

# A Closer Look - Information Sharing

## *Family Educational Rights and Privacy Act (FERPA) & Health Insurance Portability and Accountability Act (HIPAA)*

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FEMA



# FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

- **Statute: 20 U.S.C. § 1232g**
- **Regulations: 34 CFR Part 99**
- **Family Policy Compliance Office (FPCO) in U.S. Department of Education administers FERPA.**



# TO WHICH EDUCATIONAL AGENCIES AND INSTITUTIONS DOES FERPA APPLY?

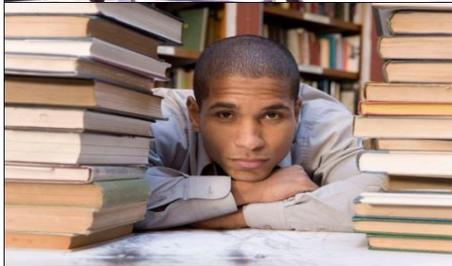
§ 99.1



**Elementary**



**Secondary**



**Postsecondary**

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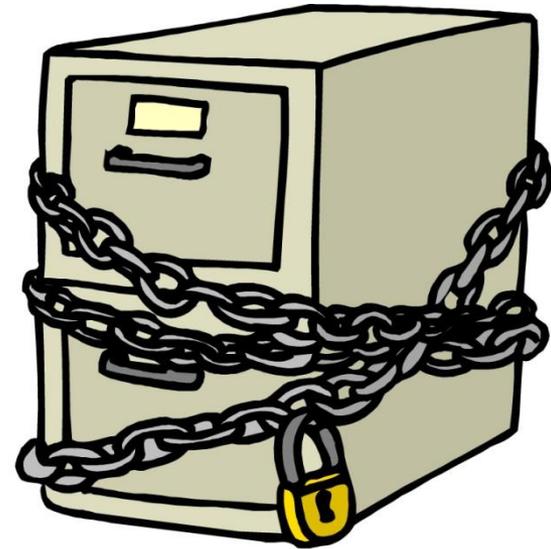


# WHAT IS FERPA?

§ 99.10  
§ 99.20  
§ 99.30  
§ 99.63

**A federal privacy law that affords parents the right to—**

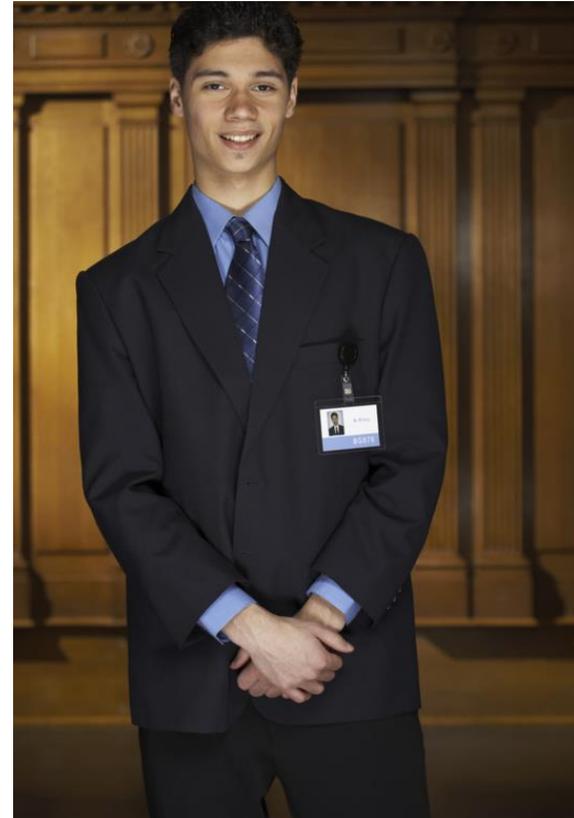
- **have access to their children's education records,**
- **seek to have the records amended,**
- **consent to the disclosure of personally identifiable information (PII) from education records, except as provided by law, and**
- **file a complaint with FPCO.**



