



Intersection of FERPA & Part B of IDEA Confidentiality Provisions

Deborah Morrow
Special Assistant for Policy
and Fiscal Issues, OSEP

March 15, 2012

Ellen Campbell
Deputy Director
FPCO



Getting to know you:

- My current role in the agency I represent is:
 - A. Special Education Official – State Level
 - B. Special Education Official – District Level
 - C. Special Education Teacher – District Level
 - D. Information Technology – State Level
 - E. Information Technology – District level
 - F. Regular Education Teacher
 - G. Other



Family Educational Rights and Privacy Act (FERPA)

- Statute: 20 U.S.C. § 1232g

 (§ 444 of the General Education Provisions Act (GEPA))
- Regulations: 34 CFR Part 99
- Latest changes to regulations:
- December 2, 2011 – <http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- December 9, 2008 – <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>



Individuals with Disabilities Education Act (IDEA)

- Statute: 20 U.S.C. § 1401 and §§ 1411-1419
- Regulations: 34 CFR Part 300
- Latest changes to regulations:
 - August 14, 2006 -
<http://www.gpo.gov/fdsys/pkg/FR-2006-08-14/pdf/06-6656.pdf>
 - December 1, 2008 =
<http://www.gpo.gov/fdsys/pkg/FR-2008-12-01/pdf/E8-28175.pdf>



Part B of the Individuals with Disabilities Education Act (IDEA)

§ 300.610 Confidentiality of Information

“The Secretary takes appropriate action, in accordance with section 444 of GEPA [FERPA], to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.627.”



Attendee poll results:



Primary Rights of Parents Under FERPA

- Right to inspect and review education records relating to their child
- Right to seek amendment of education records
- Right to consent to the disclosure of personally identifiable information in education records, except as provided by law



Rights of Eligible Students Under FERPA

- These rights under FERPA transfer to the student when he or she turns 18 years of age or enters a postsecondary institution at any age ("eligible student").
 - § 99.3 "Eligible student"
 - § 99.5 Rights of Students



§ 300.625 of IDEA “Children’s rights”

- If the rights accorded to parents under Part B are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding education records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the IDEA to the student and the parents. (§300.625(c)).



Definitions (Partial)

- “Education records” means 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.

(§ 99.3)

- This definition also applies under the IDEA
(§ 300.611(b))



“Education records,” cont.

- Records maintained by an educational agency or institution, or by a party acting for the educational agency or institution, that are subject to FERPA on students with disabilities receiving services under Part B of IDEA are “education records” subject to FERPA.
- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records” subject to FERPA.



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*, Vol. 65, No. 250, December 28, 2000)
- Other HIPAA Rules may apply.



Personally Identifiable Information (PII)

“Personally identifiable information” (PII) 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, student number, or biometric record;
- Other direct identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;



PII, cont.

- 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
- 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.

(§ 99.3)



Rights of Parents

§ 99.4 What are the rights of parents, custodial or noncustodial?

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights.
- Similarly, under the IDEA, an agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce (§300.613(c)).



Annual Notification of Rights

- § 99.7 of FERPA requires schools to annually notify parents and eligible students in attendance of their rights under FERPA.
- § 300.612 of the IDEA regulations requires a State educational agency (SEA) to give notice that is adequate to fully inform parents about the requirements related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act, including the rights under FERPA and its implementing regulations in 34 CFR Part 99.



Inspection & Review of Education Records

- § 99.10 of FERPA provides that an educational agency or institution – as well as the SEA – afford parents and eligible students the right to inspect and review their education records, within 45 days of receiving a request.
- § 300.613 of the IDEA regulations requires each participating agency to comply with a request to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under part 300 without unnecessary delay and *before* any meeting regarding an IEP, or any hearing pursuant to § 300.507 (due process complaint regarding identification, evaluation, or educational placement or provision of a free appropriate public education to the child) or §§ 300.530 through 300.532 (discipline procedures), or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made.



Charging Fee for Copies

- § 99.11 of FERPA and § 300.617 of the IDEA regulations states that an educational agency or institution may charge a fee for copies of education records, unless imposing a fee would effectively prevent a parent or eligible student from exercising his or her rights to inspect and review education records.



Limitations on Right to Inspect and Review

- § 99.12 of FERPA and § 300.615 of the IDEA regulations state that if records contain information on more than one student, the parent has the right to inspect, review, or be informed of only the specific information about his or her child's education records.



