

# FERPA Overview

AASBO  
February 10, 2015  
Bryant Conference Center  
Tuscaloosa, AL

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## Disclaimer

The presentation should not be deemed to be legal device. This handout includes highlights from FERPA which should not be relied upon as definitive treatment of the law. Please review the entire legislation and regulations and obtain guidance from your local board attorney.

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## The Family Educational Rights and Privacy Act (FERPA)

- \* Statute: 20 U.S.C § 1232g
- \* Regulations: 34 C.F.R. Part 99
- \* Enacted by Congress in 1974 in order to protect the privacy of students and their parents
- \* The most recent changes to the FERPA law occurred through the Uninterrupted Scholars Act (the USA) in January 2013
- \* Most recent changes to regulations: 2011

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## To which educational agencies and institutions does FERPA apply?



- Elementary
- Secondary
- Postsecondary

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## The Family Education Rights and Privacy Act (FERPA)

The Act was designed to protect a student's educational information and status as a student.

FERPA affords **parents** (and **eligible students**) the right to:

- \* Have access to their child's education records;
- \* Seek to have the records amended;
- \* Prevent the disclosure of information without consent, subject to certain exceptions;
- \* File a complaint with the U.S. Department of Education.

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## Inspection, Review, and Corrections

School must provide access to educational records in response to **parent's or eligible student's request** within 45 days:

- \* **PHOTOCOPIES:** FERPA does not require schools to provide copies – unless failure to do so would effectively prevent access;
- \* **FEEES:** FERPA does not prohibit charging fees for copies, unless fee would effectively prevent access.

Schools must consider parent's/eligible student's request to **CORRECT** information asserted to be misleading or inaccurate:

- \* If the school disagrees, it must inform parent/student of right to a formal hearing;
- \* If school declines to correct record, parent/student may provide an explanatory statement.

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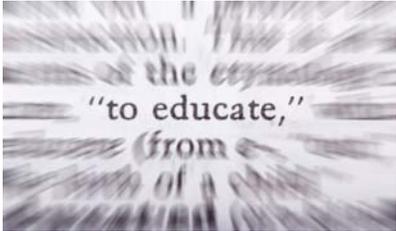
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## FERPA Definitions



"to educate,"

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## What is a Student?

- \* An individual who is enrolled in and actually attends an educational institution;
- \* Attendance includes, but is not limited to—
  - (a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and
  - (b) The period during which a person is working under a work-study program. (Authority: 20 U.S.C. 1232g).

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## What is an Eligible Student?

An "eligible student" is a student who has reached 18 years of age or is attending a postsecondary institution at any age.

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## Education Records

Education records are records which:

- (i) contain information directly related to a student;
- (ii) are *maintained* by an educational agency or institution or by a person acting for such agency or institution.

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## Education Records

- \* Grades
- \* Class Lists
- \* Student Course Schedules
- \* Disciplinary Records
- \* Student Financial Records
- \* Payroll records for employees who are employed as a direct result of their status as students

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## Medical Records

- \* At the elementary or secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered "educational records" subject to FERPA. A school nurse may share information on students with other school officials if these "school officials" have a "legitimate educational interest" in the records in accordance with school policy.

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## What are NOT education records?

- \* The term "education record" does not include:
  - **sole possessions:** records used only as a personal memory aid, made by instructional, supervisory, and administrative personnel and educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute;
  - **law enforcement unit records:** records maintained by a law enforcement unit of the LEA created by the law enforcement unit for the purpose of law enforcement
  - **alumni records;**
  - **peer-graded papers** before they are collected and recorded by the teacher.

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## Personally Identifiable Information (PII)

- \* The term includes, but is not limited to—
  - (a) The student's name;
  - (b) The name of the student's parent or other family members;
  - (c) The address of the student or student's family;
  - (d) A personal identifier, such as the student's social security number, student number, or biometric record;
  - (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
  - (f) 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
  - (g) 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. (Authority: 20 U.S.C. 1232g)

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## Personally Identifiable Information (PII) includes...



Student's Name



Mother's Maiden Name



Address



Date of Birth



Social Security Number



Parent's Name

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## General Rule of Consent

Schools must have written permission from the parent or from the eligible student in order to release any information from the student's education record.



