UNITED STATES DEPARTMENT OF EDUCATION

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Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.

Rights of Parents

FERPA applies to an "educational agency or institution" that receives funds under a program administered by the U.S. Department of Education (Department). The Family Policy Compliance Office (FPCO) in the Department, the office that administers FERPA, has issued guidance documents about FERPA for parents and for eligible students. Those documents are available on FPCO's website – http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html and http://www.ed.gov/policy/gen/guid/fpco/ferpa/students.html.

Educational agencies and institutions subject to FERPA may not have a policy or practice of denying parents the right to:

- Inspect and review education records (§ 99.10);
- Seek to amend education records (§§ 99.20, 99.21, and 99.22); and
- Consent to the disclosure of personally identifiable information from education records except as specified by law (§§ 99.30 and 99.31).

These rights transfer to the student when he or she turns 18 years of age or enters a postsecondary educational institution at any age ("eligible student").

While a State educational agency (SEA) may receive funds from the Department, as a practical matter, FERPA generally would not directly apply to the records of an SEA. This is because FERPA defines "education records" as information directly related to a "student," which itself is defined as excluding a person who has not been in attendance at the educational agency or institution. *See* 34 CFR § 99.3 "Student." Because students generally are not in attendance at an SEA, it follows that FERPA generally does not directly apply to the SEA. However, certain FERPA provisions nevertheless often do apply to SEAs, such as FERPA's redisclosure and recordation provisions, which are applicable when an SEA non-consensually rediscloses personally identifiable information (PII) from students' education records that the SEA received from educational agencies and institutions.

In addition, FERPA provides parents with the right to inspect and review education records maintained by an SEA within a reasonable period of time, but not more than 45 days after it has received a request. 20 U.S.C. § 1232g(a)(1)(B); 34 CFR § 99.10(a)(2). This includes, for example, State assessments completed by students maintained by the SEA. The SEA may make the education records available to the parent either directly, by sending them to the local

educational agency (LEA) for inspection and review, or making other appropriate arrangements. For more information on this provision, see 20 U.S.C. § 1232g(a)(1)(B); 34 CFR § 99.10.

Permitted Disclosures to SEAs

FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose PII from education records to SEAs and other State educational authorities without a parent's prior consent under certain conditions. For a review of the exceptions to the general prior consent rule in FERPA, see 34 CFR § 99.31. The most common exception that relates to disclosure to a State educational authority is found in §§ 99.31(a)(3) and 99.35. The disclosure must be in connection with:

- An audit or evaluation of Federal or State supported education programs; or
- The enforcement of or compliance with Federal legal requirements relating to such programs.

Information collected under this provision generally must be:

- Protected so that information is not disclosed to anyone other than the authorized representatives of the State educational authority (§ 99.35(b)(1)); and,
- Destroyed when no longer needed for the purposes listed above (§ 99.35(b)(2)).

Redisclosure and Recordation

As we previously advised you, several changes were made to the FERPA regulations in 2008 that impact SEAs. Specifically, the FERPA regulations published in December 2008 modified FERPA's prohibition on redisclosure of education records (as noted above) by State and local educational authorities, including SEAs. Under the regulations, State and local educational authorities, as well as the Secretary of Education and other Federal officials and agencies that are listed in § 99.31(a)(3), may redisclose personally identifiable information from education records on behalf of educational agencies and institutions in accordance with the longstanding requirements in § 99.33(b) that require that the redisclosure meet the requirements of § 99.31 and be recorded.

Under the 2008 amendments to the FERPA regulations, an educational agency or institution may comply with § 99.32(b) and record the names of the additional parties to which the receiving party may make further disclosures and their legitimate interests under § 99.31 or, if the educational agency or institution where the education records originated does not make this recordation of the further disclosures, then a State or local educational authority or other Federal official or agency that is listed in § 99.31(a)(3) that rediscloses education records on behalf of an educational agency or institution may comply with this recordation requirement (§ 99.32(b)(2)(i)(A)). An educational agency or institution is required to obtain a copy of a State or local educational authority's record of further disclosures and make it available in response to a parent's or eligible student's request to review the student's record of disclosures (§ 99.32(a)(4)). The State or local educational authority must make its record showing its redisclosures available to an educational agency or institution upon request within a reasonable

period of time not exceeding 30 days (§ 99.32(b)(2)(iii)). The regulations permit the State or local educational authority to maintain the record by the student's class, school, district, or other grouping rather than by the name of the student (§ 99.32(b)(2)(ii)).

Statutory Amendments to FERPA Not in Regulations

There are two statutory amendments that Congress has made to FERPA that are not yet in the regulations. These amendments are described below:

Uninterrupted Scholars Act of 2013: In January 2013, Congress passed the "Uninterrupted Scholars Act (USA)" which amended FERPA to permit educational agencies and institutions to disclose personally identifiable information from education records of a student in foster care placement to an agency caseworker or other representative of a State or local child welfare agency or tribal organization who is authorized to access a student's case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student. See 20 U.S.C. § 1232g(b)(1)(L).

