

# University of Hawaii System

## FERPA Awareness Training

June 26-28, 2018

## 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 Students 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

### **Subpart A – General**

#### **§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 –
  - Sole possession records.
  - Records created and maintained by a law enforcement unit for a law enforcement purpose.
  - Employment records (unless contingent on attendance).
  - Medical records made and maintained in the course of treatment and disclosed only to those individuals providing treatment.
  - Records that only contain information about a student after he or she is no longer a student at that institution (e.g., alumni records).

### ***Definitions, cont.***

- “Personally Identifiable Information” includes:
  - Student’s name
  - Name of student’s parent or other family members
  - Address of the student or student’s family
  - Personal identifier – SSN, student ID number, biometric record
  - Indirect identifiers – date and place of birth, mother’s maiden name
  - Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person

*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

Cannot include SSN

*Definitions, cont.*

- **“Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means (oral, written, electronic, etc.), to any party *except the party identified as the party that provided or created the record.***

*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 an institution; and
  - regarding whom the institution maintains education records.

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

- **Institutions must annually notify 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 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.

### ➤ § 99.12 *What limitations exist on the right to inspect and review education records?*

- If the records contain information on more than one student, the requesting student may inspect, review, or be informed of only the specific information about his or her records.
- An institution does not have to permit a student to inspect and review education records that are –

Confidential letters and statements of recommendation – regarding admission, application for employment, or receipt of an honor or honorary recognition – if the student has waived his or her right to inspect and review those letters and statements.

Financial records of his or her parents

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

### ➤ § 99.20, § 99.21, § 99.22

- Once a student identifies a record he or she believes to contain inaccurate or misleading information:
  - Institution must decide within reasonable period of time whether to amend as requested.
  - If institution decides not to amend, must inform student of right to a hearing.
  - After hearing, if decision is still not to amend, student 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 student 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 postsecondary institutions 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*

## Disclosure provisions, cont.

### ➤ **Exceptions, cont.**

- **To organizations conducting studies on behalf of educational institutions**
- **To accrediting organizations**
- **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**
- **To the student**

Disclosure provisions, cont.

➤ **Exceptions, cont.**

- Results of a disciplinary hearing to an alleged victim of a crime of violence
- Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies
- Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies
- Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State

**§ 99.31(a)(1)(i)(B) Authorized Disclosures Without Prior Written Consent**

- The school official exception can include contractors, consultants, volunteers, and other parties to whom a school has outsourced services or functions under certain circumstances:
  - The party is under the direct control of the school;
  - The party is subject to the same conditions governing the use and redisclosure of education records applicable to other school officials;
  - Clarifies the specific conditions under which schools may disclose education records to outside parties performing services or functions for the school.

**99.31(a)(1)(ii)**

**99.31(a)(1)(ii) Controlling access to education records by school officials**

- Regulations specify the steps a school must take to ensure that a school official gains access only to education records in which the official has a legitimate educational interest.
- Some institutions permit school officials unrestricted access to education records, particularly those contained in electronic records systems.
- Regulations require schools to use "reasonable methods" to ensure an official is given access to only those education records in which the official has a legitimate educational interest.

**99.31(a)(1)(ii) cont.**

- Schools may choose to use methods such as:
  - Physical controls (locked filing cabinets)
  - Technological controls (role-based access controls for electronic records)
  - Administrative policies (must be effective in ensuring compliance)
- Clarifies that a school is responsible for ensuring that it is taking measures to permit only those officials with a legitimate educational interest to access education records.

Disclosure provisions, cont.

**§ 99.31(c) Identification and authentication of identity.**

- 2009 FERPA amendments require institutions to use *reasonable* methods to identify and authenticate the identity of parents, students, school officials, and other parties before disclosing education records.
- Identification means determining who is the intended or authorized recipient of the information.
- Authentication means ensuring that the recipient is who he or she claims to be.
- Regulations permit use of PINs, passwords, personal security questions; smart cards and tokens; biometric indicators; or other factors *known or possessed only by the authorized recipient*.

Disclosure provisions, cont.

- "The use of widely available information to authenticate identity, such as the recipient's name, date of birth, SSN or student ID number, is not considered *reasonable* under the regulations."

## Recordkeeping

- § 99.32 *What recordkeeping requirements exist concerning requests and disclosures?*
- An institution 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.
    - (See regulations for exceptions.)

## Redisclosure

- § 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, an institution should inform the receiving party that the information may not be further disclosed. (See regulations for exceptions).

## 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.
  - Students may file complaints with the U.S. Department of Education.

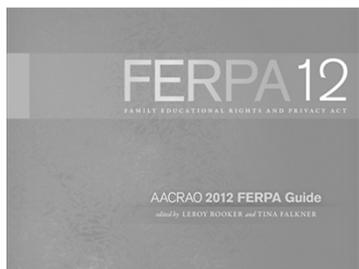
## *Resources for school officials:*

Family Policy Compliance Office U.S. Department of Education

(202) 260-3887

Informal requests for technical assistance:

[ferpa@aacrao.org](mailto:ferpa@aacrao.org)



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