



## UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

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### **The Family Educational Rights and Privacy Act (FERPA)**

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

#### ***Rights of Parents***

FERPA provides that a local educational agency (LEA) that receives Department of Education (Department) funds may not have a policy or practice of denying parents the right to:

- Inspect and review education records within 45 days of a request (§ 99.10);
- Seek to amend education records believed to be inaccurate (§§ 99.20, 99.21, and 99.22); and
- Consent to the disclosure of personally identifiable information (PII) 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”). 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/fpc/ferpa/parents.html> and <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/students.html>.

#### ***FERPA Regulations***

The FERPA regulations can be found on FPCO’s website at this link: <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>. In our last Dear Colleague Letter, we informed you of changes we made to the regulations in 2008 and 2011. You can view the *Federal Register* notices for those amendments to FERPA on our website as well: 2011 – <http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>; and, 2008 – <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>.

#### ***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 general notification requirements 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 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).

### ***Annual Notice***

LEAs (or their individual schools) must annually notify parents and eligible students of their rights under FERPA. See § 99.7. A model FERPA notification for LEAs is available on FPCO's website – [www.ed.gov/policy/gen/guid/fpco](http://www.ed.gov/policy/gen/guid/fpco). The annual notification must include:

- The procedure to inspect and review education records;

- The procedure to request amendment of education records;
- A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest if the educational agency or institution discloses or intends to disclose PII from education records to school officials without consent; and
- The right of parents to file a complaint with the FPCO in the Department.

In addition, LEAs may want to include with their annual notification of rights under FERPA their directory information public notices, as discussed below.

### ***Directory Information***

If the LEA or educational institution under the LEA chooses to designate directory information, which can be disclosed from education records without consent, it is required by § 99.37 to notify parents and eligible students of its directory information policy. A model “directory information” notice is available on FPCO’s website – <http://www2.ed.gov/policy/gen/guid/fpc/doc/ferpa-dir-info-not.doc>. The notice must notify parents and eligible students of:

- The types of information the LEA (or institution) has designated as directory information (*see* § 99.3 “Directory information” for definition); and,
- The right to opt out of disclosure of directory information.

An LEA or educational institution is not required to have a directory information policy, but most LEAs and educational institutions find that it is very useful. Proper designation of directory information permits a school to use directory information to publish items such as yearbooks, graduation announcements, newsletters, or honor roll announcements without having to get written consent from each student’s parent for each use of student information. LEAs or educational institutions also may institute a limited directory information policy under which an LEA or school may limit its directory information disclosures to certain parties, for certain purposes, or both. *See* § 99.37(d).

### ***Rediscovery and Recordation***

LEAs must also comply with FERPA’s recordation and redisclosure provisions, set forth in §§ 99.32 and 99.33, except for disclosures that are specifically exempted therefrom. In 2008, the Department amended both of these regulatory provisions, including by: requiring a State or local educational authority or Federal official or agency listed in § 99.31(a)(3) that rediscloses personally identifiable information from education records to record that disclosure if the educational agency or institution does not do so under § 99.32(b); revising § 99.32(b) to require an educational agency or institution that makes a disclosure in a health or safety emergency to record information concerning the circumstances of the emergency; and amending § 99.33(b) to permit State and local educational authorities and certain Federal officials who receive education records under §§ 99.31(a)(3) and 99.35 to further disclose education records on behalf of educational agencies and institutions in accordance with the longstanding requirements in § 99.33(b), which applied to other parties that receive education records.

## Protection of Pupil Rights Amendment (PPRA)

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

PPRA may apply to the programs and activities of a State educational agency (SEA), LEA, or other recipient of funds under any program administered by the Department. It governs the administration to elementary and secondary school 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).

The question often arises whether a school administering such a survey must get "active" consent or "passive" consent from parents. Although these terms are not found in PPRA, "active" consent is commonly understood to mean that a parent must provide a signed, dated, written consent before his or her child can participate in a survey. "Passive" consent, on the other hand, is understood to signify that consent is assumed after a parent is notified and given the opportunity to opt their child out of participating in a survey.

Under PPRA, schools and other recipients of Department funds under a program administered by the Department must obtain written parental consent ("active" consent) before students are required, as part of a program administered by the Department, to participate in any survey, analysis, or evaluation that reveals information concerning any of the eight protected areas noted above. For surveys that students are not required, as part of a program administered by the Department, to participate in but that are administered by an LEA (as defined in the PPRA), PPRA requires that the LEA "directly" notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in a survey that asks questions about one or more of the eight protected areas listed above in order to provide them with an opportunity to opt their children out of participation ("passive" consent). That requirement is discussed below. With regard to those surveys that ask questions concerning one or more of the eight protected areas listed above but that do *not* require students to participate or are *not* part of a program administered by the Department, the LEA should utilize the "passive" consent requirement.

Additionally, under PPRA, parents have the right to review, upon request, any instructional materials which will be used in connection with any survey, analysis, or evaluation as part of a program administered by the Department. In addition, as explained further below, an LEA must implement a policy concerning the right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access within a reasonable period of time after the request is received.

As explained in more detail below, PPRA also concerns the development of local policies concerning student privacy, parental notification of these local policies and of the specific or approximate dates of certain specific activities (e.g., the administration of certain invasive physical exams or screening to students), the opportunity for the parent to opt the student out of participation in certain specific activities, and parental access to information. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

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),” which can be found on our website at: <http://www2.ed.gov/policy/gen/guid/fpco/doc/ppra-gen-not.doc>.

PPRA requires LEAs to work with parents to develop and adopt policies on the following items:

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students and the procedure for granting a request by a parent for such access;
- Arrangements to protect student privacy that are provided by the LEA in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information);
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access within a reasonable period of time after the request is received;
- Administration of physical exams or screenings of students;
- The collection, disclosure, or use of personal information (including items such as a student’s or parent’s first and last name, address, telephone number or social security number) collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes, including the LEA’s arrangements for protecting student privacy in the event of collection, disclosure, or use of information for these purposes; and
- The right of parents to inspect, upon request, any instrument used in the collection of personal information for marketing or sales purposes before the instrument is administered or distributed to a student and the LEA’s procedure for granting a parent’s request for such access.

LEAs must notify parents of these policies 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. (This notification requirement may be included in the general notification of rights under PPRA.) An LEA is not required to develop and adopt new policies if the SEA or LEA had in place on January 8, 2002, policies covering the requirements set forth in this law. However, the LEA must still provide annual notice of these policies to parents.

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 students are not required, as part of a program administered by the Department, to take the survey. (LEAs must obtain active consent, and may not use an opt-out procedure, if students are required, as part of a program administered by the Department, to take the survey);
- 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 (except as noted below); and
- 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 provision 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 provision 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 collected 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; and
  - 6) Student recognition programs.

DEFINITIONS OF SOME TERMS USED IN PPRA:

“Instructional Material” – instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

“Invasive Physical Examination” – any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

“Local Educational Agency” – an elementary school, secondary school, school district, or local board of education that is the recipient of funds under an applicable program, but does not include a postsecondary institution.

“Personal Information” – individually identifiable information including –

- (1) a student’s or parent’s first and last name;
- (2) a home or other physical address (including a street name and the name of a city or town);
- (3) a telephone number; or
- (4) a social security number.

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](mailto:FERPA@ED.Gov) and [PPRA@ED.Gov](mailto:PPRA@ED.Gov). The FPCO website address is: [www.ed.gov/fpc](http://www.ed.gov/fpc).