

# FERPA 101

MPAAA Spring Conference, 2018

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## FERPA pre-test

1. FERPA only applies to schools that receive federal education funds. T F
2. Once a student turns 18, the school can't share education records with the parents. T F
3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, the school must provide the grandparent with access to the child's education records. T F
4. Student health records maintained by the school nurse are not education records. T F
5. FERPA permits a parent to file a lawsuit against a school, district, or school board for violating his or her rights under FERPA. T F

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## FERPA pre-test (cont.)

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| 7. Designated directory information is not considered sensitive personally identifiable information, and, therefore, the school may disclose the information without the consent or knowledge of the parent or eligible student.                     | T | F |
| 8. If a parent discusses a matter about his or her child in an open school board meeting, that constitutes "consent" under FERPA for school board members or other school officials to respond by disclosing PII from the child's education records. | T | F |

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| 10. When a student under 18 transfers from School District A to School District B, District A can share all of the student's education records with District B without the consent of the parent, including disciplinary records and special education records. | T | F |

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## The world has changed

When FERPA was passed in 1974:

- Average house price was \$38k
- Average income was \$11k
- Federal spending was "only" \$269B
- You could buy a PC for the low, low price of \$20k



And...

- Disco was still cool
- Education records were papers in the principal's office

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## What is FERPA?

A federal privacy law that affords parents the right to:

- have access to their children's education records,
- seek to have the records amended, and
- consent to the disclosure of personally identifiable information from education records, except as provided by law.



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## Key points

- FERPA protects the privacy of students by restricting access to records that contain *Personally Identifiable Information* (PII).
- FERPA does not permit the *Disclosure* of PII from education records without consent, except under certain *Exceptions*.
- FERPA requires that *Reasonable Methods* be used to protect the integrity and security of the records being maintained at the school or district.
- FERPA does permit the disclosure of certain types of PII that is properly designated as *Directory Information* by the school or district if the parent or eligible student does not opt out of the disclosure.

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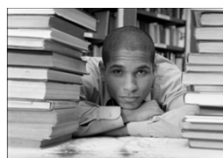
## To which educational agencies and institutions does FERPA apply?



Elementary



Secondary



Postsecondary



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## Pop quiz

A police officer shows up at the main office of a high school/university, and asks if a certain student is attending school today. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. The police officer does not have a court order.

Can the school/university tell the officer whether or not the student is attending school today?

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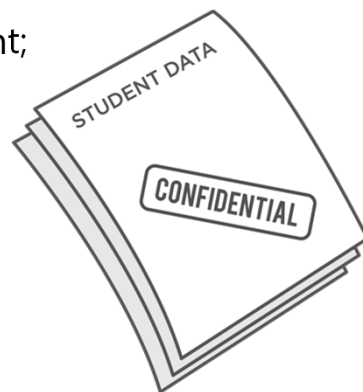
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## Just what is an education record?

“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.



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## Education records exemptions

Exemptions to “education records” include, but are not limited to:

- Sole possession records used as a personal memory aid;
- Law enforcement unit records;
- Peer-graded papers before they are collected and recorded by teacher.



## What about the Health Insurance Portability and Accountability Act (HIPAA)?

Records that are subject to FERPA are not subject to the HIPAA Privacy Rule (see page 82483, *Federal Register*, Vol. 65, No. 250, December 28, 2000).

- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records.”
- Other HIPAA Rules may apply.



## So what's the answer then?

The secretary would have to log into the student information system to confirm the student was in attendance. That attendance record is ALSO an education record.

Without a court order or an imminent threat, this could not be disclosed.

But.....

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## Law enforcement units & records

“Law enforcement unit” means any individual, office, department, division, or other component of a school that is officially authorized or designated by the school to:

- Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any law against any individual or organization other than the school itself; or
- Maintain the physical security and safety of the school.

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## Law enforcement units & records

Examples include:

- Unit of commissioned police officers
- Unit of non-commissioned security guards
- Fully equipped police units
- Smaller security office
- Vice-principal or other school official
- Local off-duty police officer
- School Resource Officer (SRO)



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## Law enforcement units & records (cont.)

- Law enforcement unit records means those records, files, documents, and other materials that are:
  - Created by a law enforcement unit;
  - Created for a law enforcement purpose; and
  - Maintained by the law enforcement unit.

