

## Virginia CASE Conference

### FERPA for Leaders

Virginia Beach, VA  
May 27, 2010

## 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 Parents 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**

(These rights transfer to student when student turns 18 or attends a postsecondary institution.)

### Subpart A – General

§ 99.1 *To which educational agencies and institutions do these regulations apply?*

- FERPA applies to schools that receive funds under any program administered by the Secretary of Education.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.

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

- “Education records” are records that are –
  - (1) directly related to a student; and
  - (2) 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 –**
  - Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute, e.g., personal notes.
  - Records created and maintained by a law enforcement unit for a law enforcement purpose.

### **"Education records," cont.**

- Records on a student receiving services under Part B of the Individuals with Disabilities Education Act are "education records" subject to FERPA.
- Medical or health records are "education records" subject to FERPA.

### **Definitions, cont.**

- "Parent" means a parent of a student and includes:
  - a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

### **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, or biometric record;
  - Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

### **Definitions, cont.**

- "Personally identifiable information" includes, but is not limited to:
  - 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.

### **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 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 a school; and
  - regarding whom the school maintains education records.

## 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.

### *§ 99.7 What must an educational agency or institution include in its annual notification?*

- Schools must annually notify parents of students *in attendance* of their rights under FERPA, including:
  - Right to inspect and review education records;
  - Right to request amendment of education records;
  - Right to consent to disclosures, with certain exceptions;
  - Right to file a complaint with U.S. Department of Education

## Annual notification, cont.

- The annual notification must also include the following:
  - Procedure to inspect and review education records;
  - A statement that education records may be disclosed to school officials without prior written consent, including:
    - Specification of criteria for determining who are school officials and
    - What constitutes a legitimate educational interest.

## Subpart B – Inspection and Review of Education Records

### *§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?*

- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
- School may *not* destroy records if request for access is pending.

## Inspection and Review, cont.

- *§ 99.11 May an educational agency or institution charge a fee for copies of education records?*
  - Yes – unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review education records.
- *§ 99.12 What limitations exist on the right to inspect and review education records?*
  - If the records contain information on more than one student, the requesting parent may inspect, review, or be informed of only the specific information about his or her child's records.

### **Subpart C – What are the Procedures for Amending Education Records**

§ 99. 20, § 99.21, § 99.22

- Parent should identify portion of record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent of right to a hearing.
- After hearing, if decision is still not to amend, parent has a right to insert a statement in the record.

### **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 parent 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?**

- The exceptions which relate to LEAs are:
  - To school officials with legitimate educational interests (defined in annual notification)
  - To schools in which a student seeks or intends to enroll
  - To Federal, State, and local *educational* authorities conducting an audit, evaluation, or enforcement of education programs
  - In connection with financial aid, such as a college loan

### **Disclosure provisions, cont.**

- **Exceptions, cont.**
  - To organizations conducting studies on behalf of *schools*
  - To parents of a dependent student
  - To comply with a judicial order or subpoena (reasonable effort to notify)
  - In a health or safety emergency
  - Directory information
  - Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State
  - To State and local officials in connection with serving the student under the juvenile justice system.

### **Recordkeeping**

§ 99.32 **What recordkeeping requirements exist concerning requests and disclosures?**

- A school must maintain a record of each request for access to and each disclosure from an education record. This record of access must:
  - Be maintained as long as record is maintained;
  - Include the parties who have requested or received information from education records; and
  - Include the legitimate interest parties had in receiving information.

### **Recordkeeping, cont.**

- The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:
  - The parent or eligible student,
  - A properly designated school official for a legitimate educational purpose,
  - A party with written consent from the parent or eligible student,
  - A party seeking directory information,
  - A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed.

## *Redisdisclosure*

### **§ 99.33 What limitations apply to the redisclosure of information?**

- When disclosing information from education records to one of the parties listed under § 99.31, a school should inform the receiving party that the information may not be further disclosed, except when:
  - The disclosure is to the parent or eligible student
  - The receiving party discloses information on behalf of the school under § 99.31

## *Redisdisclosure, cont.*

- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and student
- The disclosure is to the parents of a dependent student
- The information disclosed is directory information
- The disclosure, as described in § 99.31(a)(16), concerns a registered sex offender

## *Audit or Evaluation*

### **§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?**

- Federal, State, and local officials listed under §99.31(a)(3) may have access to records only --
  - in connection with an 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.
- The information must be
  - Protected from disclosure to anyone else, except as permitted under 99.33(b)
  - Destroyed when no longer needed for the purposes listed above.

## *Directory Information*

### **§ 99.37 What conditions apply to disclosing directory information?**

- A school may disclose directory information if it has given public notice to parents of students in attendance of:
  - What items the school has designated as directory information.
  - A parent's right to refuse to let the school designate any or all of the information as directory information.
  - The time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information.

## *Directory Information, cont.*

- FERPA does not define "public notice" – left to the individual school to decide.
- Means of notice could include:
  - Student handbooks or catalog
  - School or local newspaper
  - Student's registration packet
- School may choose to include notice regarding directory information with the annual notification required by § 99.7.
- Notice to former students is not necessary.

## **Subpart E – What are the Enforcement Provisions?**

### **§§ 99.60-99.67**

- The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Parents and eligible students may file complaints with the U.S. Department of Education.
- Timely complaint = 180 days

## Resources for school officials:

Family Policy Compliance Office  
U.S. Department of Education  
(202) 260-3887

Informal requests for technical assistance:  
[FERPA@ed.gov](mailto:FERPA@ed.gov)

Websites:  
<http://www.ed.gov/policy/gen/guid/fpco/index.html>

**LeRoy S. Rooker**

**[rooker.ferpa@gmail.com](mailto:rooker.ferpa@gmail.com)**