Amending Education Records

- §§ 99.20, 99.21 & 99.22 of FERPA contain procedures for parents and eligible students seeking to amend education records.
 - Identify portion of record believed to be inaccurate, misleading, or in violation of the student's rights of privacy.
 - If school decides not to amend, must inform parent of right to hearing.
 - After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.
 - Cannot seek to amend substantive decisions, such as grades, special education program/services, etc.
 - If, as a result of a hearing, the agency decides to amend the record, it must do so and inform the parent, in writing.



Amending Education Records, cont.

- §§ 300.618-300.621 of the IDEA regulations govern the amendment of education records and reflect the FERPA requirements.
- § 300.621 states that a hearing held under § 300.619 must be conducted according to the procedures in § 99.22 of the FERPA regulations.



Interactive Quiz:

- All of the following are “exceptions” to consent EXCEPT:
 - A. Authorized representatives of federal, state, and local educational authorities who ask for the data.
 - B. “School officials” with legitimate educational interests
 - C. Organizations conducting studies on behalf of schools
 - D. Parents of a dependent student
 - E. To comply with a judicial order or subpoena



Consent for Disclosures

- § 99.30 of FERPA requires that a parent or eligible student provide a signed and dated written consent before a school discloses education records, except for specific exceptions.
- § 300.622 of the IDEA regulations requires –
 - Parental consent before PII is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of §300.622, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA;
 - Parental consent, or consent of eligible child who has reached age of majority under State law, must be obtained before PII is disclosed to officials providing or paying for transition services in accordance with § 300.321(b)(3); and
 - Parental consent must be obtained before any PII about the child is released between officials of the LEA where the private school is located and officials of the LEA of the parents' residence if the child is enrolled or is going to enroll in a private school that is not located in the LEA of the parent's residence.



Exceptions to Consent

§ 99.31 of FERPA exceptions that generally relate to LEAs:

- To “school officials” with “legitimate educational interests” (defined in annual notification). § 99.31(a)(1)
- To schools in which a student seeks or intends to enroll. § 99.31(a)(2) and § 99.34
- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs. § 99.31(a)(3) and § 99.35



Exceptions to Consent, cont.

- To State and local officials pursuant to State statute concerning juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are disclosed. § 99.31(a)(5) and § 99.38
- To organizations conducting studies on behalf of schools. § 99.31(a)(6)
- To parents of a dependent student. § 99.31(a)(8)



Exceptions to Consent, cont.

- To comply with a judicial order or subpoena (reasonable effort to notify). § 99.31(a)(9)
- In a health or safety emergency. § 99.31(a)(10) & § 99.36
- Directory information. § 99.31(a)(11) & § 99.37



Exceptions to Consent, cont.

§ 99.31(a)(1) School officials with legitimate educational interests can include –

- A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions, provided the outside party –
 - 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;
 - and



Exceptions to Consent, cont.

- is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records;
- an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests (physical or technological access controls or administrative policy for controlling access).



Exceptions to Consent, cont.

§§ 99.31(a)(3) & 99.35 Federal, State, and local officials listed in § 99.31(a)(3) may have access to education records only –

- In connection with audit or evaluation of Federal or State supported education programs, or
- For the enforcement of or compliance with Federal legal requirements which relate to those programs.



Exceptions to Consent, cont.

- Information must be protected from disclosure and destroyed when no longer needed
- Except that further disclosures may be made on behalf of educational agency or institution in accordance with § 99.33(b).
- Recent amendments to FERPA regulations define "authorized representative" and "education programs"



Exceptions to Consent, cont.

- “Directory information” is information not generally considered harmful or an invasion of privacy if disclosed.

- Includes items such as –
 - Name, address, telephone listing, e-mail address, photograph
 - Date and place of birth
 - Participation in officially recognized activities & sports
 - Weight and height of athletes
 - Dates of attendance, grade level



Exceptions to Consent, cont.

- School may disclose directory information if it has given public notice to parents and eligible students in attendance concerning “directory information.” See § 99.37 for requirements concerning your public notice.
- Student ID Badge – Parents and eligible students may not use the right to opt out of directory information disclosures in order to prevent a school from requiring him/her to wear, to display publicly, or to disclose a student ID card or badge that exhibits information that has been properly designated by the school as directory information in the public notice under § 99.37.



Exceptions to Consent, cont.