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## Law enforcement units & records (cont.)

- LEU records do not mean:
  - Records created by an LEU for a law enforcement purpose that are maintained by another component of the school;
  - Records created and maintained by an LEU exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the school.

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## Takeaways for the Enterprise

- Do you have a clear understanding what constitutes an educational record in your district?
  - Do you know where your crown jewels are?
  - You can't properly protect PII if you don't know where all of it is.
- Put a district policy in place on how to deal with police officers.
  - Train your staff on that policy.

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## Pop quiz

John is an high school teacher. He wants to post the results of a math test so he runs a report that has the names, scores, gender and race/ethnicity of the students.

John wants to preserve the privacy of his students so he deletes the column with student name.

Does this remove the personally identifiable information?

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## What is personally identifiable information (PII)?

- Name
- Address
- Mother's maiden name
- Date of birth
- Social security number
- Parent's name




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**PII is:**

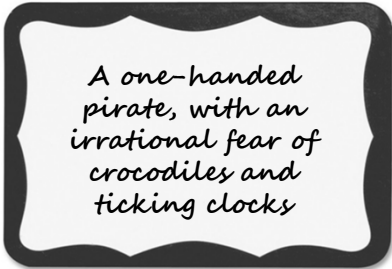
Personally  
Information





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**PII is:**


Personally  
Identifiable  
Information





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**PII is:**



Personally Identifiable Information



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**PII**

| Name | Race/Ethnicity | Gender | Pirate Status | # of Hands |
|------|----------------|--------|---------------|------------|
|      | W              | M      | Y             | 1          |
|      | A              | F      | N             | 2          |
|      | B              | M      | N             | 2          |
|      | W              | F      | N             | 2          |
|      | H              | M      | N             | 2          |

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## PII

| Name | Race /Ethnicity | Gender | Pirate Status | # of Hands | GPA |
|------|-----------------|--------|---------------|------------|-----|
|      | W               | M      | Y             | 1          | 2.0 |
|      | A               | F      | N             | 2          | 3.5 |
|      | B               | M      | N             | 2          | 3.8 |
|      | W               | F      | N             | 2          | 2.8 |
|      | H               | M      | N             | 2          | 3.3 |



## Personally identifiable information

- Information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- 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.



## So is what John did ok?

No.

While the student's name is a direct identifier, gender and race/ethnicity are also considered to be personally identifiable information.

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## What rights do parents and eligible students have?

- Right to inspect and review education records;
- Right to request amendment of education records;
- Right to consent to disclosures, with certain exceptions; and
- Right to file a complaint with U.S. Department of Education regarding an alleged violation of FERPA.

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## Pop Quiz – Divorced Parents

Jack and Diane, two young people from the American heartland fall in love and get married. After 10 years, and two kids, they grow apart and get divorced. Jack moves to California and Diane stays in Cudahy, gets remarried and has sole custody of the kids.

Concerned about how his children are doing, Jack asks for access to his children's education records. Knowing that he doesn't live with his children the school denies the request. Did the school do the right thing?

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## Definition of "parent"

- Under FERPA:
  - "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
  - Includes custodial and noncustodial parents.

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## Rights of parents (custodial and noncustodial)

FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, state statute or legally binding document that specifically revokes these rights.



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## Transfer of rights under FERPA

When a student turns 18 years old, or enters a postsecondary institution at any age they become an "eligible student" and, the rights under FERPA transfer from the parents to them.



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## Pop Quiz– Official Transcripts

Sam is a recent graduate of your high school. After his graduation he comes to the main office and requests a copy of his official transcript. You notice that he owes several hundred dollars in unpaid fees and refuse him access. He states that refusal to honor his request is a FERPA violation. What do you do?

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## Inspection and review of education record

### What rights exist for a parent or eligible student to inspect and review education records?

- School must comply with request within 45 days.
- Schools are generally required to give copies only if failure to do so would effectively deny access, or make other arrangements to inspect and review – example would be a parent or student who does not live within commuting distance.
- School may not destroy records if request for access is pending.



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## What are the procedures for amending education records?

- Parent or eligible student should identify the portion of the record believed to contain inaccurate or misleading information.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent or eligible student of right to a hearing.
- After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.

