

Fall Forum 2023
Bracing For Significant Regulatory Changes



FERPA REGULATIONS: IS PRIVACY STILL A THING?

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WHAT IS FERPA?

- Family Educational Rights and Privacy Act (FERPA)
 - Protect PII in Education Records
 - Prohibition on Disclosure of Records
 - Prior Written Consent Rule & Exceptions
 - Right to Access and Inspect
- Regulations at 34 CFR Part 99

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BASIC FERPA RESPONSIBILITIES

- Educational agency or institution may not disclose **personally identifiable information** within **education records** to third-parties without prior written consent of the parent or eligible student
 - (with exceptions) – 20 U.S.C. § 1232g(b)
- Educational agency must permit the parent or eligible student to inspect and review all education records unless such right has been waived (with exceptions) – 20 U.S.C. § 1232g(a)

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WHICH RECORDS HAVE FERPA REQUIREMENTS?

- 34 CFR § 99.1 Education Records: Directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution
- Exceptions include records held by the maker for memory aid, employee records, and others

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WHAT IS PII?

- The student's name
- The name of the student's parent or other family members
- The address of the student or student's family
- A personal identifier, such as the student's social security number, student number, or biometric record
- Other indirect identifiers, such as date/place of birth, mother's maiden name

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WHAT IS PII? (CONT.)

- Information that is linked or linkable to a specific student that would allow a reasonable person in the school community, to identify the student with reasonable certainty
- 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

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EXCEPTIONS TO NEED FOR PRIOR WRITTEN CONSENT?

- 34 CFR § 99.31(a) includes 16 different exceptions that DO NOT require prior written consent before disclosure, including:
 - Education Officials
 - Prospective Schools
 - Audit Purposes
 - Directory Information
 - Limited Third-Party Servicers

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OTHER SCHOOL OFFICIALS - § 99.31(a)(1)

- Access only to records in which they have a legitimate interest
- Must have a combination of “appropriate physical, technical, administrative, and operational controls”
- Policies and procedures must be effective in limiting access to appropriate staff
- Subject to the requirements of § 99.33(a) on use and redisclosure

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PROSPECTIVE SCHOOLS – § 99.31(a)(2)

- Disclosure to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled
 - So long as the disclosure is for purposes related to the student's enrollment or transfer, does NOT require prior written consent
 - Notification must be made
- See also § 99.34

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AUDIT PURPOSES – § 99.31(a)(3)

- Authorized representatives of:
 - The Comptroller General of the United States
 - The Attorney General of the United States
 - The Secretary
 - The State and local educational authorities
- May have access 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 that relate to those programs
- See also § 99.35

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DIRECTORY INFORMATION – § 99.31(a)(11)

- Student's name
- Address, telephone listing, email address
- Photograph
- Date and place of birth
- Major field of study
- Grade level, enrollment status (e.g., undergraduate or graduate, full-time or part-time), dates of attendance
- Participation in officially recognized activities and sports, including weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended

See also § 99.37

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THIRD-PARTY CONTRACTORS – § 99.31(a)(6)

- Can only be used for the specific purpose for which it was disclosed (included in the contract)
 - Not for marketing purposes, but may still have generalized, non-targeted ads
 - Once data is no longer needed, must be destroyed
- <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-model-terms-service>

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ANNUAL NOTIFICATIONS – § 99.7

- Schools must still send annual notifications
 - Right to inspect/amend records and consent to disclosures
 - Any disclosures that will be made throughout the year (right to opt out)


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HELPFUL RESOURCE

- ED's FERPA Page: <https://studentprivacy.ed.gov/>



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