



# Protecting the Privacy of Student Information—FERPA Q & A for South Dakota Districts

February 2014

Baron Rodriguez, Director, PTAC



# Presentation Overview

- LEA's role in protecting student privacy
- Overview of key privacy statutes
- Frequently asked questions from the field



# LEAs: Balancing Data Use and Privacy Protection

- School districts maintain and use personal student information
- Legally and ethically responsible for safeguarding collected information
  - Unauthorized or accidental *disclosure*
- Strive to balance benefits of using student data vs. protecting student privacy
  - Educational purposes
  - Serving students' needs
  - Protecting records through efficient *data governance*



# Privacy Concerns

- Education records generally contain *PII*
- Children and young adults particularly vulnerable
  - Identity theft and fraud
  - Security of medical and financial data
  - Accidental misuse of information
- Privacy concerns increase as more data are stored and accessed electronically
  - Identity authentication
  - Secure data transfer
  - Data breaches



# Privacy Protection — Laws and Regulations

- Local policies, state, and federal laws governing
  - Access rights of parents and eligible students
  - Authorized disclosure of restricted information to external entities for specific and pre-approved purposes
- Requirements and conditions for data disclosure
  - Parental notification, informed consent, and recordation of data releases
  - Data sharing agreements



# Frequently Asked Question #1

A student aide (or other volunteer) is helping to check out books in the library, and during the course of their work can see other students' ID numbers. Is this a violation of FERPA?



## Frequently Asked Question #1

If a student aide (or other volunteer) is helping to check out books in the library, and can see other students' ID numbers as they are checking out books, is this a violation of FERPA?

Answer: Probably not. This likely falls under the school official exception, since this student aide has a "legitimate educational interest". Districts should specify within its annual notification its policy regarding disclosing PII, legitimate educational interest and determination of "school official".



# Federal Privacy Statutes

- FERPA, PPRA, NCLB, IDEA, NSLA, Patriot Act, COPPA, and HIPAA
- Overview of statutes—Fig. 2-1 on p.42 of the [Forum Guide to Protecting the Privacy of Student Information](#)
  - Protect the privacy rights of students and their families
  - Affect data collection, maintenance, and disclosure procedures
  - Encompass education records kept in electronic and paper media



# Access to Student Records: Directory Information

- Directory information
  - May be released without prior consent
  - District policies could specify what types of information are considered directory info
- Under **FERPA**, parents must be informed of what is considered directory information and given the opportunity to withhold its release
  - [FERPA Model Notice for Directory Information](#)



# FERPA Regulatory Changes — Directory Information

- Definition of directory information
- Conditions for disclosure
  - Student ID cards and badges
  - Limited directory information



## Frequently Asked Question #2

Our district has a parent who as opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?



## Frequently Asked Question #2

Our district has a parent who as opted out of “directory information” as part of our annual notification process. The parent does not want their child to have a photo taken and wants their child to be exempt from wearing a badge. Are we in violation of FERPA should we require the student to wear a badge?

**Answer: No. The recently enacted changes to FERPA allow schools/districts the latitude to require that students wear an ID badge. Districts can require their students to wear ID badges and are not required to allow the student/parent to opt out of the badge under FERPA provisions.**



# Access to Student Records: Non-directory Information

- Non-directory information
  - Can be released with written consent
  - The consent should specify the information that may be released, the purpose of the release, and the recipient



# Disclosure of Student Records Without Consent

- FERPA and other federal statutes, such as PPRA, restrict the release or collection of different types of *sensitive information* without prior consent
- Under FERPA, parents and eligible students have the right to consent to disclosures of PII
  - Rights must be described in the [Annual FERPA Notice](#)



# Disclosure of PII from Education Records under FERPA

- FERPA permits non-consensual disclosure of PII from education records under several exceptions
- Staff or employees who need access to perform duties
  - School official exception
  - “Legitimate educational interest”
- External entities
  - Studies exception
  - Audit or evaluation exception
  - Uninterrupted Scholars Act
  - Other (e.g., court order, health or safety emergency)



What is the most common exception used for disclosure without consent?

Answer: Generally, the Audit and Evaluation exception.

*Example:*

An LEA could designate a university as an *authorized representative* in order to disclose, without consent, PII from education records on its former students to the university. The university then may disclose, without consent, transcript data on these former students to the LEA to permit the LEA to evaluate how effectively the LEA prepared its students for success in postsecondary education



# Studies Exception

- “For or on behalf of” schools, school districts, or postsecondary institutions
- Studies must be for the purpose of
  - Developing, validating, or administering predictive tests; or
  - Administering student aid programs; or
  - Improving instruction
- Written Agreements



# Written Agreements: Studies Exception

- Written agreements must
  - Specify the purpose, scope, and duration of the study and the information to be disclosed, and
  - Require the organization to
    - use PII only to meet the purpose(s) of the study
    - limit access to PII to those with legitimate interests
    - destroy PII upon completion of the study and specify the time period in which the information must be destroyed



# Uninterrupted Scholars Act – What’s Changed?

New exception to the general consent rule passed by Congress January, 2013, P.L. 112-278.

