

FERPA Compliance and Student Financial Services

LeRoy Rooker
AACRAO FERPA Consulting

April 19, 2017



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.

34 CFR § 99.3 Definitions (Partial)

- “Education records” are records which:
 - (1) contain information that 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.

Definitions, cont.

- Exceptions to “education records” include:
 - Sole Possession Records
 - Law Enforcement Records
 - Employment Records
 - Health Records
 - *Alumni Records*

Record

- “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

- “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

- “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.*

Directory Information

- “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, e-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, cont.

- FERPA regulations specifically prohibit the designation of a student's SSN.
- Regulations also prohibit designating student ID number as directory information, except as described in the regulations.
- Directory information cannot be disclosed without consent if it is linked to any non-directory information.

- “Student” means any individual:
 - who is or has been in attendance at an institution; and
 - regarding whom the institution maintains education records.

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.

Inspect 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 –
 - *Financial records of the student's parents.*

Disclosure of Education Records

- § 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 Exceptions to the prior consent provision(partial).
 - *School officials* – § 99.31(a)(1)
 - *Seeks or intends to enroll* – § 99.31(a)(2)
 - Authorized representatives of state educational authority -- § 99.31(a)(3)
 - *Financial aid* -- § 99.31(a)(4)

Disclosure provisions, cont.

- Exceptions continued:
 - Parents of dependent students –
§ 99.31(a)(8)
 - Subpoena or court orders –
§ 99.31(a)(9)
 - Directory information – § 99.31(a)(11)
 - The student -- § 99.31(a)(12)

§ 99.31(a)(1) School Officials

- The definition of “education records” recognizes that schools use agents (“party acting for”) to perform certain services. Therefore under § 99.31(a)(1), schools may disclose personally identifiable information from education records, without prior written student consent, to an outside contractor or consultant acting as a “school official” if:
 - The service is one that would allow an employee to obtain access to the information if the service were performed in-house (i.e., there is a **“legitimate educational interest”**); and
 - The contractor is an “agent” or party acting for the school (i.e., under its direct control) for purposes of the service.

Excluded: contracts for services where there is no “legitimate educational interest.”

99.31(a)(2) Seeks or Intends to Enroll

Disclosure to a school where student seeks or intends to enroll

- Regulations permit a school to disclose education records to another school where the student seeks or intends to enroll.
- Previous regulations did not address whether a school is permitted to disclose education records after a student has actually enrolled in another school.
- 2009 regulations clarify that the authority to disclose or transfer education records to a student's new school continues after actual enrollment so long as the disclosure is in connection with the student's enrollment.
 - *Ensures that a school may supplement, update, or correct records sent during the student's application or transfer period.*

§ 99.31(a)(4) Financial Aid

- In connection with financial aid:
 - (i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to--
 - (A) Determine eligibility for the aid;
 - (B) Determine the amount of the aid;
 - (C) Determine the conditions for the aid;
 - (D) Enforce terms and conditions of the aid.

Financial Aid, cont.

- (ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

§ 99.31(a)(4) Financial Aid Disclosures

- Former Yale University student allegedly obtained financial aid by forging documents in his admissions application.
- Disclosure to State's attorney is permissible under the financial aid exception. §99.33 redisclosure and §99.32 record-keeping requirements apply.

- Unlike the other exceptions to FERPA's prior written consent provision, disclosure of records in connection with financial aid are not limited to a certain party; rather, disclosure is limited to a certain purpose.
- Thus, if the record of the disclosure states the legitimate interest as investigating and prosecuting the student for suspected larceny, any redisclosures which are necessary to investigate and prosecute would be permissible.

