

# **FERPA 101 – The Short Version**

**OACRAO**

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# **FERPA Basics**

**Family Educational Rights and Privacy Act  
of 1974, as amended**

## **Applicable State Laws**

- Relationship between State Open Records Laws and FERPA.

# FERPA Basics

## Background

- Passed in 1974; amended several times since then. Major amendments in 2009.
- Designed to protect the privacy of education records and to provide information to parents (primary/secondary education) or to students (higher education).
- Intended that students' rights be broadly defined and exceptions narrowly construed.
- There is some institutional flexibility.
- Few legal cases - issue is typically access, not improper disclosure.

# FERPA Basics

## Definitions:

- “Directory Information” - information not considered harmful or an invasion of privacy if disclosed.
  - 2009: New regulations re: SSN’s and SIN’s
- “Education Records” - anything related to the student (broadly defined) with exceptions (narrowly defined):
  - Records in the sole possession of the maker.
  - Law enforcement records.
  - Employment records.
  - Medical/psychological treatment records.
  - Alumni records.

# FERPA Basics

## Definitions (cont.):

- **2009: New regulations re: Distance Education; Alumni Records; Personally Identifiable Information**
- “Parent” - either parent.
- “Eligible Student” -
  - 18 years of age or enrolled in higher education.
  - Must be enrolled.
  - Applies only to that segment of the institution in which the student is enrolled.

# **FERPA Basics**

## **Five basic rights of students under the Act:**

- Inspection and review of their records.
- Amend an incorrect record.
- Consent to disclosure (with exceptions).
- File a complaint with DOE.
- Obtain a copy of the institution's policy.

# FERPA Basics

## Institutional Notice requirements

- At least annually.
- Reasonable effort to reach students.
- Must include at least the following:
  - Provisions to inspect/review educational records.
  - Right to amend an incorrect record/procedures.
  - Criteria/examples of “school officials.”
  - Definition of “Directory Information”

# FERPA Basics

## Inspection and review

- Can review everything, except:
  - Information about other students.
  - Financial records of parents.
  - Confidential letters of recommendation with access right waived (after 1/1/75).
  - Cannot destroy records once requested.
  - Can charge a reasonable fee.

# FERPA Basics

## **Amending the record.**

- Reasonable procedures outlined in the Act.

## **Right to consent to disclosure.**

- Must have a signed release. Note: use of e-signatures.
- When is prior consent not required? (may release, but not required)
- 2009 Amendments: New regulations re: verification of education records; authentication expectations.
  - Legitimate educational interest - “need to know.”
- 2009 Amendments: New regulations re: definition of “school officials;” management of access to education records.

# FERPA Basics

- **When is prior consent not required? (cont.)**
  - Disclosure to another institution where student seeks to enroll or is enrolled.  
*2009 Amendments: Clarification re: release to another institution.*
  - Disclosure to DOE, state/local education authorities.  
*2009 Amendments: Clarification re: re-disclosure to another third party.*
  - Disclosure in connection with the receipt of financial aid.
  - Disclosure to state/local officials in conjunction with legislative requirements.

# FERPA Basics

- **When is prior consent not required? (cont.)**
  - Disclosure to organization conducting studies to improve instruction, etc.  
*2009 Amendments: Clarifications re: purpose of the studies and role of the institution.*
  - Disclosure to accrediting organizations.
  - Disclosure to parents of dependent students.  
*2009 Amendments: Clarification re: disclosure of information to parents.*
  - To comply with a judicial order or lawfully issued subpoena.  
*2009 Amendments: New exception for USA Patriot Act.*

# FERPA Basics

- **When is prior consent not required? (cont.)**
  - Disclosure for health/safety emergency.  
*2009 Amendments: Clarification of what constitutes such circumstances.*
  - Disclosure of Directory Information – note “N” release requirement.  
*2009 Amendments: Clarification for managing “N” releases and “N” release students.*

# FERPA Basics

- **When is prior consent not required? (cont.)**

- Disclosure to the alleged victim, information from disciplinary proceedings .

2009 Amendments: Clarification of releasing information to the alleged victim.

- Disclosure to parents of any student under the age of 21, a violation of Federal, State, local or institutional laws/regulations related to substance abuse.

- 2009 Amendments: New exception for the Sex Crimes Prevention Act (Megan's Law)

# **FERPA Basics**

**FERPA rights (and the right to privacy) end at death.**

**Record-keeping requirements.**

**Right to file a complaint with the DOE.**

- 2009 Amendments: Clarification of DOE's authority to investigate claims
- 2009 Amendments: Recommendations regarding safeguarding standards.

# FERPA Basics

## 2011 Proposed Regulatory Changes - Key Points:

- Would redefine "education program" to be any program that is principally engaged in the provision of education--from early childhood to adult ed--whether or not it is administered by an educational authority.
- Would redefine "authorized representative" to include any state functionary, regardless of whether they are under the direct control of the state educational authority.
- Would amend current regulations by allowing officials to enter into "research" agreements with colleges, and re-disclose the information they gather.
- Would remove the requirement that officials named above should be able to invoke federal, state, or local statutory authority to conduct an audit before they are allowed non-consensual access to personally identifiable information.
- Would provide additional flexibility to manage release of Directory Information.

# **FERPA Basics**

## **Resources**

Family Policy Compliance Office (DOE)

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

National Assoc of College & University Attorneys

<http://www.nacua.org/>

# FERPA Basics

## Resources

### AACRAO

<http://www.aacrao.org/>

#### Publications (order on website)

- The AACRAO 2010 FERPA Guide
  - The FERPA Quick Guide (2011)
  - The Registrar's Guide (Evolving Best Practices)
- FERPA Chapter has lots of resource information

#### Compliance Information (website)

# **FERPA Basics**

## **Contact Information**

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