The Family Educational Rights and Privacy Act and CTE: Performance Reporting and Protecting Student Privacy

Dale King, Director, Family Policy Compliance Office
Presentation Agenda

• Update on student privacy regulations and legislation
  • Regulatory reform
  • Federal and state laws

• Overview of the Family Educational Rights and Privacy Act (FERPA)
  • FERPA basics
  • CTE and FERPA
  • Key exceptions

• Scenarios
Change is in the Air
Regulatory Reform and Privacy

• Executive Order 13777 issued February 24, 2017
• ED formed its own RRTF (Regulatory Reform Task Force) comprised of career and political staff
• More than 150 regulations and more than 1700 guidance documents
• Recommendations for each regulation:
  • Rescind
  • Modify
  • Keep
Legislation?

Federal Legislation
• Will 2018 be the year for a new FERPA?

State Legislation
• The states have been where the action is in privacy legislation since 2013.
State Student Privacy Legislation

39 States Have Passed 106 Laws Since 2013

Passed a student privacy law since 2013
Introduced but did not pass a student privacy law since 2013

FUTURE OF PRIVACY FORUM
All agree that FERPA can be confusing
What is FERPA?

- Gives parents the right to access their child’s education records and seek to amend the education records
- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requires written consent of parent before disclosing PII – unless an exception applies
- Applies to educational agencies and institutions that receive federal education funds for any program administered by the Secretary
- Gives parents the right to file a complaint with Family Policy Compliance Office (FPCO)

FERPA is a privacy statute. Its purpose is to protect the privacy interests of parents and students in education records maintained by educational agencies and institutions on students.
Entities Not Covered Under FERPA

- Vocational Rehabilitation (VR) agencies
- State educational agencies
- Community- or faith-based organizations
- Public or private nonprofit agencies
- Volunteer organizations
- Libraries
- Public housing authorities
- Industry partners
Transfer of Rights

• When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").
• *Education records* are records that are directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution.

• *PII* includes such information as student’s name, student’s parents or family names, social security number, student number, date and place of birth; and 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.
Prior Written Consent Requirement

• Except for specific exceptions, a parent or eligible 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.
What are the exceptions to general consent?

- To school officials with legitimate educational interests (defined in annual notification);
- To schools in which a student seeks or intends to enroll;
- To state and local officials pursuant to a state statute in connection with serving the student under the juvenile justice system;
- To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
- To accrediting organizations;
- To parents of a dependent student;
What are exceptions to general consent? (cont.)

- To authorized representatives of federal, state, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency;
- To child welfare agency or tribal organization for those children in foster care;
- Financial Aid; and
- Directory information.
• **5S1: Secondary Placement.** Placed in postsecondary education or advanced training, in the military service, or employment in the second quarter following the program year in which left secondary education.

• **6S1: Nontraditional Participation.** Participated in a program that leads to employment in nontraditional fields

• **6S2: Nontraditional Completion.** Completed a program that leads to employment in nontraditional fields

• **4P1: Student Placement.** Placed or retained in employment, or placed in military service or apprenticeship programs in the 2nd quarter following program year in which they left postsecondary education

• **5P1: Nontraditional Participation.** Participated in a program that leads to employment in nontraditional fields

• **5P2: Nontraditional Completion.** Completed a program that leads to employment in nontraditional fields
Performance Reporting and Data Privacy and Confidentiality

• Matching records to meet performance accountability, reporting, and evaluation requirements raises complex issues regarding privacy and confidentiality.

• Multiple Federal laws may need to be considered when conducting data matching for reporting performance.

• States may choose to provide greater privacy and confidentiality protections.
Federal Laws and Regulations Governing Use and Disclosure of Records

• FERPA regulations at 34 CFR 99
  • Governs the use and disclosure of personally identifiable information (PII) from education records

• VR regulations at 34 CFR 361.38
  • Govern the use and release of personal information from VR records

• Department of Labor Regulations at 20 CFR Part 603
  • Govern the use and release of confidential Unemployment Compensation (UC) information from wage records by States and State UC agencies that administer State UC laws
Audit or Evaluation Exception

• Permits the disclosure of PII from education records without consent to authorized representatives of state or local educational authorities

• PII from education records must be used to audit or evaluate a federal- or state-supported education program, or to enforce or comply with Federal legal requirements that relate to those education programs
Audit or Evaluation Exception

- Each state designates one or more agencies or entities that are responsible for and authorized under local, State, or Federal law to supervise, plan, coordinate, advise, audit, or evaluate elementary, secondary, or postsecondary federal- or state-supported education programs and services in the state (i.e., state educational agency, an local educational agency (LEA), and a state postsecondary commission).

