

Sharing Information (FERPA)

FY07 REMS Initial Grantee Meeting

December 5, 2007, San Diego, CA



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FERPA

- Family Educational Rights and Privacy Act
- Statute: 20 U.S.C. 1232g
- Regulations: 34 CFR Part 99



Primary Rights of Parents 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

(These rights transfer to student when student turns 18 or attends a postsecondary institution.)



§ 99.3 What definitions apply to these regulations? (Partial)

- “Education records” are records which –
 - 1) contain information which is directly related to a student; and
 - 2) are maintained by an educational agency or institution or by a party acting for the agency or institution.



“Education records,” cont.

- Records on a student receiving services under Part B of the Individuals with Disabilities Education Act are “education records” subject to FERPA.
- Medical or health records are “education records” subject to FERPA.



Record

- “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



Law Enforcement Unit Records

§ § 99.3 “Education Records(b)(2) and 99.8

■ Law Enforcement Unit Records

- are exempt from the definition of education records
- means those records, files, documents, and other materials that are—
 - i) created by a law enforcement unit;
 - ii) created for a law enforcement purpose; and
 - iii) maintained by the law enforcement unit.



Law Enforcement Unit Records, *cont.*

- A Law Enforcement Unit can be:
 - an individual
 - office
 - department
 - division
 - another component of an educational agency or institution
- Which is:
 - officially authorized or designated by that agency or institution to—
 - (i) Enforce any local, State, or Federal law, or
 - (ii) Maintain the physical security and safety of the agency or institution.



Law Enforcement Unit Records, *cont.*

- A "law enforcement unit" does not lose its status if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.



Law Enforcement Unit Records, *cont.*

- Not exempt from FERPA are:
 - Copies of law enforcement unit records that are maintained by a component of the educational agency or institution other than the law enforcement unit; and
 - Any records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution; or
 - Copies of education records maintained by the law enforcement unit.



Personally Identifiable Information

- “Personally identifiable information” includes, but is not limited to:
 - Student’s name
 - Parent’s name
 - Address of the student or student’s family.
 - A personal identifier, such as a social security number or student number
 - A list of personal characteristics or other information that would make the student’s identity easily traceable



Directory Information

- “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-, part-time, undergraduate, graduate)
 - degrees & awards received
 - dates of attendance
 - most recent previous school attended



Directory Information, *cont.*

- Directory information cannot include student identification numbers or social security numbers.
- Directory information cannot be disclosed without consent if it is linked to any non-directory information.



§ 99.30 Under what conditions is prior consent required to disclose information?

- Except for specific exceptions, a parent 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
 - Identity party or class of parties to whom disclosure may be made.



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

- LEA exceptions (partial):
 - To school officials with legitimate educational interest (defined in annual notification) (a)(1)
 - To schools in which a student seeks or intends to enroll (a)(2)
 - To State and local officials in connection with serving the student under the juvenile justice system (a)(5)
 - To comply with a judicial order or subpoena (reasonable effort to notify) (a)(9)
 - Health of safety emergency (a)(10)
 - Directory information (a)(11)



School Officials & Legitimate Educational Interests

§ 99.31(a)(1)

- Education records can be disclosed without consent to school officials who have been determined to have legitimate educational interests.
- Criteria for determining “school officials” and “legitimate educational interests” must be set forth in LEA’s annual notification of rights under FERPA.
- School district law enforcement unit officials may be designated as school officials with legitimate educational interests in education records required for them to perform their jobs for the school.



Officials of Another School or School System Where the Student Seeks or Intends to Enroll

§ 99.31(a)(2)

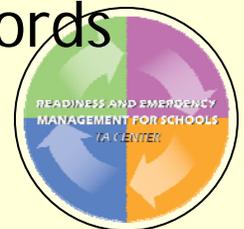
- Education records can be disclosed without consent to school officials of another school in which the student seeks or intends to enroll under the conditions described in § 99.34.
- School officials must make a reasonable attempt to notify the parent or eligible student of the disclosure, unless the disclosure is initiated by the parent or eligible student, or the FERPA annual notification includes a notice that the school forwards records to other schools that have requested the records in which the student seeks or intends to enroll.



Juvenile Justice System

§ § 99.31(a)(5) and 99.38

- Schools may disclose without consent to local or State officials who are part of a juvenile justice system if:
 - There is a State statute that provides for the disclosures and the disclosures concern the juvenile justice system's ability to serve, prior to adjudication, the student whose records are being disclosed, and
 - The local or State officials noted in the law have certified, in writing, that the personally identifiable information contained in the records will not be disclosed to a third party.



Juvenile Justice System, *cont.*

The juvenile justice system exception to FERPA's prior written consent provision allows for the disclosure of education records absent consent if the following four conditions are met:

- 1) The disclosure of the records must be to State and local authorities;
- 2) The disclosure must be pursuant to a State statute;
- 3) The disclosure must concern the juvenile justice system's ability to serve the student whose records are being released; and
- 4) The State or local officials must certify in writing to the educational agency or institution that the personally identifiable information in those records will not be disclosed to a third party - except as provided in the State law.



Subpoenas and Court Orders

§ 99.31(a)(9)

- Education records can be disclosed without consent in order to comply with a lawfully issued subpoena or court order.
- School must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that protective action may be sought - *unless*
 - *It is a subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or contents of the subpoena not be disclosed.*



Health and Safety Emergencies

§ § 99.31(a)(10) and 99.36

- 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.
- Schools may disclose information about certain disciplinary actions taken against students to officials of other schools.



Health and Safety, *cont.*

- Schools may disclose without consent information about certain disciplinary actions taken against students to other schools.
 - Disciplinary action taken for conduct that posed a significant risk to well-being of school community.
 - Student does not have to be in attendance at the other institution.
 - Student does not have to be seeking or intending to enroll in other institution.



Technical Assistance

For technical assistance and advice to school officials:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-5920

(202) 260-3887

Telephone

(202) 260-9001

Fax



Informal Technical Assistance



*For informal requests for technical assistance,
email us at:*

FERPA@ed.gov



Visit our Website:

<http://www.ed.gov/policy/gen/guid/fpc/index.html>