- Disclosure permitted to: “agency caseworker or other representative” of a State or local CWA who has the right to access a student’s case plan
- Disclosure permitted when: the CWA is “legally responsible ... for the care and protection of the student”
- Provisions for tribal organizations as well



# Changes to Notice Provisions

- Uninterrupted Scholars Act amends the requirement to notify a parent before complying with a subpoena or court order to disclose records when the parent has been a party to a court order proceeding involving child abuse, neglect, or dependency.
- Theory behind this change: *The parent has already been informed by being involved in the child abuse, neglect, or dependency proceeding*



## Permitted: Sharing To Address Educational Needs

- The Uninterrupted Scholars Act allows schools to disclose education records to CWAs to address student education needs
- If the school or district is sharing information for other purposes, they may need to look at other exceptions such as the studies or audit/evaluation exception
- But .... Remember the “education program” limitation when sharing under the audit/evaluation exception



## Frequently Asked Question: County Health Department

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?



## Frequently Asked Question #3

Our county health department has asked for student information regarding age, classes, and residence due to a possible measles outbreak. Can we release this information to them?

Answer: There are a number of exceptions to FERPA's general consent rule; however, there is no specific exemption that permits a school to disclose education records -- outside of an emergency -- to a public health department. There is an exception that permits schools to disclose education records in connection with health or safety emergencies.



# Sharing Disciplinary Action

- A student is disciplined for a conduct that posed a significant risk to the safety or well-being of other students. He leaves the school and enters another institution without requesting a transfer. The new school finds out that he attended the first school and calls for information. Can the old school tell the new school about the disciplinary action?

**YES**





# Federal Privacy Statutes — Examples of Notices

- **PPRA** affords parents a right to opt out of having their child participate in certain school activities
  - Student survey, analysis, or evaluation
  - Collection of information for marketing purposes
  - Certain physical examinations/screenings
  - One or more of the eight areas designated as “protected information surveys”
  - Model notice to parents: “[PPRA Model Notice and Consent/Opt-Out for Specific Activities](#)”



# Federal Privacy Statutes — Examples of Notices

- **FERPA and IDEA** protect special education records
  - Provisions regarding procedural safeguards related to parental notice: IDEA–Reauthorized Statute  
[“PROCEDURAL SAFEGUARDS: SURROGATES, NOTICE AND CONSENT”](#)
  - Example of the IDEA notice from CT: [“Procedural Safeguards Notice Required Under IDEA Part B”](#)



# Federal Privacy Statutes — Examples of Notices

- **NSLA** protects records about eligibility for free or reduced price meals
  - Example of the NSLA notice from KY: "[PROTOTYPE DISCLOSURE OF FREE AND REDUCED PRICE INFORMATION AGREEMENT](#)"
- **COPPA** protects online collection, usage, and disclosure of personal information (not education records) about children under 13
  - Websites should post a privacy notice
  - Instructions for composing a [Direct Notice to Parents](#)



# Federal Privacy Statutes — Examples of Notices

- HIPAA
- Privacy rule does not apply to records protected by FERPA and IDEA
  - Authorized uses and disclosures of protected health records are discussed on p. 11 of the "[SUMMARY OF THE HIPAA PRIVACY RULE](#)"



## Frequently Asked Question: FERPA vs. HIPAA

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?



## Frequently Asked Question #4

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?

**Answer: FERPA.** At the elementary/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.

**Guidance:** <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>.



# Frequently Asked Question: Parental Rights

*What should a school do if it is notified that a child is in foster care and then the biological parent asks to meet with the child's teacher and review the student's progress? Does FERPA mean that the school can no longer talk to the biological parent?*





# 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.



# FPCO Mission and Resources

- Administers
  - FERPA
  - Protection of Pupil Rights Amendment (PPRA)
  - Military recruiter provisions in the Elementary and Secondary Education Act (ESEA)
- Investigates alleged violations of these laws
- Issues guidance documents
- Coordinates with PTAC



# Military Recruiter Provision

*Q: Is there a provision in No Child Left Behind that permits military recruiters to have access to information on students?*

*Congress included a provision in the No Child Left Behind Act that requires local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act (ESEA) to provide students' names, addresses, and telephone listings to military recruiters upon request. Typically, recruiters request this information on junior and senior high school students. The information is used specifically for armed services recruiting purposes and to inform young people of scholarship opportunities. Schools are required to provide notice to parents, allowing them an opportunity to opt out of providing the information to recruiters. For more information, visit:*

- [Family Policy Compliance Office website](#)
- [Guidance on Access for and Disclosures to Military Recruiters](#)



Where is the latest guidance???

# FERPA

## Exceptions

Privacy Considerations  
of Teacher/Student Linkages  
Contracting with IT Vendors

REVERSE ENGINEERED Guidance  
Joint Labor/ED Privacy Considerations  
Contracting with IT Vendors



# PTAC Resources

- **NEW GUIDANCE: Protecting Student Privacy While Using Online Educational Services**
  - Webinar: March 13<sup>th</sup> 2:30PM ET
- Help Desk
- Web resources: <http://ptac.ed.gov>
  - Technical Briefs, Issue Briefs, and White Papers
  - Case studies
  - Security Checklists
  - Frequently Asked Questions
  - Webinars, Presentations, and Training Materials



# Contact Information



Privacy Technical  
Assistance Center

## Family Policy Compliance Office

Telephone: (202) 260-3887

Email: [FERPA@ed.gov](mailto:FERPA@ed.gov)

FAX: (202) 260-9001

Website: [www.ed.gov/fpc](http://www.ed.gov/fpc)

## Privacy Technical Assistance Center

Telephone: (855) 249-3072

Email: [privacyTA@ed.gov](mailto:privacyTA@ed.gov)

FAX: (855) 249-3073

Website: <http://ptac.ed.gov>