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## Circumstances where schools DO NOT Need Consent include:

- \* School officials with legitimate educational interests (defined in your annual notification);
- \* Another school to which a student is transferring;
- \* Accrediting organizations;
- \* Organizations conducting studies;
- \* Audits or evaluations;
- \* Comply with a lawfully-issued subpoena or judicial order;
- \* State and local juvenile justice system authorities;
- \* Directory Information;
- \* Health and safety emergency; and
- \* NEW EXCEPTION as of January 14, 2013 – the Uninterrupted Scholars Act (USA).

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## Exception for School Officials

- \* A “school official” who has “legitimate educational interest” may access educational records without consent.
- \* School officials may include:
  - \* Teachers, administrators, board members, support staff;
  - \* Attorneys, counselors, nurses, health staff;
  - \* Contractors, consultants.

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## Legitimate Educational Interests

- Generally considered to be those to whom the information is necessary to perform their professional responsibilities.
- Example: Personnel who regularly work with the student's file?

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## What Is Directory Information?

- \* *Personally Identifiable Information* that is not generally considered harmful or an invasion of privacy if disclosed;
- \* *These are items that you might find in a yearbook, a sports program, a student directory.*
- \* Not a student's Social Security Number and generally not a Student ID Number;
- \* May include a Student ID Number if displayed on a Student ID Badge.

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## Exception for Directory Information

- \* Schools may only disclose this information without consent after giving parent/eligible student:
  - (1) notice; and
  - (2) right to opt out.

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## Uninterrupted Scholars Act

New exception to the general consent rule passed in 2013:

- Applies to students in foster care;
- Disclosure permitted to an “agency caseworker or other representative” of a Child Welfare Agency who has the right to access a student’s case plan;
- CWA is “legally responsible ... for the care and protection of the student.”

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## Exception for Emergencies

- \* Schools may disclose PII without prior written consent if it is necessary to protect the health or safety of student or others:
  - \* Exception only applies to IMMEDIATE emergencies;
  - \* Exception does not apply to POSSIBLE emergencies.
- \* Disclosure is limited to “appropriate persons” in the circumstances:
  - \* Law enforcement officers, emergency responders, public-health officials, medical personnel, parents;
  - \* The school must record details of the disclosure.

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## Recordkeeping Requirements

Generally, a school must maintain a record of each request for access to and each disclosure from an education record.

*But there are exceptions!*

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## Enforcement

- \* Carried out by the Family Policy Compliance Office;
- \* Written Complaints may be sent to: Family Policy Compliance office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202;
- \* Enforcement action for noncompliance may include:
  - \* Withholding further payments under any applicable programs;
  - \* Issuing a complaint to compel compliance through a cease and desist order;
  - \* Terminating eligibility to receive funding under any applicable program.

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## Privacy Technical Assistance Center

For FERPA videos and answers to specific questions regarding FERPA and other data confidentiality issues, please visit the:

Privacy Technical Assistance Center  
at  
**PrivacyTA@ed.gov**

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## PTAC - <http://ptac.ed.gov>



*Pop Quiz!*

**REPORT CARD**

Math	D
English	F
Science	F
History	D
Art	D
Music	F
Phys. Ed.	F

**Transcript**

Paul, a 17-year-old high school student, received his latest report card a few days ago. He did not do very well, and when his mother, Dina, asked to see the report card, Paul wouldn't show it to her. Dina took Paul with her to the high school and asked Mrs. Jones in the school records office to show her Paul's report card. Now, Mrs. Jones needs to determine whether she may release Paul's report card to Dina.

In the following vignette, Paul is a student, Dina is his mother and Mrs. Jones is a school administrator. After you view the vignette, you will

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Pop Quiz!

In order to determine whether she may release Paul's report card to Dina, what's the most relevant question that Mrs. Jones should ask Dina?

- "How old is Paul?"
- "Is your request related to a health or safety emergency?"
- "You won't get mad at him, will you?"

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Pop Quiz!

We agree.

This question is the most relevant one to help Mrs. Jones determine whether to release Paul's report card to Dina, because the right to review a student's education records transfers from the parents to the student when the student turns 18.