The USA also amended the exception to the general requirement of consent in FERPA that permits an LEA's or school's disclosure of PII from students' education records, without consent, if the disclosure is necessary to comply with a lawfully issued subpoena or judicial order. FERPA requires LEAs and schools to make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student to seek to quash the subpoena or order or to seek protective action, unless an exception to the notification requirement applies. The USA amended this general notification requirement, adding an additional exception so that a school or LEA does not have to notify a parent if the court has already given the parent notice as a party in specified types of court proceedings. Specifically, the amendment modifies FERPA's statutory provision that generally requires that parents and students be notified of judicial orders or subpoenas in advance of compliance by the educational agency or institution by adding the following exception to the general notification requirement–

> except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required. [*See* 20 U.S.C. § 1232g (b)(2)(B).]

Accordingly, if a school receives a judicial order or lawfully issued subpoena that was issued in the context of either of the foregoing two types of proceedings to which the parent was a party, FERPA permits the school to disclose the PII from education records necessary to comply with the order or subpoena, without consent. However, as explained, the school generally must make a reasonable effort to notify the parent or eligible student prior to disclosing the education records – unless an exception to the notification requirement applies, such as when the court has already provided notice to the parent in the foregoing specified types of court proceedings.

We issued guidance on this change to FERPA in May 2014. Here is a link to the guidance that is posted on our website: http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf.

The Healthy, Hunger-Free Kids Act of 2010: In December 2010, Congress passed "The Healthy, Hunger-Free Kids Act of 2010." This Act, in part, amended FERPA to permit educational agencies and institutions to disclose PII from students' education records to the Secretary of Agriculture or authorized representatives of the Food and Nutrition Service for purposes of conducting program monitoring, evaluations, and performance measurements of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, under certain conditions. *See* 20 U.S.C. § 1232g(b)(1)(K).

Protection of Pupil Rights Amendment (PPRA)

Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98.

PPRA applies to the programs and activities of an SEA, LEA, or other recipient of funds under any program administered by the U.S. Department of Education. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

LEAs must provide parents and eligible students effective notice of their rights under PPRA. In addition, LEAs are required, in consultation with parents, to develop and adopt local policies concerning student privacy, parental access to information, and administration of certain physical examinations to minors. The general notice of rights under PPRA may include the specific local policies, as noted in our "Model Notification of Rights Under the Protection of Pupil Rights Amendment (PPRA)." LEAs must notify parents of their policies adopted under PPRA at least annually at the beginning of the school year. LEAs must also notify parents within a reasonable period of time if any substantive change is made to the policies. For details about these required policies, as well as other requirements of PPRA not explained in this document, please see the letter to local superintendents at http://www2.ed.gov/policy/gen/guid/fpco/pdf/superint-notice.pdf.

In addition, an LEA must "directly" notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys listed below and

provide an opportunity for parents to opt their child out of participation in the specific survey or activity. The notification must be provided at least annually at the beginning of the school year and must provide the specific or approximate dates during the school year when activities described below are scheduled, or expected to be scheduled. If the LEA is unable to identify the specific or approximate dates of the activities or surveys requiring specific notification at the beginning of the school year, it must provide this notification to parents once the activity or survey is scheduled. Parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as be provided with an opportunity to review any pertinent surveys and instruments used to collect personal information from students for marketing purposes. A model specific notification for use by LEAs may be obtained on the website noted at the end of this guidance. LEAs must offer an opportunity for parents to opt their child out of participating in the following activities:

- The administration of any survey concerning one or more of the eight protected areas listed above if it is not funded in whole or in part with Department funds. (LEAs must obtain active consent, and may not use an opt-out procedure, if the student is required to submit to the survey and the survey is funded as part of a program administered by the Department.)

- Activities involving the collection, disclosure, or use of personal information collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes.

- Any non-emergency, invasive physical examination or screening that is: 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification. Additionally, this requirement does not apply to hearing, vision, or scoliosis screening.

PPRA does not preempt applicable provisions of State law that require parental notification. Also, requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:

1) College or other postsecondary education recruitment, or military recruitment.
2) Book clubs, magazines, and programs providing access to low-cost literary products.
3) Curriculum and instructional materials used by elementary schools and secondary schools.
4) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the

purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments.

5) The sale by students of products or services to raise funds for school-related or education-related activities.
6) Student recognition programs.

We trust this information is helpful to you. Should you have questions about FERPA or PPRA, our address and telephone number are as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
1-800-USA-LEARN (1-800-872-5327)

Informal inquiries may be sent to FPCO via the following email addresses: FERPA@ED.Gov and PPRA@ED.Gov. The FPCO website address is: www.ed.gov/fpco.