



FERPA Update Mississippi Community & Junior Colleges

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Who is PTAC?

- Baron Rodriguez – Director
- Margie Bates – Privacy Coordinator
- Alexandra Henning – Documentation Expert
- Mike Tassej – Security Expert



What is PTAC's role?

- To provide resources and expertise to educational entities such as districts, K12 state education agencies, and postsecondary institutions.



Disclaimer

- This webinar is intended to discuss the current FERPA regulations and recent changes.
 - It is **NOT** intended to interpret or provide comment on whether sharing of data with other agencies is permissible under other federal, state, or local laws.
 - State and local laws may have **MORE** stringent protections around privacy and security of education data and other state agency associated data.

Remember that for student education data containing PII, *FERPA is the floor, not the ceiling*, regarding the protection of the privacy of student education records.



What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's *education records*, the right to seek to have the records amended, and the right to consent to the disclosure of personally identifiable information from education records, except as provided by law.

When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").



Testing your knowledge....





Dual Enrolled Students

- True or False?
 - FERPA prohibits the sharing of information between the two institutions a dually enrolled students attend.
- *False: FERPA not only permits the sharing of information between the institutions, but also allows postsecondary institutions to share information to PARENTS of high school students who are dependents for Federal income tax purposes.*



Dual Enrolled Students

- True or False?
 - FERPA requires consent of the parent or student to share/disclose the information as previously mentioned.
- *False: Two schools may share education records without the consent of either the parents or the student under § 99.34. AND: If the student is under 18, the parents still retain the right under FERPA to inspect and review ANY education records maintained by the high school INCLUDING records that the college or university disclosed to the high school.*



Data Sharing = Disclosure

Remember: There is no "data sharing" or "research" clause in FERPA, rather, sharing of student PII is considered "disclosure" under FERPA and is only allowable under specific circumstances.



Scenario #1

- Q: When a student turns 18 years old, the rights under FERPA transfer from his parents to the student. Can the high school still disclose information from the student's education records to his parents absent consent of the student? If yes, how?
- A: Yes! More than likely, the student is still living at home and is probably claimed as a dependent by the parents for IRS tax purposes. If so, then the school can share any information from the student's education records with the parents, even if the student hasn't provided consent (or objects).



Scenario #2

Q: A student who is under 18 is still in high school but also taking classes at the local college. Have FERPA rights transferred to the student? Can her parents see the records at the local college?



Scenario #2

Well...

- At the high school, the rights under FERPA have NOT transferred to the student because the student is under 18.
- At the local college, the student is considered an “eligible student” and the rights belong to her for those records at the college.
- The high school and college may share records on students who are attending the schools.
- If the college sends the records to the high school, then the parents have the right to see them there.
 - Otherwise, the college “may” but is not required to share the records with the parents if the parents claim the student as a dependent for federal income tax purposes, as noted in the previous scenario.

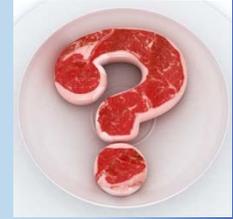


Confidentiality under FERPA

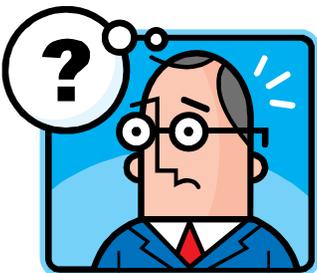
- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requirement for written consent before sharing PII
- Exceptions from the consent requirement for:
 - “Studies”
 - “Audits and Evaluations”
 - Health and Safety emergencies
 - And others purposes as specified in §99.31



Applicants vs. Matriculated Students



- Quiz: Under FERPA, “education records” means those records that are:
 1. Directly related to a student and RECEIVED by and educational agency or institution
 2. Directly related to a student and MAINTAINED by an educational agency or institution
 3. Personally identifiable information received by an educational institution
 4. Transcripts received by an institution which contain only limited PII

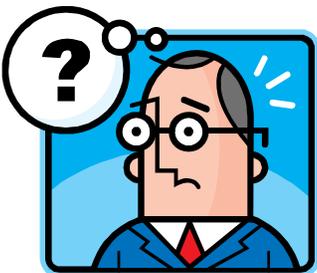




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Scenario # 3

Question:

A school designates name, address, telephone listing, email address, and honor and awards received as directory information. A reporter from the local newspaper calls the school and informs the school that he is writing an article about the success of Hispanic students. The reporter asks the school for the name and contact information for all the Hispanic students who made the honor roll for the current school year. Are the names and contact information for all the Hispanic students who made the honor roll for the current school year “directory information” or personally identifiable information?