# TRANSFER OF RIGHTS UNDER FERPA

§ 99.5

- **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”).**

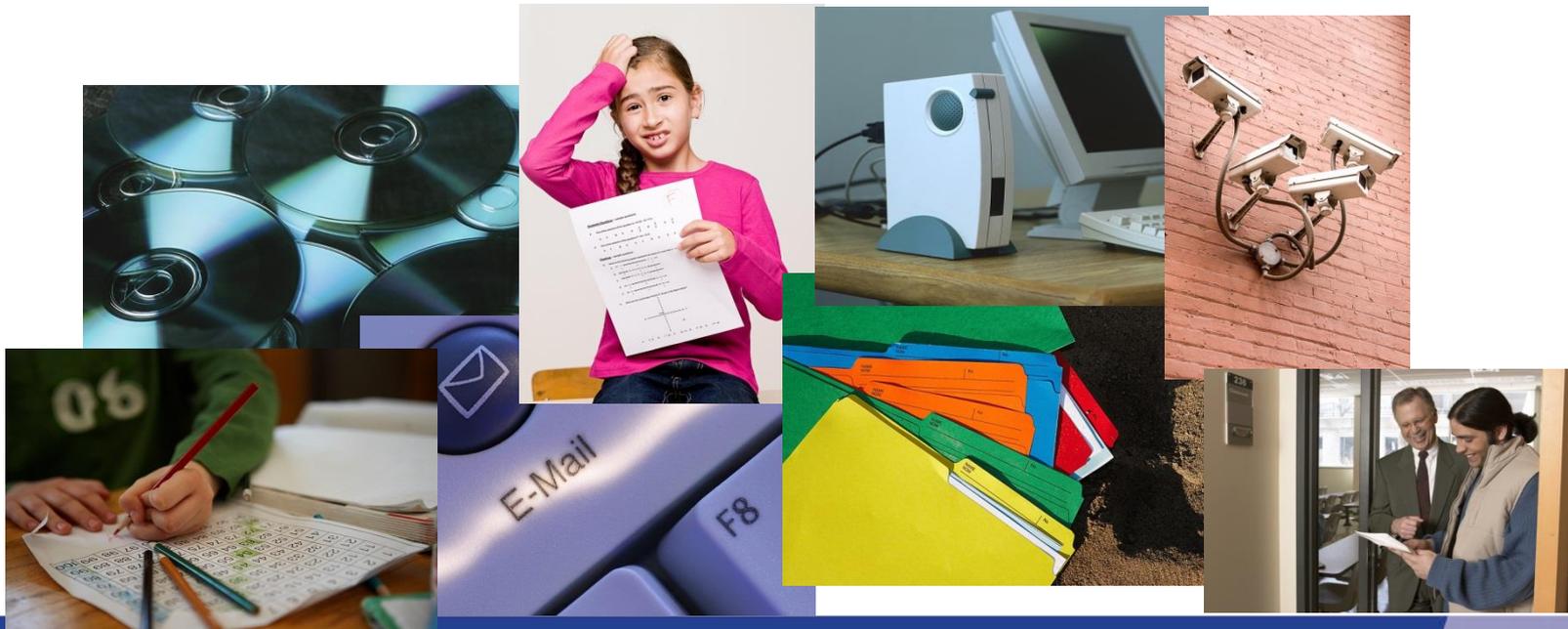


# WHAT ARE EDUCATION RECORDS?

§ 99.3

**“Education records” are records that are –**

- directly related to a student; and
- maintained by an educational agency or institution or by a party acting for the agency or institution.



# “EDUCATION RECORDS,” CONT.

§ 99.3

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



# PERSONALLY IDENTIFIABLE INFORMATION (PII)

§ 99.3

**“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;**
- **Other direct identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;**



# PERSONALLY IDENTIFIABLE INFORMATION (PII), CONT.

§ 99.3

- **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.**



# ANNUALLY NOTIFIED OF RIGHTS

§ 99.7



- **Schools must annually notify parents of students and eligible students in attendance of their rights under FERPA.**

# PRIOR WRITTEN CONSENT REQUIREMENT

§ 99.30

**Except for specific exceptions, a parent or eligible 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.**



# EXCEPTIONS TO CONSENT

§ 99.31

- **School officials with legitimate educational interests (§ 99.31(a)(1))**
  - Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
  - Model notification on FPCO website for both LEAs and postsecondary institutions:
    - <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/lea-officials.html>
    - <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/ps-officials.html>

# EXCEPTIONS TO CONSENT, CONT.

§ 99.31

- **Outsourcing services under school official exception (§ 99.31(a)(1)(i)(B))**
  - 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.
  - May consider utilizing non-employees as members of its threat assessment team, as counselors, nurses, and security staff.
  - If these outside parties meet the conditions for outsourcing, they may have access to education records.