- Limited Directory Information Policy – School may now adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, for both. Must specify this limited policy in the public notice to parents and eligible students and must limit directory information disclosures to those specified in the public notice.
- Cannot disclose non-directory information linked to directory information.



Interactive Quiz Responses



Interactive Quiz:

- All of the following are “exceptions” to consent EXCEPT:
 - A. Authorized representatives of federal, state, and local educational authorities who ask for the data
 - B. “School officials” with legitimate educational interests
 - C. Organizations conducting studies on behalf of schools
 - D. Parents of a dependent student
 - E. To comply with a judicial order or subpoena

“A” is incorrect. Remember, it must be in connection with an audit or evaluation of Federal or State supported education programs OR for the enforcement of compliance with Federal legal requirements which relate to those programs.



Public Disclosure of Information

- Under § 300.602(b)(3), the State must not report to the public or the Secretary any information on performance (under the State's Performance Plan) that would result in the disclosure of PII about individual children, or where the available data are insufficient to yield statistically reliable information.



Destruction of Information

- § 99.10(e) of FERPA states that an educational agency or institution, or SEA or its component, shall not destroy any education records *if* there is an outstanding request to inspect and review the records.
- § 300.624 of the IDEA regulations requires a public agency to inform parents when PII that is collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child.
- Under the IDEA, information must be destroyed at the request of the parents, but certain information, such as directory information, may be maintained without time limitation.



Record of Access

- § 99.32 of FERPA contains recordkeeping requirements for both schools and SEAs.
 - Record of disclosure must be maintained as long as record is maintained;
 - Include parties who requested or received information; and
 - Include legitimate interest the parties had in receiving information.

- § 300.614 of the IDEA regulations contains recordkeeping requirements for participating agencies.
 - Keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees);
 - Include name of party, day access given, and purpose for which the party is authorized to use the records.



FERPA Enforcement Provisions

- §§ 99.60 – 99.67 Enforcement provisions of FERPA
- Parents and eligible students may file complaints under FERPA with the Family Policy Compliance Office.
- Complaint must be timely (180 days)
- If an educational agency or institution does not comply with FERPA, the Secretary has several enforcement options available including terminating eligibility to receive funding under any applicable program.



IDEA Enforcement

- § 300.626 of the IDEA regulations provides that the SEA must have in effect policies and procedures, including sanctions, to ensure that the confidentiality requirements in §§ 300.611 – 300.625 are followed.



IDEA State Complaint Procedures

- An organization or individual, including from another State, may file a signed written complaint under procedures described in §§ 300.151 – 300.153 alleging that a public agency has violated a requirement of Part B of the IDEA or the IDEA regulations. This could include the Confidentiality of Information provisions in §§ 300.611-300.626. Such complaints are filed with, and resolved by, the State educational agency (SEA) (or the LEA if allowed by State procedures).



Guidance Documents & Other Resource Materials

- Addressing Emergencies on Campus
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- FERPA & H1N1 (re: disclosures to local and state health departments)
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf>
- Joint FERPA-HIPAA Guidance
<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- Balancing Student Privacy & School Safety
<http://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html>
- Unofficial updated version of FERPA regulations showing changes:
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/2012-final-regs.pdf>
- New Model Notifications
LEAs: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>
- Webinars (see "Featured Resources")
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>



Upcoming Guidance Documents

- Videos
- Emails
- Free & Reduced Lunch Data



FPCO Listserv

To sign up for the FPCO Announcement ListServ, go to:

<http://www2.ed.gov/policy/gen/guid/fpc0/tps/index.html>

1. Click either "Local and State" or "Postsecondary" Training Partner Services.
2. Type word "privacy" in both User Name and Password pop-up box.
3. Once in Training Partner Services page, click "Register for Listserv."
4. Follow direction and enter your contact information and click "ADD" button. To remove your contact information, follow directions above and click "Remove."



Poll: How did we do?

- This webinar was very helpful
- This webinar was somewhat helpful
- This webinar was not helpful



FPCO Contact Information

- For technical assistance and advice to school officials:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520

(202) 260-3887 Telephone

(202) 260-9001 Fax

- For informal requests for technical assistance, email us at:

FERPA@ed.gov

- FPCO Web site: www.ed.gov/fpc



OSEP Contact Information

- For technical assistance and advice to school officials:

Office of Special Education Programs (OSEP)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-8520

(202) 245-7629 Telephone

(202) 245-7614 Fax

- OSEP Web site:

<http://www2.ed.gov/about/offices/list/osers/osep/index.html>