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American Association of Collegiate
Registrars and Admissions Officers
One Dupont Circle, NW, Suite 520
Washington, DC 20036-1135

Tel: (202) 293-9161 | Fax: (202) 872-8857 | www.aacrao.org

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Preface

The *FERPA Quick Guide* was written for higher education administrators entrusted with the task of storing, handling and releasing student records. It provides a basic overview of the *Family Educational Rights and Privacy Act of 1974*, as amended, the full text of its regulations, and a summary of the 2009 regulatory changes. In addition, this guide highlights how the Act applies to various school officials, including brief outlines of key terms and issues as well as commonly asked questions.

The *Quick Guide* is a useful introduction to FERPA. To obtain a more detailed analysis and application of the Act, as well as extensive FERPA training materials and case studies, refer to the *AACRAO 2010 FERPA Guide*. To order this and other professional development resources published by AACRAO, visit www.aacrao.org/publications/.

CHAPTER ONE



Introduction

Under the *Family Educational Rights and Privacy Act* (hereafter referred to as The Act or FERPA), students are given three primary rights. They have the right to:

- ◆ Inspect and review their education records.
- ◆ Have some control over the disclosure of information from their education records.
- ◆ Seek to amend incorrect education records.

Educational institutions and agencies should conform to fair information practices. This means that persons who are subjects of data systems (*i.e.*, students at an institution) must:

- ◆ Be informed of the existence of such systems.
- ◆ Be apprised of what data about them is on record.
- ◆ Be given assurances that such data is used only for intended purposes.
- ◆ Be given the opportunity to request an amendment or correction to their records.
- ◆ Be certain that those responsible for data systems take reasonable precautions to prevent misuse of the data.
- ◆ Know that the institution will reasonably respond when an alleged misuse of, or access to, data is brought to the attention of those responsible for data systems.

Although The Act does not require it, those responsible for data systems are obliged to consider properly disposing of, or destroying, information when 1) the conditions under which that information was collected no longer exist and 2) there are no legal restrictions preventing such disposal.

Essence of the Act

FERPA deals specifically with the education records of students, affording them certain rights with respect to those records. For purposes of definition, education records are those records which are 1) directly related to a student and 2) maintained by an institution or a party acting for the institution.

FERPA gives students who reach the age of 18, or who attend a postsecondary institution, the right to inspect and review their own education records. Furthermore, students have other rights including the right to request amendment of records and to have some control over the disclosure of personally identifiable information from these records.

FERPA applies to all educational agencies and institutions that receive funding under most programs administered by the Secretary of Education (34 C.F.R. 99.1). Almost all postsecondary institutions, both public and private, generally receive such funding and must, therefore, comply with FERPA.

Institutions must annually notify students currently in attendance of their rights by any means that are likely to be read by students. The most common examples are found in the student handbook, catalog, or student newspaper. This notice also applies to any students pursuing education via distance education or any other non-traditional educational delivery processes. (*See Appendix C, on page 81, for a sample of a model annual notification statement provided by the Family Policy Compliance Office.*)

The regulations do not specify the means to be used for annually notifying students regarding their FERPA rights. Schools are not required by FERPA to notify former students of their FERPA rights. Although it is highly recommended that each institution publish its annual notification on its Web site, this method is only acceptable for fulfilling the annual notification requirement if all students are required to have personal computers or free and convenient access to computers that can access the institution's Web site.

If every enrolled student is given an institutional email address, schools may send their annual notification via email to their students.

Institutions may not disclose information contained in education records without the student's written consent except under conditions specified in The Act. An institution is not required to disclose information from a student's education records to the parents of dependent students but may exercise its discretion to do so. It is the responsibility of an institution to ensure that information is not improperly disclosed to the parents of students.

To Whose Records Does the Act Apply?

FERPA applies to the education records of persons who are, or have been, in attendance in postsecondary institutions, including students in cooperative and correspondence study programs and in any non-traditional educational delivery processes, such as distance learning.

FERPA does not apply to records of applicants for admission who are denied acceptance or, if accepted, do not attend an institution. Furthermore, rights are not given by FERPA to students enrolled in one component of an institution who seek to be admitted in another component of a school (*e.g.*, a student, admitted to one college within a university, but denied admission in another college, does not have any FERPA rights in the college which denied him/her admission).

To What Records Does the Act Apply?

The Act applies to all education records maintained by a postsecondary institution, or by a party acting for the institution, which are directly related to a student. Records containing a student's name, social security number or other personally identifiable information, in whatever medium, are covered by FERPA unless identified in one of The Act's excluded categories (*see* "Education Records," on page 17, for excluded categories).

To Which Institutions Does the Act Apply?

The Act applies to all institutions that receive funds administered by the Secretary of Education. This funding can either be in direct grants to the institution or to students attending the institution (financial aid). The Act applies to the entire institution even though only one component, *e.g.*, department or college, of the institution receives such funding.

Enforcement and Penalties

Responsibility for administering The Act has been assigned to the Family Policy Compliance Office within the Department of Education. This office reviews and investigates complaints, whether brought by the affected eligible student or otherwise brought to the attention of that office. When a violation has been found, FPCO attempts to bring about compliance through voluntary means, including any changes to the policies or practices of the institution. The penalty for noncompliance with FERPA can be withholding payments of Department of Education funds from the institution, issuing a cease and desist order, or terminating eligibility to receive funds; such actions generally will be taken only if compliance cannot be secured by voluntary means.

Conflict With State Law

FERPA may be more permissive than the privacy laws of some states. If a conflict exists between FERPA and a state or local law, and if an institution determines that it cannot comply with the requirements of The Act, it should advise the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5901; phone: (202) 260-3887; fax: (202) 260-9001, within 45 days of that determination, giving the text and legal citation of the conflicting law. These guidelines, therefore, should not be interpreted to reduce the stringency of such state laws. They counsel common sense, good judgment, perspective, and integrity for compliance by postsecondary institutions in the implementation of The Act.

Several challenges to FERPA were made during the 1990s based on various states' open records/meetings laws. In general, sunshine/open records laws do not supersede FERPA; thus, schools must continue to comply with FERPA. Any perceived conflict between a state open records law and FERPA should be brought to the attention of the Family Policy Compliance Office.

The “Musts” and “Mays” in FERPA

Throughout The Act, the words “may” and “must” are used. These words are usually used in connection with sections of The Act that either permit or require an institution to perform an action to comply with FERPA. In the former case, the institution has control over a decision; in other words, it *may*

do something. In the latter case, the institution has no choice; in other words, it *must* do something.

There are many “mays” and a few “musts” in FERPA. The reader should be aware of these words and not consider an institution legally obliged to release education record information when FERPA actually states that the institution *may* release education record information. For example, FERPA states that each institution may identify certain items as directory information; however, this is an institutional decision. By deciding not to identify any items as directory information, the institution would be making a decision that could have a major administrative impact on all offices. For example, consider the challenges of producing a commencement program if the names of all the graduates and their degrees were not identified as directory information.

Note that the “may” under FERPA could become a “must” for public institutions in a state where the Open Records Law requires release of information that FERPA permits to be released, or under other legislation that might require all institutions in that state to release information releasable under FERPA.