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## Prior written consent requirement

Except for specific exceptions, a parent or eligible 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.



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## Considerations for the Enterprise

- What is your policy if someone makes a FERPA request for education records?
- In cases where you need consent, how are you tracking and maintaining those consent forms?

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## What are some of the exceptions to general consent?

- To school officials with legitimate educational interests (defined in annual notification);
- To schools in which a student seeks or intends to enroll, subject to certain conditions;
- To state and local officials pursuant to a state statute in connection with serving the student under the juvenile justice system subject to certain conditions;
- To comply with a judicial order or subpoena (generally requires reasonable effort to notify parent or eligible student at last known address);

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## What are some of the exceptions to general consent? (cont.)

- To accrediting organizations to carry out their accrediting functions;
- To parents of a dependent student;
- To authorized representatives of specific federal agencies and state and local educational authorities conducting an audit, evaluation, or enforcement of federally- or state-supported education programs;
- To organizations conducting studies for specific purposes on behalf of schools or school districts;



## What are some of exceptions to general consent? (cont.)

- In a health or safety emergency, subject to certain conditions;
- To child welfare agency or tribal organization for those children in foster care, in order to address the student's education needs and subject to certain conditions; and
- Directory information, subject to certain conditions.



## Pop Quiz: Community-Based Organization

A community-based organization that has programs for children with special needs approaches you regarding their programs and asks for the name, address, and telephone number of parents with students in your school who have a disability in order to contact parents regarding their programs. You like the programs offered by the organization and believe the programs may be of benefit to the students with disabilities in your school and their parents.

Can the names and contact information for these students be disclosed to the organization?

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## Exception: Directory information



Information in a student's education records that would not generally be considered harmful or an invasion of privacy if disclosed.

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## Exception: Directory information

- May include:
  - ✓ name, address, phone number, and e-mail address
  - ✓ photograph
  - ✓ date and place of birth
  - ✓ most recent school attended
  - ✓ grade level and major field of study
  - ✓ dates of attendance (e.g., year or semester)
  - ✓ participation in officially recognized sports and activities
  - ✓ height and weight of athletes
  - ✓ degrees, honors, and awards received
- Can *never* include Social Security Number
- Can't disclose non-directory information with directory information



## Exception: Directory information (cont.)

- Annual notice must be given to parents of students in attendance and eligible students in attendance
- Parents may choose to "opt-out" of the disclosure of directory information on their child.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.



## Considerations for the Enterprise

- How are you tracking opt-outs?
- Have you seen your directory policy?
- Have you verified that the only records you are releasing under the directory exception are a part of your directory policy?



## Exception: School official

- Schools may disclose PII from education records without consent if the disclosure is to other school officials within the school, including teachers, whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.



## Pop Quiz: Classroom Volunteers

Mr. Hawes is a parent volunteer in your resource classroom for students with learning disabilities. Mr. Hawes has a child with a disability enrolled in the school although not in your class. Mr. Hawes assignment is to work with a small group of students on math skills. You provide Mr. Hawes with the math achievement scores, classroom test reports, and other math related information from the special education records of each individual student he is assisting.

Is it permissible for you to share the individual math test scores and other related information with Mr. Hawes without the consent or knowledge of the parents of the students?

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## Exception: School official (cont.)

Outsourcing services under school official exception:

- Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
- If these outside parties meet the conditions for outsourcing, they may have access to education records.

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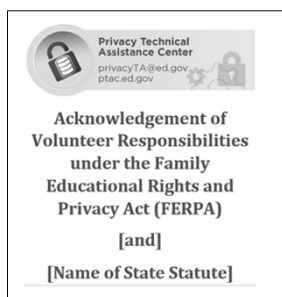
## Exception: School official (cont.)

### Conditions for outsourcing:

- Performs an institutional service or function for which the agency or institution would otherwise use its employees;
- Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- PII from education records may be used only for the purposes for which the disclosure was made, and may not be redisclosed without the authorization of the educational agency or institution and in compliance with FERPA;
- Meets the criteria specified in the school, LEA, or institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.



## Do you use volunteers?



- Do they know the rules?
- Are they sharing information from education records at the bus stop?
- Provide them training with this video.
- Use this brochure to explain the rules.