- A state or local educational authority may designate an individual or entity, including a contractor or other government agency, to be its authorized representative.

- Example: the state educational authority may designate a state UC agency as its authorized representative for the purpose of conducting an audit or evaluation of a Federal- or state-supported education program.
Conditions Governing Disclosures to Authorized Representatives

• Used to audit or evaluate a Federal- or state-supported education program, or to enforce Federal legal requirements that relate to those education programs.

• Use reasonable methods to ensure to the greatest extent practicable that its authorized representative is FERPA-compliant.

• Must be a written agreement between the state or local educational authority and its authorized representative.

• Educational authority must authorize any further disclosure to be made and ensure that all other FERPA requirements are met.
What is an education program?

• Any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education; and

• Any program that is administered by an educational agency or institution.
Directory Information

Information in a student’s education records that would not generally be considered harmful or an invasion of privacy if disclosed.
Directory Information Exception

• May include:
  • name, address, phone number, and e-mail address
  • photograph
  • date and place of birth
  • Most recent school attended; grade level and major field of study
  • dates of attendance (e.g., year or semester)
  • participation in officially recognized sports and activities; height and weight of athletes,
  • degrees, honors, and awards received, and

• Can never include social security number
• Can’t disclose non-directory information with directory information
School Official Exception

• Schools may disclose PII from education records without consent if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interest

• Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest
School Official Exception, Cont.

• Conditions for outsourcing:
  • Performs an institutional service or function for which the agency or institution would otherwise use employees;
  • Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
  • PII from education records may be used only for the purposes for which the disclosure was made; and
  • Meets the criteria specified in the school, LEA, or institution’s annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.
TABLE TALK: Scenarios
Janet is a 17 year old high school student who is enrolled in the career and technical education Culinary Arts Program of Study. The Culinary Arts Program has an articulation agreement with a local community college. As such, Janet also is dually-enrolled at the community college where she is taking the Artisan Breads and Pastries class. Janet’s parents have requested access to and a copy of Janet’s education records maintained at both the high school and the community college.

• Must you and the high school honor the parent’s request to access Janet’s records and to receive a copy of her records?
A college prep advisor is housed at the local high school and provides guidance and career counseling to students regarding college opportunities. The advisor is not an employee of the school system, but of the local college or college consortium. The advisor approaches the high school guidance counselor and requests access to the education records on those students he is advising.

• May the high school guidance counselor provide the advisor with the records on the students the advisor is counseling?
Your state has an energy industry Program of Study (POS). Colleges throughout your state offer the necessary courses for students to seek to obtain an energy industry-recognized credential. Upon completion, students may pay to take the assessment to earn the industry-recognized credential which is administered and issued by a national energy association. You contact the association asking for a list of all students from your state that received a credential. The association refuses to provide you the information without consent of the students as the information is protected under FERPA and there is not an exception to consent that would permit the disclosure.

- How does FERPA apply in this situation? Is the organization correct in its interpretation?
Your school has a strong Hospitality and Tourism POS. The state Tourism Association has just initiated a workshop specifically for Hispanic students on tourism demands and employment needs within your state. The Association approaches you regarding the workshop and asks for the name, address, and telephone number of Hispanic students in your school who are enrolled in your POS. You believe the workshop would be of interest and benefit to the Hispanic students in your program and want to assist the Association.

- Can the names and contact information for these students be disclosed to the association?
Your Scenarios
Well, I don’t find FERPA confusing AT ALL.
Check out our new website!

https://studentprivacy.ed.gov/

- Combines Privacy and Technical Assistance Center (PTAC) and Family Policy Compliance Office (FPCO) websites
- File a complaint, find guidance, look up old FPCO letters
- Find training materials, including short videos
- Kathleen’s favorite change: the ability to search
- FPCO letters
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Telephone: (202) 260-3887
Website: https://studentprivacy.ed.gov/

For informal requests for technical assistance and/or to sign up for the Student Privacy GovDelivery Announcement ListServ, click the “Contact” button on https://studentprivacy.ed.gov/.
Up Next…

• Lunch from 11:30-12:45
  • tickets can be purchased at the check-in/information desk from 11:45 to 12:00

• Collaboration Roundtables start at 12:45!