

Family Educational Rights and Privacy Act

Directory Information
Designation and Use

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FERPA: What is it?

- Federal statute that governs the access to and disclosure of the education records of students of educational agencies or institutions receiving federal education funds
- Codified at 26 U.S.C. 1232g
- Federal Regulations: 34 CFR Part 99

FERPA: Definitions – Education Records

- Education Records: Records, files, documents and other materials which – contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.
 - Does not include:
 - Certain records of instructional, supervisory or administrative personnel which are in their sole possession and are not accessible or revealed to any other person except a substitute
 - Records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement
 - Records of employees of an educational agency or institution
 - Certain mental health records of a student who is at least 18 years old or is attending a post-secondary educational agency or institution.

FERPA: Definitions – Directory Information

- Directory information: “Directory information” is personally identifiable information about a student that is generally not considered harmful or an invasion of privacy if disclosed.
- Directory information includes but is not limited to:
 - Student’s name
 - Address
 - Telephone listing and email address
 - Date and place of birth
 - Major field of study
 - Participation in officially recognized activities and sports
 - Weight and height of members of athletic teams
 - Dates of attendance
 - Degrees and awards received
 - The most recent previous educational agency or institution attended by the student
 - Photograph

FERPA: Definitions – Directory Information (cont)

- Directory Information does NOT include (1) a student's social security number or (2) a student ID number, except that
 - a student ID number or other unique personal identifier may be directory information if it is either (a) used by a student for accessing or communicating in electronic systems or (b) is displayed on a student ID badge and
 - The student ID number or other unique personal identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity

FERPA: General Rules

- Access: the parents of students (or the student if 18 or attending post-secondary institution) who are or have been in attendance at a school of an applicable education agency or institution has the right to inspect and review their childrens' education records
 - Parents have the right a hearing to challenge the content of a student's education records in order to ensure the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of the student.
 - Parents must also have the opportunity to correct or delete any such inaccurate, misleading or inappropriate data contained in a student's education records.
- Disclosure: FERPA generally prohibits disclosure to third parties of education records, or "personally identifying information" ("PII") contained in "education records" other than directory information, without a parent's or student's written consent.

Exceptions to Disclosure Prohibition

- Education records or non-directory PII may be released to third parties without parent's consent in certain circumstances:
 - School officials who have a legitimate educational interest in the records
 - Officials of other schools or systems in which the students seeks to enroll, with certain conditions
 - Certain representatives of the federal government (Comptroller general, education secretary and Attorney General) and state educational authorities
 - For financial aid purposes
 - Organizations conducting certain studies for the educational agency or institution (limited circumstances)
 - Accreditation agencies for accrediting purposes
 - For protection of health, safety and welfare in emergencies
 - Certain law enforcement purposes
- Parental consent requires specification of the records to be released, the reason of the release and the party to whom the records may be released (parent may receive a copy of released record if requested)

Directory Information

- An educational agency or institution making public directory information shall:
 - (1) give public notice of the categories of information which it has designated as directory information and
 - (2) allow a reasonable period of time for a parent to inform the institution or agency that any or all of the information designated as directory information should not be released without the parent's prior consent.

Directory Information: Public Notice Frequency and Content

- Must be provided annually
- Types of PII the agency or institution has designated as directory information
- A parent's right to refuse to let the agency or institution designate any or all of the types of PII about the student as directory information
- Period of time within which the parent may exercise the right to opt out by written notification to the agency or institution

Directory Information: Public Notice Content

- The agency or institution may specify that disclosure of directory information will be limited to specific parties, for specific purposes, or both
- The disclosure of directory information must be limited to those parties, or for those purposes, or both

Former Student Opt Out

- An educational agency or institution may disclose directory information about former students without complying with the notice and opt out regulatory requirements
- BUT – the agency or institution must continue to honor any valid request to opt out of directory information disclosure made while a student was in attendance unless the student rescinds the opt out request

Opt Out Limitations

- A parent may not use the right to opt out of the disclosure of PII in order to
 - Prevent an agency or institution from disclosing or requiring a student to disclose the student's name, identifier or institutional email address in a class in which the student is enrolled, or
 - Prevent an agency or institution from requiring a student to wear, display publicly, or disclose a student ID card or badge that exhibits information that has been properly designated directory information

FERPA: Other Issues

- An agency or institution is not required to maintain a record of each request or access to and each disclosure of PII from the education records of a student if the disclosure of PII was made to a party seeking directory information
- Even if an agency or institution does not disclose directory information (and hence, does not provide the directory information notice), it must still provide (i) a notice that it discloses PII to military recruiters and (ii) an opportunity to opt out of this disclosure