FERPA in 5

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Enacted by Congress in 1974 in order to protect the privacy of students and their parents.

FERPA requires that all federally funded institutions comply with certain procedures prior to determining whether or not student information can be disclosed.

The act was designed to protect a student’s educational information and status as a student.
Can a reasonable person in the school community who does not have personal knowledge of the relevant circumstances identify an individual in the publicly released data with reasonable certainty?

Paraphrased from 34 CFR 99.3 and 99.31(b)(1)
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)
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)
Another school to which a student is transferring
* Accrediting organizations
* State or federal auditors
* Appropriate persons in connection with financial aid
* Comply with a lawfully issued subpoena or judicial order
* State and local juvenile justice system authorities
Schools may make nonconsensual disclosure of PII if it is necessary to protect the health or safety of student or others
- Exception only applies to IMMINENT or EXISTENT emergencies
- Does not apply to POSSIBLE or EVENTUAL emergencies
- Disclosure is limited to “appropriate persons” in the circumstances
  - Law enforcement officers, public-health officials, medical personnel, parents
  - The school must document details of the disclosure
- In a disaster, a school may disclose “directory information” to assist in locating parents
A “school official” who has “legitimate educational interest” may access educational records without consent.

School officials include:

- Teachers, administrators, board members, support staff
- Attorneys, counselors, nurses, health staff
- Human resources and IT staff
- Contractors, consultants, volunteers
What Is Directory Information?

* Personally Identifiable Information that is not generally considered harmful or an invasion of privacy if disclosed
* 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
Schools may disclose PII without prior consent if properly designated as directory information. If disclosure would not be harmful/invasion of privacy.

Directory information:
- May NEVER include Social security numbers
- Could include student’s name, contact information, birthdate
- Could include various other types of information

Schools may only disclose this information without consent after giving parent/student (1) notice and (2) right to opt out.
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 - 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.
* 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
Not Considered Educational Records

* “Sole possession” records made by faculty and staff for their own use as reference or memory aids and not shared with others
* Personal Observations
* Law Enforcement Unit Records
* Medical and Mental Health Records used only for the treatment of the student
* Alumni Records
* Peer graded papers and exams prior to the grade being recorded in the instructor’s grade book
Each educational agency or institution shall annually notify parents of students/eligible students currently in attendance of their rights on an annual basis. An agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. An agency or institution shall effectively notify parents who have a primary or home language other than English.
School must provide access to educational records in response to parent’s or eligible student’s request within 45 days
  - FERPA does not require schools to provide copies, unless failure to do so would effectively prevent access
  - FERPA does not prevent charging fees for copies, unless fee would effectively prevent access
  - Schools may NOT destroy records if a request is pending
* Schools must consider parent’s/eligible student’s request to correct information asserted to be misleading or inaccurate
  - If school disagrees, it must inform parent/student of right to formal hearing
  - If school declines to correct record, parent/student may add explanatory statement
* Schools are NOT required to consider requests to amend grades, opinions, disability placement decisions or disciplinary decisions
Carried out by the Family Policy Compliance Office and the Office of Administrative Law Judges

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:
* Withhold further payments under any applicable programs
* Issue a complaint to compel compliance through a cease and desist order
* Terminate eligibility to receive funding under any applicable program
For additional 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