Scenario # 3

Answer:

No. You cannot link “directory information” with an item that cannot be designated as a “directory information” item, such as race or ethnicity. The school could send home a note to the parents of these students and ask them to sign a consent form giving permission to disclose the students’ names to the media.



Directory Information

“Directory information” is –

- Personally identifiable information that is not generally considered harmful or an invasion of privacy if disclosed includes but is not limited to:
 - name, address, telephone listing, electronic mail address;
 - date and place of birth;
 - photographs;
 - participation in officially recognized activities and sports;
 - field of study;
 - enrollment status (full-, part-time, undergraduate, graduate);
 - degrees & awards received;
 - dates of attendance;



Directory Information (cont.)

- “Directory information” cannot include a student’s social security number and generally may not include a student’s ID number.



Directory Information (cont.)

- **New!** “Directory information” may include a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the 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, such as a PIN, password, or other factor known or possessed only by the authorized user.



Disclosure Provisions (cont.)

- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs. § 99.31(a)(3) and § 99.35
- 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:
 - determine eligibility for the aid;
 - determine the amount of the aid;
 - determine the conditions of the aid; or
 - enforce the terms and conditions of the aid. § 99.31(a)(4)



Disclosure Provisions (cont.)

- To a victim of an alleged perpetrator of a crime of violence or non-forcible sex offense.
- To anyone if the disclosure is in connection with a disciplinary proceeding at a postsecondary institution if it determines that the student is an alleged perpetrator of a crime of violence or non-forcible sex offense and with respect to the allegation against him or her the student has committed a violation of the institution's rules or policies. § 99.31(a)(14)



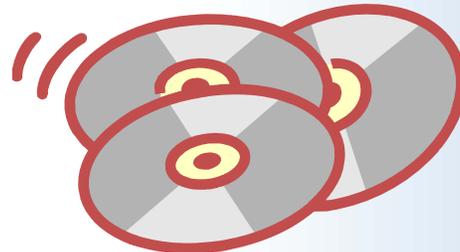
Disclosure Provisions (cont.)

- To organizations conducting studies on behalf of schools.
§ 99.31(a)(6)
- To accrediting organizations. § 99.31(a)(7)
- To parents of a dependent student. § 99.31(a)(8)
- To comply with a judicial order or subpoena (reasonable effort to notify). § 99.31(a)(9)
- In a health or safety emergency. § 99.31(a)(10) & § 99.36
- Directory information. § 99.37



When does an applicant become a student?

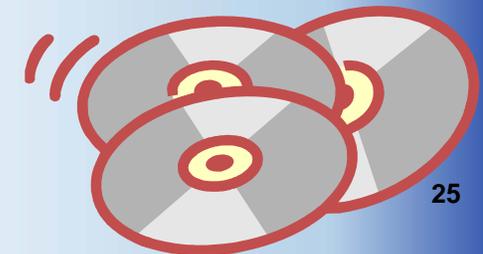
- A. When an institution receives an application containing transcripts and personally identifiable information.
- B. When an institution accepts the application and begins the enrollment process
- C. When an institution maintains records or personally identifiable information regardless of if the student has been in attendance
- D. When an institution maintains records or personally identifiable information and the student has been in attendance.





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- D. **When an institution maintains records or personally identifiable information and the student has been in attendance.**





How do FERPA Amendments Affect Data Sharing?



Key FERPA Regulatory Changes

- Written agreements now required for data sharing under the audit/evaluation exception
- Under the audit/evaluation exception, the entity disclosing PII must use "reasonable methods"
- New definition: *Authorized Representative*
- New definition: *Education Program*



Written Agreements

- Mandatory when sharing data without consent under both exceptions
- Many names for the same document:
Written agreement, contract, memorandum of understanding, data exchange agreement, etc.
- “Guidance for Reasonable Methods and Written Agreements”



Definitions

- Education Program
 - Any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution (FERPA regulations § 99.3).
 - Under the audit/evaluation exception, PII can only be disclosed to audit/evaluate a Federal- or State-supported “education program”



Definitions

- Authorized Representative
 - Any entity or individual designated by a State or local educational authority or an agency headed by an official... to conduct—with respect to Federal- or State-supported education programs—any audit or evaluation, or any compliance or enforcement activity in connection with Federal legal requirements that relate to these programs (FERPA regulations, § 99.3).



