

Family Educational Rights and Privacy Act (FERPA)

Also known as the Buckley Amendment

Statute: 20 U.S.C. § 1232(g)

Regulations: 34 CFR Part 99

Primary Rights of Students under FERPA

- Right to inspect and review education records
- Right to seek to amend education records
- Right to have some control over the disclosure of information from education records

§ 99.3 What definitions apply to these regulations? (Partial)

- "Education records" are records which –
 - (1) contain information which is directly related to a student; and
 - (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

"Education records," cont.

- Exceptions to "education records" include – (partial)
 - Records created and maintained by a law enforcement unit for a law enforcement purpose.
 - Medical records made and maintained in the course of treatment and disclosed only to those individuals providing treatment.

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- Records that are subject to FERPA are NOT subject to the HIPAA Privacy Rule (see page 82483, Federal Register, December 28, 2000)
- Other HIPAA rules may apply.

HIPAA Privacy Rule, cont.

- Educational institutions that provide health or medical services to students may qualify as "covered entities" under the HIPAA Privacy Rule. However, the HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA. The definition of "Protected health information" in 45 C.F.R. § 160.103, states, in relevant part, the following:

HIPAA Privacy Rule, cont.

(2) Protected health information excludes individually identifiable health information in:

- (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; [and]
- (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv) ["treatment records"].

Definitions, cont.

- "Personally identifiable information" includes, but is not limited to:
 - The student's name.
 - Name of the student's parent or other family members.
 - Address of the student or student's family.
 - A personal identifier, such as a social security number or student number.
 - A list of personal characteristics or other information that would make the student's identity easily traceable.

Definitions, cont.

- "Directory information" is –
 - Information not generally considered harmful or an invasion of privacy if disclosed.
 - Includes, but is not limited to:
 - name, address, telephone listing, electronic mail address
 - date and place of birth, photographs
 - participation in officially recognized activities and sports
 - field of study
 - weight and height of athletes
 - enrollment status (full-, part-time, undergraduate, graduate)
 - degrees & awards received
 - dates of attendance
 - most recent previous school attended
 - grade level
- Directory information cannot include student identification numbers or social security numbers.

Definitions, cont.

- "Record" means any information maintained in any way, including, but not limited to:
 - Handwriting
 - Video or audio tape
 - Computer media
 - Film
 - Print
 - Microfilm and microfiche

Definitions, cont.

- "Student" means any individual:
 - who is or has been in attendance at an institution; and
 - regarding whom the institution maintains education records.

Subpart D – Disclosure of Personally Identifiable Information From Education Records by an Educational Agency or Institution

- § 99.30 *Under what conditions is prior consent required to disclose information?*
 - Except for specific exceptions, a 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.

Disclosure provisions, cont.

- § 99.31 *Under what conditions is prior consent not required to disclose information? (partial)*
 - The exceptions which relate to postsecondary institutions are *(partial)*:
 - To school officials with legitimate educational interests (defined in annual notification)
 - To schools in which a student seeks or intends to enroll

Disclosure provisions, cont.

- Exceptions, cont.
 - To parents of a dependent student
 - To comply with a judicial order or subpoena (reasonable effort to notify)
 - In a health or safety emergency

Disclosure provisions, cont.

- Exceptions, cont.
 - Results of a 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

Health and Safety Emergencies

§ § 99.31(a)(10) and 99.36

- Disclosure to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.

Technical Assistance

For technical assistance and advice to school officials:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-5920

(202) 260-3887 Telephone
(202) 260-9001 Fax



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