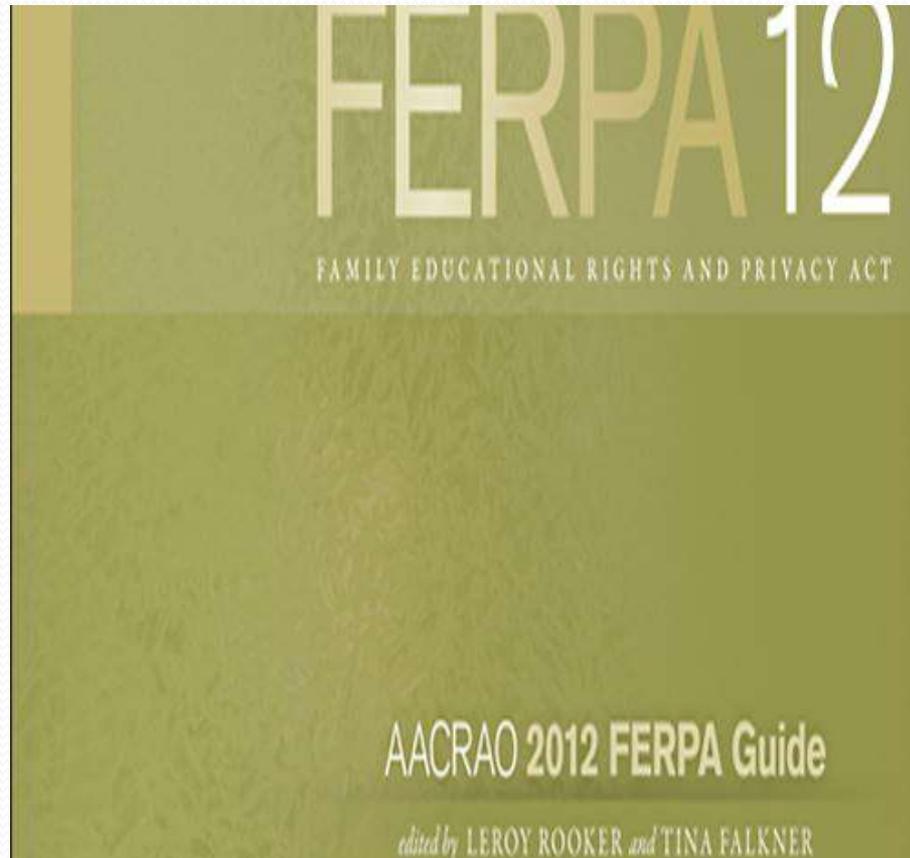
§ 99.31(c) Identification and authentication of identity.

- Regulations require a school 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.

§ 99.37(d) Prohibition on use of SSNs to identify students when disclosing or confirming directory information

- SSNs may not be used to identify a student when disclosing or confirming directory information.
- The use of SSN to identify a student in disclosing or confirming directory information creates an improper disclosure of the student's SSN

AACRAO 2012 FERPA Guide



Order Here:
bookstore.aacrao.org



Authoritative FERPA Resources





LeRoy S. Rooker

Senior Fellow

AACRAO

One Dupont Circle, NW

Washington, DC 20036-1135

(202) 293-9161 x. 1059

ferpa@aacrao.org

Upcoming Webinar

Wed, May 17 – 11:00am Pacific 2:00pm Eastern – **FREE**

Campus Mental Health Helping Students in Distress

Guest Speaker: Jamie Davidson, Ph.D.
Associate Vice Pres. for Student Wellness
Licensed Psychologist
University of Nevada, Las Vegas



Just as you depend on other departments for outreach in your efforts, your mental health department may look to you as a 'first-responder' to:

- Listen for symptoms of students in distress
- Respond to needs 'appropriately' and act as a liaison
- Empathize and reinforce help seeking behavior
- Recognize behaviors from 'Immaturity to illness'



Upcoming Conference



**Cruisin' to Collections SFS
Compliance and Strategy Conference 2017**

July 16 - July 19

20 training sessions

Registration \$399.00

Highlighted Sessions

The Consumer Financial Protection Bureau

Patricia Scherschel Student Lending Program Manager
Consumer Financial Protection Bureau

Perkins Loan Extension Act and Perkins Update

Alicia Molt Deputy Chief of Staff for Congressman Mark Pocan
Wes Huffman Associate Director COHEAO

www.secondalliance.com

Certificate Available