Audit/Evaluation Exception

Allows PII from education records to be shared without consent with

- "Authorized representatives" of
- "FERPA-permitted entities"
 - Comptroller General of U.S.,
 - U.S. Attorney General,
 - U.S. Secretary of Education, and
 - State or Local Educational Authorities

34 CFR Section 99.31(a)(3)



Audit/Evaluation

- Data can only be shared in order to
 - Audit or evaluate a Federal- or State-supported **education** program, or
 - Enforce or comply with Federal legal requirements that relate to those education programs
- Education program – broad, but not limitless



Studies Exception

- “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
- Written Agreements



Can a labor agency be an authorized representative?

- Depends (if sharing PII):
 - Must have a written agreement
 - Must be for a specific purpose
 - Must be for the audit or evaluation of a state or federal education program
 - Must follow all provisions for audit/evaluation exception under FERPA



Does this apply to all data shared between labor and education program?

- Depends (not sharing PII)
 - Aggregate data – If aggregate data (provided data disclosure avoidance applied) can be used FERPA restrictions don't apply. (For instance a research study)
 - De-identified data – If data is properly de-identified, FERPA restrictions don't apply.
 - Do you really need to know the names of the students for accurate matching?
 - For program evaluation, de-identified data is generally more than sufficient.



Does this apply to all data shared between labor and education program?

- Depends
 - Directory Information
 - Problem: Most states don't have a uniform directory information policy. Generally differs between LEAs.



What are the Requirements for Written Agreements?



Written Agreements— Audit/Evaluation Exception

- Written agreements must
 - Designate an authorized representative
 - Specify what PII will be disclosed and for what purpose
 - under the audit/evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs
 - Describe the activity to make clear that it falls within the audit/evaluation exception



Written Agreements— Studies Exception

- Written agreements **must**
 - Specify the purpose, scope, and duration of the study and the information to be disclosed, and
 - Require the organization to
 - use PII only to meet the purpose(s) of the study
 - limit access to PII to those with legitimate interests
 - destroy PII upon completion of the study and specify the time period in which the information must be destroyed



Written Agreements— Audit/Evaluation Exception

- Written agreements must
 - Require an authorized representative to destroy PII upon completion of the evaluation and specify the time period in which the information must be destroyed
 - Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use



Written Agreements— Best practices

“FERPA represents the floor for protecting privacy, not the ceiling.”

- Bind individuals to the agreement
- Specify points of contact/data custodians
- Mention Institutional Review Board review and approval
- State ownership of PII
- Identify penalties



Written Agreements— Best practices

- Include funding terms
- Maintain right to audit
- Identify and comply with all legal requirements
- Have plans to handle a data breach
- Review and approve reported results
- Define terms for conflict resolution
- Specify modification and termination procedures
- Inform the public about written agreements
 - In some cases, a separate confidential IT Security Plan may be appropriate