# EXCEPTIONS TO CONSENT, CONT.

§ 99.31

- **Conditions for outsourcing institutional services or functions to outside parties:**
  - **Performs an institutional service or function for which the agency or institution would otherwise use employees;**
  - **Is under the direct control of the agency or institution with respect to the use and maintenance of education records;**



# EXCEPTIONS TO CONSENT, CONT.

§ 99.31

- **Conditions for outsourcing institutional services or functions to outside parties, cont.:**
  - Is subject to the requirements in § 99.33(a) that the PII from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
  - 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.

# EXCEPTIONS TO CONSENT, CONT.

§ 99.31

- **Health or Safety Emergency Disclosures (§ 99.31(a)(10) and § 99.36)**
  - Disclosure is necessary to protect the health or safety of the student or other individuals.
  - To appropriate parties whose knowledge of information is necessary to protect the health or safety of the student or other persons.
  - 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.

- **Health or Safety Emergency Disclosures, cont.**
  - Must be articulable and significant threat.
  - School must make determination on case-by-case basis.
  - 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 disclosure.



- **Directory Information (§ 99.31(a)(11) and § 99.37)**
  - Defined as information in a student's education records that would not generally be considered harmful or an invasion of privacy.
  - Name, address, telephone number, e-mail address, photograph, date and place of birth, grade level, 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, and most recent school attended.
  - Can never include an SSN.
  - Generally may not include student ID number, except under specified circumstances.

- **Directory Information, cont.**
  - **Public notice must be given to parents of students in attendance and eligible students in attendance concerning “directory information.”**
  - **Parent or eligible student may not use the right to opt out of directory information disclosures in order to prevent a school from requiring a student to wear, to display publicly, or to disclose a student ID card or badge.**
  - **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.**

- **Judicial Order or Lawfully Issued Subpoenas ((§ 99.31(a)(9))**
  - May comply with judicial order or lawfully issued subpoena for education records.
  - Must make reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to permit the parent or eligible student the opportunity to see protective action.

- **Judicial Order or Lawfully Issued Subpoenas, cont.**
  - **Except do not have to notify if certain conditions apply.**
    - **Federal grand jury subpoena or other subpoena issued for a law enforcement purpose if the court or other issuing agency has ordered that the existence or contents of subpoena or information provided not be disclosed.**
    - ***Ex parte* order obtained by the U.S. Attorney General (or designee not lower than the Assistant Attorney General) concerning investigations or prosecutions of terrorism or other specified offenses.**

# LAW ENFORCEMENT UNITS & RECORDS

§ 99.8

- **“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, CONT.

§ 99.8

- **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 (SRO)**



# LAW ENFORCEMENT UNITS & RECORDS, CONT.

§ 99.8

- **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.
  
- **LEU records do not mean –**
  - Records created by an LEU for a law enforcement purpose that are maintained by another component of the school;
  - Records created and maintained by an LEU exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the school.

