



***Nuesoft Xpress
Webinar
December 9, 2008***

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

- *§ 99.1 To which educational agencies and institutions do these regulations apply?*
 - **FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education.**
 - **“Educational institutions” means: schools or other entities that provide educational services and are attended by students.**
 - **“Educational agencies” means: entities that are authorized to direct and control public elementary or secondary, or postsecondary, institutions.**

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

- **“Education records” are records which –**
 - **(1) contain information which is directly related to a student; and**
 - **(2) are 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

Law Enforcement Records

Employment Records

Treatment Records

Alumni Records

Treatment Records

- **“Education records” do not include records on an eligible student that are:**
 - (1) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;**
 - (2) Made, maintained, or used only in connection with treatment of the student; and**
 - (3) Disclosed only to individuals providing the treatment. For the purpose of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.**

Treatment Records, cont.

- Once “treatment records” are disclosed outside of the requirements described above, the records become “education records” under FERPA.
- Records maintained by an office of disability services are “education records” because they contain information that is directly related to a student.
- “Treatment” does not include determining appropriate accommodations for a disability.
- There is no exclusion from the definition of “education records” for “health” or “medical” records, except for “treatment” records that meet the requirements described above.

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- HIPAA Privacy Rule specifically excludes from its definition of "protected health information" individually identifiable health information contained in an "education record" covered by FERPA, as well as "treatment" records excluded from the definition of "education records." (see page 82483, Federal Register, December 28, 2000)
- Other HIPAA rules may apply.

HIPAA Privacy Rule, cont.

(2) Protected health information excludes individually identifiable health information in:

- (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; [and]**
- (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv) [“treatment records”].**

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.
 - A list of personal characteristics or other information that would make the student’s identity easily traceable.

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 student identification numbers or 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 an institution; and**
 - **regarding whom the institution maintains education records.**

Admission Records

§99.5(c)

- **An individual who is or has been in attendance at an educational institution and who applies for admission at another component of that institution does not have rights under FERPA with respect to records maintained by that other component, including records maintained in connection with the student's application for admission, unless the student is accepted and attends that other component of the institution.**

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.

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.

Technical Assistance

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



Informal Technical Assistance



For informal requests for technical assistance, email us at:

FERPA@ed.gov

Visit our web site:

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