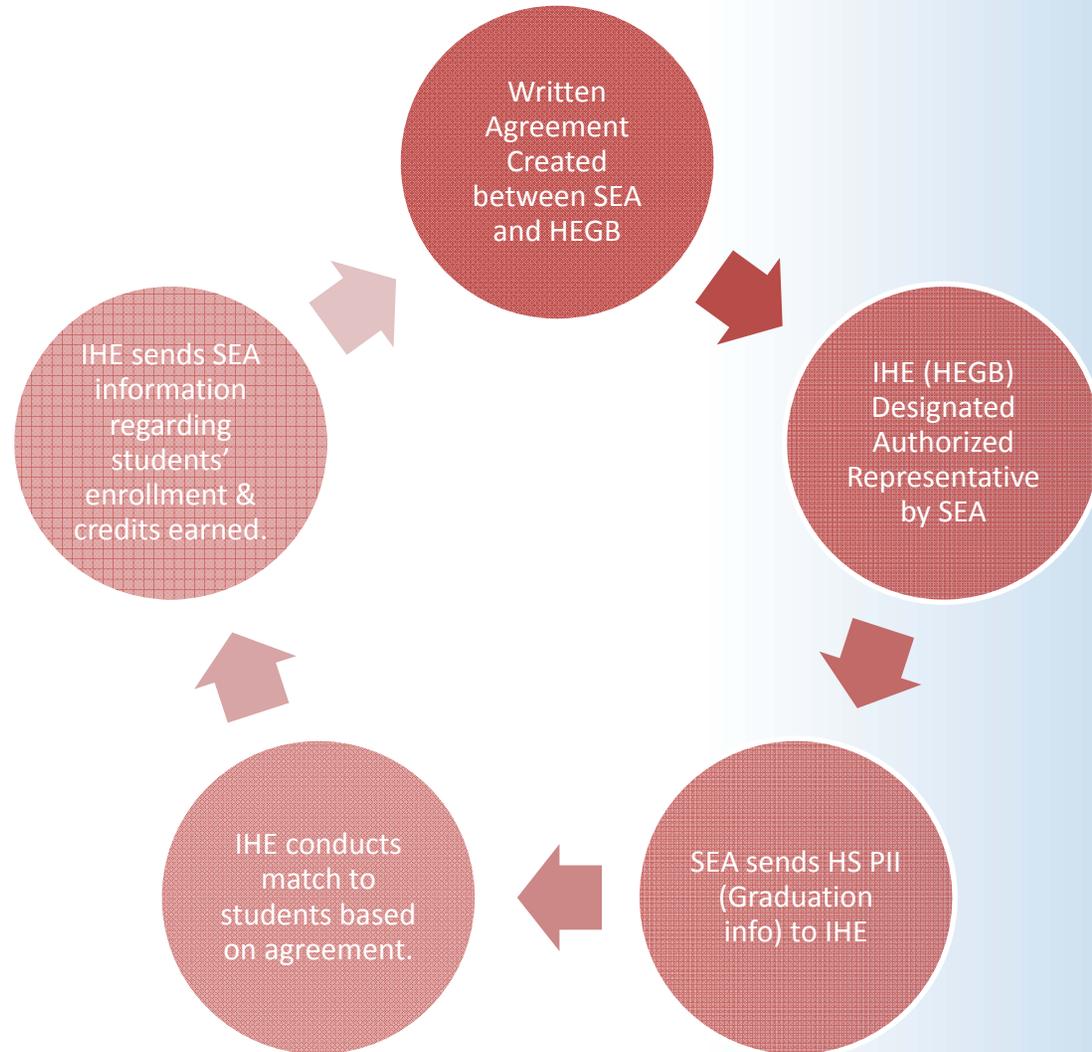


Example: High School Feedback Report: Basic Scenario

- SFSF requirement: publish data on student success in college
- Assume functional K-12 SLDS
- Assume Higher Education Governing Board with public postsecondary information



High School Feedback Report: How It Works





Example: Adult Education Program: Basic Scenario

- Local community action organization operates “XYZ Job Training”
- XYZ Job Training gets funding from DOL, not ED
- XYZ Job Training wants to evaluate how well it is preparing its students for reentry into the workforce.
- Assume data is combined and housed in a functional SLDS



Adult Education Program: How to Accomplish

- XYZ Job Training is a federally funded "education program" under FERPA regs
- Audit/evaluation exception
- Recordation
- Written agreement
- Reasonable methods
- Best practices
- Guidance for reasonable methods and written agreements



Example of **disallowed** data sharing between education and labor agencies:

- Evaluating the effectiveness of unemployment insurance programs returning employees to the workforce.
- Using linked student data to collect unemployment overpayments made to individuals.



PTAC Resources available

- Case Studies
 - [H.S. Feedback Report](#)
 - [Head Start Program](#)
 - [FPCO Enforcement of FERPA](#)
 - [PTAC Technical Assistance](#)
- Data Sharing
 - [Data Sharing Agreement Checklist **New**](#)
 - [Guidance for Reasonable Methods](#)
- Data Security
 - [Data Security Checklist](#)
 - [Data Governance Checklist](#)



New Guidance Coming Soon:

- Cloud Computing FAQs (Published!!)
- Disclosure Avoidance FAQs
- Authentication Best Practices (July)
- Identification of Data Types & Uses
- Data Breach Response Checklist (July)
- De-identified Data Case Study
- FERPA 101 professional training video
- FERPA 201 (Data Sharing) professional training video



Still need help?

- **PTAC Helpdesk** – Review specific questions, reports, or issues jointly with ED officials.

Write: PrivacyTA@ed.gov or call: (855) 249-3072

- **PTAC Site Visits** – PTAC can provide onsite assistance through training (such as FERPA for colleges & universities at yearly registrars meeting), facilitated discussions and can bring experts in the areas of privacy, governance, security, data disclosure avoidance techniques or SLDS expertise.

- Suggest new briefs/guidance!

Write: PrivacyTA@ed.gov



Upcoming PTAC Regional Meetings

- Postsecondary: Fall 2012
- Early Childhood: August 2012
- Labor: TBD/September 2012



Contact Information



Privacy Technical
Assistance Center

Family Policy Compliance Office

Telephone: (202) 260-3887

Email: FERPA@ed.gov

FAX: (202) 260-9001

Website: www.ed.gov/fpc

Privacy Technical Assistance Center

Telephone: (855) 249-3072

Email: privacyTA@ed.gov

FAX: (855) 249-3073

Website: www.ed.gov/ptac