# LAW ENFORCEMENT UNITS & RECORDS, CONT.

§ 99.8

- **Can an LEU official be a school official?**
  - **As long as certain conditions are met!**
    - **Must meet criteria for who constitutes a school official set forth in the school or LEA's annual notification to parents and eligible students of their FERPA rights or in college or university's annual notification to eligible students of FERPA rights.**
    - **See slides 11 – 14.**
    - **Schools must determine that the school official's interest in accessing the education records meets the criteria for legitimate educational interests.**
    - **School officials typically have "legitimate educational interest" if he/she needs to review record in order to fulfill his/her professional responsibility.**

# LAW ENFORCEMENT UNITS & RECORDS, CONT.

§ 99.8

- **Utilizing SROs or other outside local law enforcement officials –**
  - **Can be authorized or designated as LEU.**
  - **LEU officers not automatically considered school officials.**
  - **Must meet criteria for “school official” in annual notification.**
  - **Must follow “outsourcing” requirements in § 99.31(a)(1)(i)(B). See slides 13-15.**
  - **If school official, may have access to students’ education records.**
  - **May only use PII from education records for purposes it was disclosed, e.g., to promote school safety and the physical security of students.**

# LAW ENFORCEMENT UNITS & RECORDS, CONT.

§ 99.8

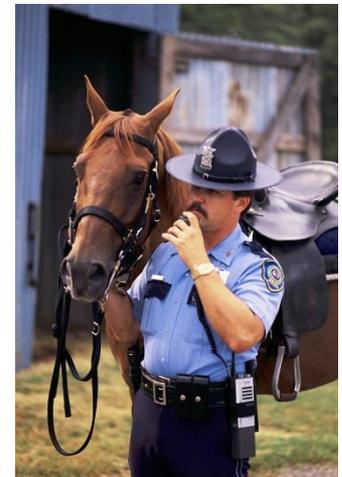
- **Utilizing SROs or other outside local law enforcement officials, cont. –**
  - **Subject to the redisclosure provisions of § 99.33(a).**
  - **Means that an SRO or other outside law enforcement official serving as a “school official” under FERPA may not disclose PII from education records to others, including employees of his or her local police department who are not acting as school officials, without consent unless the redisclosure fits within one of the exceptions to FERPA’s consent requirement.**



# LAW ENFORCEMENT UNITS & RECORDS, CONT.

§ 99.8

- **Utilizing SROs or other outside local law enforcement officials, cont. –**
  - **May disclose properly designated directory information to local police on those students whose parents (or they) have not opted out.**
  - **May share LEU records with local, State, or federal law enforcement pursuant to policy or State law.**



# THREAT ASSESSMENT TEAMS

§ 99.31

- **Threat assessment team –**
  - **A group of officials that convene to identify, evaluate, and address threats or potential threats to school security.**
  - **Review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals.**
  - **Assist in determining whether a health or safety emergency exists in order to know whether a disclosure may be made under the FERPA emergency exception.**
  - **More common in university settings but being instituted in elementary and secondary schools.**

# THREAT ASSESSMENT TEAMS, CONT.

§ 99.31

- **Threat assessment teams may include officials who can assist in making decisions –**
  - **School principals, deans, counselors, school law enforcement unit officials.**
  - **Outside medical and mental health professional and local law enforcement officers.**



# THREAT ASSESSMENT TEAMS, CONT.

§ 99.31

- **Disclosing PII from education records with threat assessment team members who are not employees –**
  - **Must qualify as “school officials” with “legitimate educational interests.”**
  - **Must meet requirements for “outsourcing” institutional service or function. See § 99.31(a)(1)(i)(B) and slides 12-14.**
  - **Must only use PII from education records for purposes for which it was disclosed, i.e., to conduct threat assessments.**
  - **May not redisclose PII from education records. See § 99.33(a).**
  - **While not a requirement, school may wish to have a written agreement with members of team specifying privacy requirements and responsibilities.**

# PERSONAL KNOWLEDGE OR OBSERVATION

- **FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records.**
- **This general rule does not apply where a school official learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education records.**

# HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) PRIVACY RULE

- **Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.**
- **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)**
- **Other HIPAA rules may apply.**



# HIPAA & FERPA, CONT.

- **FERPA applies to the records on students at campus health clinics at postsecondary institutions.**
  - **These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Privacy Rule, even if the school is a HIPAA covered entity. See the exceptions at paragraphs (2)(i) and (2)(ii) to the definition of “protected health information” at 45 CFR § 160.103.**

# HIPAA & FERPA, CONT.

- **“Treatment records” under FERPA, as they are commonly called, are defined as:**

