



# FERPA

Adapted by AACRAO from a presentation by LeRoy Rooker  
U.S. Department of Education, Family Policy Compliance Office

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**American Association of Collegiate Registrars and Admissions Officers**  
**[www.aacrao.org](http://www.aacrao.org)**

# PLEASE NOTE

- The following general information is provided for AACRAO members' professional development. Institutions are strongly encouraged to develop any campus policies through consultation with legal counsel.

# FERPA Background

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- Statute: Family Educational Rights and Privacy Act of 1974 (also known as the Buckley Amendment)
- Deals with the release of student education records, and affords students certain rights regarding those records
- Institutions may **not** disclose information in education records **without a student's written consent** (with few exceptions)

# **Primary Rights of Students Under FERPA**

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- To inspect and review their education records.
- To seek to amend their education records.
- To have some control over the disclosure of information derived from their education records.

# Definitions - Educational Institutions and Agencies

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- FERPA applies to each educational agency or institution which 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 K-12 or higher ed. institutions

# 34 CFR § 99.3

## Definitions - “Education Records”

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“Education records” are all records that:

- contain information that is directly related to a student and
- are maintained by an educational agency or institution or by a party acting on the behalf of the agency or institution.

# 34 CFR § 99.3

## Definitions - “Ed. Records”

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Exceptions to “education records” include:

- Sole Possession Records
- Employment Records - unless contingent on attendance
- Law Enforcement Records
- Medical/Health Records
- Alumni Records - or those that ONLY contain information about a student after he or she is no longer a student

# Definitions - 'personally identifiable information'

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Includes but is not limited to:

- Student's name
- Name of the student's parent or other family members
- Address of the student or student's family (but is allowed to be designated as directory information)
- A personal identifier, such as social security number
- List of personal characteristics that would make the student's identity traceable

# 34 CFR §99.3

## Definitions - “Directory Info.”

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- “Directory information” is information which would not generally be considered harmful or an invasion of privacy if disclosed.
- A policy for assigning directory information, or having no directory information at all, must be determined and adhered to by institutions (but written policy no longer needs to be published due to 1996 change to the law)

# 34 CFR § 99.3

## Definitions - “directory info.”

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The following can be designated by institutions as directory information:

- name
- address
- telephone
- e-mail
- field of study
- dates of attendance
- date and place of birth
- photographs

(Cont'd)

# 34 CFR § 99.3

## Definitions - “Directory Info.”

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- enrollment status (full- and part-time, ugrad, grad)
- weight and height of athletes
- degrees and awards received
- most recent previous school attended
- participation in officially recognized activities and sport
- grade level

**THE FOLLOWING MAY NOT  
BE DESIGNATED AS  
“DIRECTORY INFORMATION”**

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- Social Security number/student ID number
- Race/ethnicity/nationality
- Gender
- Grades

# DEFINITIONS - “STUDENT”

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- Any individual who is or has been in attendance at an institution; *and*,
- Regarding whom the institution maintains educational records.

# DEFINITIONS - “RECORDS”

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Information maintained in any way,  
including, but not limited to:

- handwriting
- computer media
- print
- video or audio tape
- film
- microfilm and microfiche

# 34 CFR §99.7

## ANNUAL NOTIFICATION

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Institutions must annually notify students in attendance of their **rights under FERPA to:**

- Inspect and review education records;
- Request amendment of education records the student believes to be inaccurate or misleading;
- Consent to disclosures of personally identifiable information in their education record, with certain exceptions
- File a complaint with U.S. Department of Education

# ANNUAL NOTIFICATION (cont.)

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Must also include the following:

- Procedure to inspect and review records
- Procedure for requesting amendment of records
- Statement that education records may be disclosed to school officials without prior written consent; the statement must include:
  - Specification of criteria for determining who are school officials and
  - What constitutes a legitimate educational interest

# MEANS TO COMMUNICATE ANNUAL NOTIFICATION

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- FERPA does not specify the means of notification - other than by any means reasonably likely to inform the students
- Examples: handbooks, school newspaper, local newspaper, student's registration packet

# MODEL ANNUAL NOTIFICATION AVAILABLE

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- By now, your institution's annual notification process should be in place
- “Model Notification of Rights under FERPA for Postsecondary Institutions” is available on Web site of the Education Department's Family Policy Compliance Office (the primary interpreter of FERPA that gives rulings about specific cases to schools):

<http://www.ed.gov/offices/OM/fpc/psi1.htm>

# Student Right to Inspect of Review Education Records

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- School must comply 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

# Fees

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- An educational agency may charge a fee for copies of education records unless imposing a fee effectively prevents a student from exercising his or her right to inspect and review records

# Limitations on Right to Inspect and Review Records

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- 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 education records that are confidential letters and statements of recommendation if the student has waived his or her right to those records
- Financial records of his or her parents

# Procedures for Amending Education Records

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Once a student identifies a record he or she believes to be inaccurate or misleading:

- 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 right to insert a statement in the record

# 34 CFR §99.30

## Prior Consent

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“Prior consent” is required to disclose information, but there are specific exceptions. The student will provide a signed and dated written consent before disclosure. The consent must:

- Specify records to be disclosed
- State purpose of disclosure
- Identify party or class of parties to whom disclosure may be made

# 34 CFR § 99.31

## Exceptions to Prior Consent

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Institutions may release information from student records without prior consent:

- To school officials with legitimate educational interest (defined in annual notification)
  - Citation: §99.31(a)(1)- School Officials
- To schools in which a student seeks or intends to enroll
- To Federal, State, and local authorities involving an audit or evaluation of compliance with education programs

# Exceptions to Prior Consent (cont.)

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- In connection with financial aid
- To organizations conducting studies for or on behalf of educational institutions
- To accrediting organizations
- To parents of dependent students
- To comply with a judicial order or subpoena
  - Citation: §99.31(a)(9)- Subpoenas/Court Orders
- In a health or safety emergency
- Directory Information
  - Citation: §99.31(a)(11)- Directory Information
- To the student

# Exceptions to Prior Consent (cont'd)

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- Results of disciplinary hearing
- Results of 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 (regardless of student's dependent status)

# § 99.31(a)(1)

## SCHOOL OFFICIALS

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- Information about a student maintained by an educational institution on a computer database is part of the student's education record and thus protected by FERPA
- Access to such information should be limited to individuals who are “school officials” with a “legitimate educational interest” in the information

# 34 CFR § 99.31 (A)(9)

## SUBPOENAS/COURT ORDERS

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Prior notice to student is *not required* when responding to:

- A Federal grand jury subpoena which specifies that the student not be informed of the existence of the subpoena OR
- A law enforcement subpoena which specifies the same OR
- The postal service investigating mail fraud

# § 99.37 Directory Information

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An institution may disclose directory information IF it has given public notice to students in attendance of:

- What 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 specific kinds, of information about them to be designated as directory information

# § 99.37 Directory Information

(cont'd)

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- FERPA does not define ‘public notice’ - left to individual institution 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.

# Recordkeeping Requirements

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Recordkeeping concerning requests and disclosures for access must:

- Be maintained as long as record is maintained;
- Include the parties who have requested or received information from records; and
- Include the legitimate interest parties had in receiving information

# Recordkeeping (cont.)

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Requirement does not apply if request was from or disclosure made to:

- The student or party with written consent from the student
- A properly designated school official for legitimate educational purpose
- A party seeking directory information
- A party with a law enforcement subpoena or court order which specifies nondisclosure of subpoena

# Redisdisclosure of Information

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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.

# Exceptions to Redisclosure

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- 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 (cont'd)

# Exceptions to Redisclosure

(cont'd)

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- The disclosure was made pursuant to a court order, subpoena or in connection to litigation between the college and the 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.

# Enforcement Procedures

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- Family Policy Compliance Office (FPCO) 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

# **Disclosure Provisions in other Federal Statutes: TRA '97**

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The Hope Scholarship and Lifetime Learning Credits mandated by Taxpayer Relief Act 1997 (TRA 97) require institutions to collect and report to the IRS information on individuals who have paid tuition during the tax year (including SSN and the total amount paid).

# TRA '97 OVERRIDES FERPA

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- TRA '97 education credits require reporting that *conflicts with FERPA* because the prior consent requirement would preclude the disclosure
- The Dept. of Ed. believes that Congress intended TRA '97 to override FERPA - the SSN and tuition information *must* be reported notwithstanding FERPA's privacy provisions.

# **TRA '97 OVERRIDES FERPA**

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**BUT FPCO decided that for TRA '97, the IRS' procedures will satisfy the requirements since the student will be provided notice of the release of information to the IRS (a 1098-T form will be mailed to each student by the institution). A copy of the letter outlining this reasoning is available on the FPCO Web site.**

# **Student Right-to-Know and Campus Security Act of 1990 (SRTK/CSA)**

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- Under SRTK, institutions required to publish &/or distribute grad rates and under CSA, to publish campus crime stats to current/prospective students.
- FERPA had a conflict with CSA in that crime records might include victims'/offenders' names

# Student Right-to-Know and Campus Security Act of 1990 (SRTK/CSA)

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- FERPA was amended in 1992 so that campus law enforcement can disclose law enforcement records (not crime records held by other campus officials), and in 1998 to allow postsecondary institutions to disclose final results of disciplinary proceedings if the student is an alleged perpetrator of a crime of violence.
- ASIDE: Campus disciplinary records were ruled “education records” in federal court Mar 2000 (*Miami University and OSU vs. Chronicle*) but CSA reporting only includes statistics of campus disciplinary proceedings - so not a violation of FERPA.

# SOLOMON AMENDMENT

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- In most cases, FERPA overrides Solomon in that if a student “opts out” for disclosure, the school need not report “student recruiting info.” to the military. *But if military requests non-directory info. that falls under that which is identified as ‘student recruiting information’ under Solomon & if the institution collects it, it must be released to the recruiter.*
- Dept. of Ed. works with Dept. of Defense as it drafts regulations to administer Solomon provisions. Direct questions to William J. Carr, U.S. Dept. of Defense, (703) 697-8444

# **TECHNICAL ASSISTANCE AND GUIDANCE**

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**Family Policy Compliance Office  
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600 Independence Avenue, SW  
Washington, DC 20202-4604**

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

**Fax: (202) 260-9001**

# FERPA QUESTIONS ANSWERED

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E-mail the Dept. of Ed.'s Family Policy  
Compliance Office at [FERPA@ed.gov](mailto:FERPA@ed.gov)

Visit FPCO's Web site:

<http://www.ed.gov/offices/OM/fpc/index.html>

FPCO link and **FERPA ONLINE GUIDE** on  
AACRAO's Compliance Web page:

[www.aacrao.org](http://www.aacrao.org)

Contact Jacque Gourley at AACRAO Office with  
FERPA inquiries: **202-263-0282**