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PTAC - <http://ptac.ed.gov/>

Pop Quiz!

**Transcript**

Liam, an elementary-school student, was not feeling well. Liam's teacher sent him to Nurse Ginny, the school nurse, who evaluated Liam and added some notes to his school health records. Now, one of Liam's teachers is asking questions about Liam's medical condition, trying to determine if Liam will be out of class for multiple days. Nurse Ginny needs to determine whether she may share information from Liam's medical record with his teacher.

In the following vignette, Liam is an elementary-school student and Nurse Ginny is a school nurse. After you view the vignette, you will be asked to answer a question about the information contained in a student's school health records.

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FERPA 101 - Internet Explorer

Pop Quiz!

Which of the following dictates whether Nurse Ginny may release information from Liam's health records to teachers and school administrators?

- FERPA.
- The HIPAA Privacy Rule.
- Both FERPA and the HIPAA Privacy Rule.



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FERPA 101 - Internet Explorer

Pop Quiz!

We agree.

At the elementary or secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered "education records" subject to FERPA — not the HIPAA Privacy Rule. A school nurse may share information on students with other school officials if these school officials have a "legitimate educational interest" in the records in accordance with school policy.

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## Scenarios

### Why Is FERPA So Complicated?



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### Directory Information: Reporter Request

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A reporter from the local newspaper calls the school and informs the school that he is writing an article about the success of Hispanic students. The reporter asks the school for the name and contact information for all the Hispanic students who made the honor roll for the current school year. Are the names and contact information for all the Hispanic students who made the honor roll for the current school year "directory information"?

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### Directory Information: Disability

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A non-profit organization that has programs for special needs children asks the school for directory information on students who have a certain disability. Can the names and contact information for these students be disclosed to the organization as directory information?

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### Disclosure to Police Officer

- A police officer shows up at the main office of a high school and he asks if a certain student is attending school today. The police officer does not have a search warrant or a subpoena. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. Can the school tell the officer whether or not the student is attending school today?

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### Law Enforcement Unit Maintaining Records

- A student is expelled from high school. A copy of his disciplinary record is sent to the school district's law enforcement unit so that school security can keep the student off campus. The law enforcement unit maintains that record and discloses it to a reporter in response to a State open records request. Is that permissible under FERPA?

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### Teacher as Witness

- A teacher personally witnesses an incident, such as one student bullying another. Can the teacher call the victim's parents and tell them what she observed and who she saw bullying their child?

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### Overdue Library Books

- A public school district lists the names of students who have overdue library books on their website, as well as posts the list on the school bulletin board. Is this permissible under FERPA?

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**Disciplinary Records Request**

- A student who attended a New York high school has relocated to Massachusetts and is having a hard time being admitted to the local Boston high school because the new high school wants the student's disciplinary records from his previous school. Does the New York high school have to disclose the student's discipline records to the new school?

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**Student ID Badge**

- A student refuses to wear an ID badge and his parents opted out of the disclosure of directory information on their child in order to prevent the student from having to wear an ID badge. Can the school make him wear the ID badge anyway?

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**Student Health Records**

- The school nurse at a middle school wants to share information with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

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### **After School College Prep Program**

- The local YMCA offers an after school college prep program for high school students. How would the YMCA be able to access education records from the high school in order to assist the students in this program?

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### **College Prep Advisor**

- A college prep advisor is housed at the local high school to provide guidance and counseling to students regarding college opportunities. The advisor is not an employee of the school system, but of the local college or college consortium. How would the advisor be able to obtain access to students' education records?

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### **U.S. Department of Education Grantees**

- A college has received a grant from the U.S. Department of Education to work with students in the local high schools to encourage college attendance. How can the program obtain records from the local high schools on the student participants?

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## Contact Information:

Juliana T. Dean  
Associate General Counsel  
Alabama State Department of Education  
[jdean@alsde.edu](mailto:jdean@alsde.edu)  
334-242-1899

*The information contained herein is not legal advice, and should not be relied on by the user of this material as such. The user is encouraged to retain the services of a lawyer for legal advice.*

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