**Records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student’s choice.**

**34 CFR § 99.3, “Education records.”**

# HIPAA & FERPA, CONT.

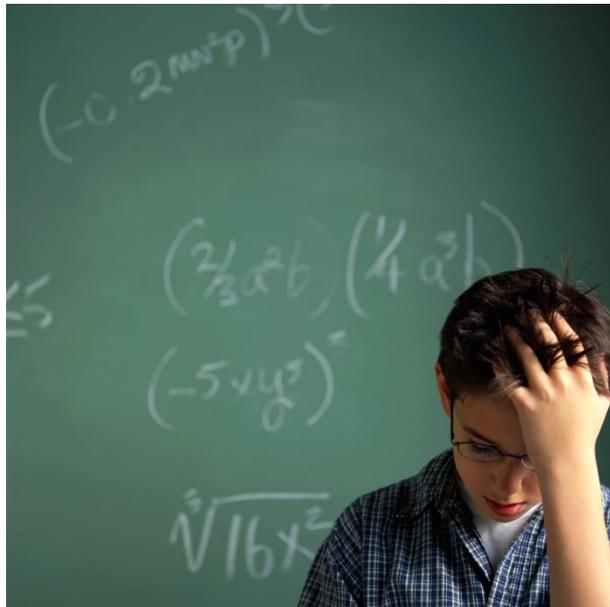
- **While the health records of students at postsecondary institutions may be subject to FERPA, if the institution is a HIPAA covered entity and provides health care to nonstudents, the individually identifiable health information of the clinic's nonstudent patients is subject to the HIPAA Privacy Rule.**
- **For example, postsecondary institutions that are subject to both HIPAA and FERPA and that operate clinics open to staff, or the public, or both (including family members of students) are required to comply with FERPA with respect to the health records of their student patients, and with the HIPAA Privacy Rule with respect to the health records of their non-student patients.**

# HIPAA & FERPA, CONT.

- **“Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records”**
- See <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

**FPCO Web site / “Hot Topics” / November 2008**

# NEED HELP WITH FERPA?



# GUIDANCE DOCUMENTS & FERPA REGULATIONS

- **Addressing Emergencies on Campus**  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- **Joint FERPA-HIPAA Guidance**  
<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- **FERPA & Disclosures Related to Emergencies & Disasters**  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- **Balancing Student Privacy & School Safety**  
<http://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html>
- **Current FERPA Regulations**  
<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- **Amendments to FERPA Regulations (Effective 1/3/12)**  
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- **Model Notifications**  
LEAs: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>  
Postsecondary: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html>

# FPCO LISTSERV

- **To sign up for the FPCO Announcement ListServ, go to:**  
<http://www2.ed.gov/policy/gen/guid/fpc0/tps/index.html>
- 1. **Click either “Local and State” or “Postsecondary” Training Partner Services.**
- 2. **Type word “privacy” in both User Name and Password pop-up boxes.**
- 3. **Once in Training Partner Services page, click “Register for Listserv.”**
- 4. **Follow direction and enter your contact information and click “Add” button. To remove your contact information, follow directions above and click “Remove.”**

# CONTACT INFORMATION

**Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520**

**Telephone: (202) 260-3887**

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

**For informal requests for technical assistance,  
email us at: [FERPA@ed.gov](mailto:FERPA@ed.gov)**

# FAMILY POLICY COMPLIANCE OFFICE

- **FPCO provides technical assistance to educational agencies and institutions about FERPA.**
- **FPCO investigates complaints filed by parents and eligible students alleging violation of FERPA rights.**
- **FPCO works with educational agencies and institutions to bring them into voluntary compliance with FERPA before taking certain enforcement actions.**



# QUESTIONS?

- **Use the Q&A Chat function on the lower right side of your screen to submit a question.**
- **Our presenter will respond to questions in the order they are received and as time permits.**

# THE REMS TA CENTER

**For additional information, resources, training, and technical assistance, please contact the Readiness and Emergency Management for Schools (REMS) Technical Assistance (TA) Center:**

**Phone: (855) 781-7367 (REMS)**

**Email: [info@remstacenter.org](mailto:info@remstacenter.org)**

**Website: <http://rems.ed.gov>**