

City University of New York

FERPA Compliance Training

Baruch College
October 20, 2010

Family Educational Rights and Privacy Act (FERPA)

Also known as the Buckley
Amendment

Statute: 20 U.S.C. § 1232(g)

Regulations: 34 CFR Part 99

Primary Rights of Students 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

Subpart A – General

- § 99.1 *To which educational agencies and institutions do these regulations apply?*
 - FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education.
 - “Educational institutions” means: schools or other entities that provide educational services and are attended by students.
 - “Educational agencies” means: entities that are authorized to direct and control public elementary or secondary, or postsecondary, institutions.

§ 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.

“Education records,” cont.

- Exceptions to “education records” include –
 - Sole possession records.
 - Records created and maintained by a law enforcement unit for a law enforcement purpose.
 - Employment records (unless contingent on attendance).
 - Medical records made and maintained in the course of treatment and disclosed only to those individuals providing treatment.
 - Records that only contain information about a student after he or she is no longer a student at that institution (e.g., alumni records).

Definitions, cont.

- “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means (oral, written, electronic, etc.), to any party *except the party identified as the party that provided or created the record.*

Definitions, cont.

- “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 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;*

Definitions, cont.

- “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; 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.*

Definitions, cont.

- “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
 - grade level
- Directory information cannot include social security numbers.

Definitions, cont.

- “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

Definitions, cont.

- “Student” means any individual:
 - who is or has been in attendance at an institution; and
 - regarding whom the institution maintains education records.

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

- Institutions must annually notify 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 file a complaint with U.S. Department of Education

Annual notification, cont.

- The annual notification must also include the following:
 - Procedure to inspect and review education records;
 - 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.

Annual notification, cont.

- FERPA does not specify the means of notification, other than by any means reasonably likely to inform the students. Examples include:
 - Student handbook
 - School newspaper or catalog
 - Local newspaper
 - Inclusion in student's registration packet

Subpart B – Inspection and Review of Education Records

- § 99.10 *What rights exist for a student to inspect and review education records?*
 - School must comply with request within 45 days.
 - Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
 - School may *not* destroy records if request for access is pending.

Inspection and Review, cont.

- § 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 student may inspect, review, or be informed of only the specific information about his or her records.
 - An institution does not have to permit a student to inspect and review education records that are –
 - Confidential letters and statements of recommendation – regarding admission, application for employment, or receipt of an honor or honorary recognition – if the student has waived his or her right to inspect and review those letters and statements.
 - Financial records of his or her parents.

Subpart C – What are the Procedures for Amending Education Records

- § 99. 20, § 99.21, § 99.22
 - Once a student identifies a record he or she believes to contain inaccurate or misleading information:
 - Institution must decide within reasonable period of time whether to amend as requested.
 - If institution decides not to amend, must inform student of right to a hearing.
 - After hearing, if decision is still not to amend, student has a right to insert a statement in the record.

Subpart D – Disclosure of Personally Identifiable Information From Education Records by an Educational Agency or Institution

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

- Except for specific exceptions, a 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.

Disclosure provisions, cont.

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

- The exceptions which relate to postsecondary institutions are:
 - *To school officials with legitimate educational interests* (defined in annual notification)
 - *To schools in which a student seeks or intends to enroll*
 - *To Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs*
 - *In connection with financial aid*

Disclosure provisions, cont.

➤ **Exceptions, cont.**

- *To organizations conducting studies on behalf of educational institutions*
- *To accrediting organizations*
- *To parents of a dependent student*
- *To comply with a judicial order or subpoena (reasonable effort to notify)*
- *In a health or safety emergency*
- *Directory information*
- *To the student*

Disclosure provisions, cont.

➤ **Exceptions, cont.**

- *Results of a disciplinary hearing to an alleged victim of a crime of violence*
- *Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies*
- *Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies*
- *Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State*

Recordkeeping

➤ **§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?**

- **An institution must maintain a record of each request for access to and each disclosure from an education record. This record of access must:**
 - Be maintained as long as record is maintained;
 - Include the parties who have requested or received information from education records; and
 - Include the legitimate interest parties had in receiving information.

Recordkeeping, cont.

➤ **The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:**

- **The student**
- **A properly designated school official for a legitimate educational purpose**
- **A party with written consent from the student**
- **A party seeking directory information**
- **A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed**

Redisclosure

➤ **§ 99.33** *What limitations apply to the redisclosure of information?*

- When disclosing information from education records to one of the parties listed under § 99.31, an institution should inform the receiving party that the information may not be further disclosed, except when:
 - The disclosure is to the eligible student
 - The receiving party discloses information on behalf of the educational agency or institution under § 99.31
 - The information disclosed is directory information

Redisclosure, cont.

- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the institution and student
- The disclosure is to the parents of a dependent student
- The disclosure is the final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies
- The disclosure, as described in § 99.31(a)(16), concerns a registered sex offender

Directory Information

➤ **§ 99.37** *What conditions apply to disclosing directory information?*

- An institution may disclose directory information if it has given public notice to students in attendance of:
 - What items the institution has designated as directory information.
 - A student's right to refuse to let the institution designate any or all of the information as directory information.
 - The time within which a student must notify the school in writing that he or she does not want any or all of the information designated as directory information.

Directory Information, cont.

- FERPA does not define "public notice" – left to the individual school to decide.
- Means of notice could include:
 - Student handbooks or catalog
 - School or local newspaper
 - Student's registration packet
- School may choose to include notice regarding directory information with the annual notification required by § 99.7.
- Notice to former students is not necessary.

Subpart E – What are the Enforcement Provisions?

➤ **§§ 99.60-99.67**

- The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Students may file complaints with the U.S. Department of Education.

Resources for school officials:

Family Policy Compliance Office U.S. Department of Education

(202) 260-3887

Informal requests for technical assistance:

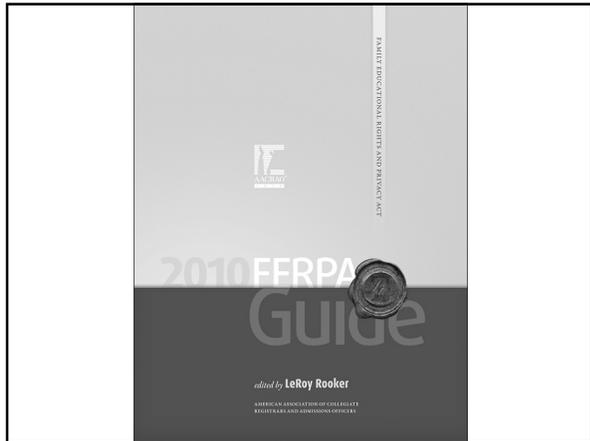
ferpa@ed.gov

ferpa@aacrao.org

Websites:

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

<http://www.aacrao.org>



LeRoy S. Rooker
Senior Fellow
AACRAO
One Dupont Circle, NW
Washington, DC 20036-1135
(202) 293-9161 x. 1059
ferpa@aacrao.org