## Considerations for the Enterprise

- What is in your annual notice?
  - Does it cover what you are doing under this exception?
- How do you manage access control in your organization?
  - Just because someone may have access to the SIS does not mean they have legitimate educational interest.



## Exception: Disclosure to officials of another school

- Consent is not required to disclose personally identifiable information from education records 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 the purposes related to the student's enrollment or transfer.



## Pop Quiz– Dual Enrollment

Janet is a 17 year old high school student at your school and is enrolled in the career and technical education Culinary Arts Program of Study. The Culinary Arts Program has an articulation agreement with local community college. As such, Janet also is dually-enrolled at the community college where she is taking the Artisan Breads and Pastries class. Janet's parents have requested access to and a copy of Janet's education records maintained at both your school and the community college.



## Pop Quiz - Continued

1. Must you and the community college honor the parent's request to access Janet's records and to receive a copy of her records?
2. How does FERPA apply in this scenario?



## Exception: Parents of a dependent student

- Consent is not required if the disclosure is to parents, as defined in §99.3, of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.



## Exception: Health or safety emergency

- Disclosure is necessary to protect the health or safety of the student or others.
- There is an articulable and significant threat to the health or safety of a student or other individuals.
- Appropriate parties typically means local, state, or federal law enforcement, trained medical personnel, public health officials, and parents.
- Must be related to an actual, impending, or imminent emergency.
- School makes determination on case-by-case basis.



## Exception: Health or safety emergency (cont.)

- Must be articulable and significant threat.
- School must make determination on case-by-case basis.
- Department will not substitute its judgment if there is a rational basis for decision to disclose under health or safety emergency exception.
- Limited to period of time of the emergency.
- Must record pertinent information when it discloses PII.

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## Pop quiz: Judicial order or subpoena

- Does FERPA require schools to disclose information from education records pursuant to a judicial order or subpoena?

Yes

No



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## Exception: Judicial orders & subpoenas

- School may disclose PII from education records necessary to comply with a judicial order or lawfully issued subpoena.
- School must make a reasonable effort to notify the parent or eligible student of the order or subpoena before complying with it in order to allow parent or eligible student opportunity to seek protective action.
- Some judicial orders and subpoenas are exempt from FERPA's notification requirement.



## Exception: Audit or evaluation

- Federal, state, and local officials listed under § 9.31(a)(3), or their authorized representative, may have access to education records only:
  - in connection with an audit or evaluation of federally- or state-supported education programs, or
  - for the enforcement of or compliance with federal legal requirements which relate to those programs.
- The information must be:
  - protected in a manner that does not permit disclosure of PII to anyone; and
  - destroyed when no longer needed for the purposes listed above.



## Uninterrupted Scholars Act

Exception to the general consent rule passed by Congress January, 2013, P.L. 112-278.

- Disclosure permitted to: "agency caseworker or other representative" of a state or local child welfare agency (CWA) or tribal organization who has the right to access a student's case plan.
- Disclosure permitted when: the CWA or tribal organization is "legally responsible ... for the care and protection of the student."

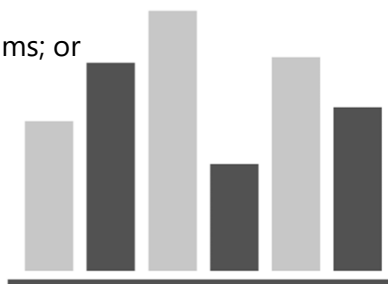
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## Studies exception

- Studies conducted "for or on behalf of" schools, school districts, or postsecondary institutions.
- Studies must be for the purpose of:
  - Developing, validating, or administering predictive tests; or
  - Administering student aid programs; or
  - Improving instruction.



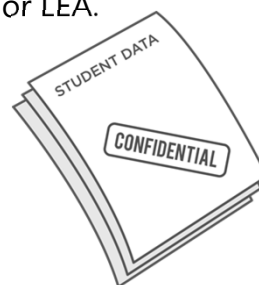
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## What are written agreements?

- Mandatory for any LEA or SEA disclosing PII without consent under audit/evaluation.
- Mandatory for school or LEA for disclosing to outside organization under the studies exception, or for SEA redisclosing for, or on behalf of, school or LEA.



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## FERPA Final Exam

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## Questions?

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## Contact information

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