- access their children's education records,
- request amendment of records, and
- consent to disclosure of personally identifiable information from education records.

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

Applicability of FERPA

FERPA applies to schools that receive funds under any program administered by the Secretary of Education.

All K-12 public schools and programs are subject to FERPA.

Education Records

“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.

Exceptions to “education records”

Exceptions to “education records” include—

- Sole possession records used as a personal memory aid;
- Law enforcement unit records;
- Student employment records; and
- “treatment records”

Personally identifiable information

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.

Personally identifiable information (cont.)

- 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; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

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 or 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.

Rights of Parents

- 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

- What are the rights of students?
- When a student becomes an eligible student, the FERPA rights of the parent transfer to the student.
- Nothing in FERPA prevents an educational agency or institution from disclosing education records, or personally identifiable information from education records, to a parent without the prior written consent of an eligible student if the disclosure meets regulatory disclosure requirements.

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;
- Right to object to release of directory information; and
- Right to file a complaint with U.S. Department of Education.

Annual Notification

The annual notification of FERPA rights must include:

- 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.

Inspection and Review of Education Record

What must the school do in response to a parent and/or eligible student's right to inspect and review education records?

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

Inspection and review (cont.)

The school may charge a fee for copies of education records unless to do so would effectively prevent the parent or eligible student from exercising his or her right to inspect and review.

If an education record contains information on more than one student, the parent may inspect and review only those portions of the record that identify his or her student (redaction of other student's information may sometimes be appropriate).

Amending Education Records

If a parent or eligible student decides to challenge the accuracy of an education record:

- The parent/eligible student will identify the portion of the record being challenged.
- The school must decide within a reasonable period of time whether to amend as requested.
- If the school determines not to amend, the school must notify the parent/eligible student of the right to request a hearing.
- After the hearing, if the decision remains not to amend, the parent/eligible student may request that their statement of challenge be inserted into the record.

Disclosure with prior consent

Except for specific exceptions, the school must receive signed, dated written consent from a parent before disclosing education records. The consent must:

- Specify the records that may be disclosed;
- State the purpose of the disclosure; and
- Identify the persons or entities to whom the disclosure may be made.

When prior consent is NOT required

Disclosure of education records without prior consent may be made:

- To school officials with legitimate educational interests
- To schools in which a student seeks to or intends to enroll
- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs

Prior consent exceptions (cont.)

- To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
- To organizations conducting studies for specific purposes on behalf of schools;
- To accrediting organizations;
- To parents of a dependent student;
- To comply with a judicial order or subpoena (with reasonable effort to notify parent or student at last known address);
- In health or safety emergency; and
- Directory information (so long as parent received annual notice of right to object to release of directory information).

Recordkeeping

The school is NOT required to keep a record of requests for access to or disclosures of education records if the request was

- from the parent/eligible student, or
- to a party with written consent of the parent/eligible student, or
- is a request for directory information.

Otherwise, the school must maintain a record of each request for access to and each disclosure of the student's education record.

Redisclosure requirements

- Further disclosure of disclosed education records is not permitted without parent/eligible student consent, unless the redisclosure is to a party who can receive the information without prior consent (i.e., school official with a legitimate educational interest).

Audit or Evaluation

Federal, State, and local officials identified in regulation may access records for audit or evaluation purposes only—

- In connection with an audit or evaluation of Federal or State supported education programs, or
- For the enforcement of or compliance with Federal legal requirements which relate to those programs.

Government officials must protect personally identifiable information from further disclosure and must destroy the information when no longer needed for the audit or evaluation.

Health and Safety Emergencies

Information from education records may be disclosed without consent in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or others.

The disclosure must be based on an articulable and significant threat; the disclosure may be made to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Disclosure of directory information

- School may disclose designated directory information only if it has given notice to parents, which includes opportunity for parent to opt out of disclosure.
- The option to opt out of disclosure of directory information does NOT give parent the right to prevent a school from requiring a student to wear an ID badge.
- Schools may, but are not required to, adopt a limited directory information policy that specifies that information may be disclosed to specific parties only, or for specific purposes only, or both. The school's directory information notice must describe the limited release policy.

FERPA enforcement

- The Family Policy Compliance Office (FPCO) is authorized to investigate, process, and review FERPA complaints.
- Parents and eligible students may file timely complaints (180 days) with FPCO.
- Corrective actions for violations may include, but are not limited to, cease and desist orders, compliance agreements, and withholding of Federal assistance.

Questions?

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