



FERPA Presentation for Elementary/Secondary School Officials

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Dale King
Director
U.S. Department of Education
Family Policy Compliance Office



Family Educational Rights and Privacy Act (FERPA)

- Statute: **20 U.S.C. § 1232g**
(§ 444 of the General Education Provisions Act (GEPA))

- Regulations: **34 CFR Part 99**

- Latest changes to regulations:
- December 2, 2011 – <http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- December 9, 2008 – <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>



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.





§ 99.1

To which educational agencies and institutions does FERPA apply?



Elementary

Secondary



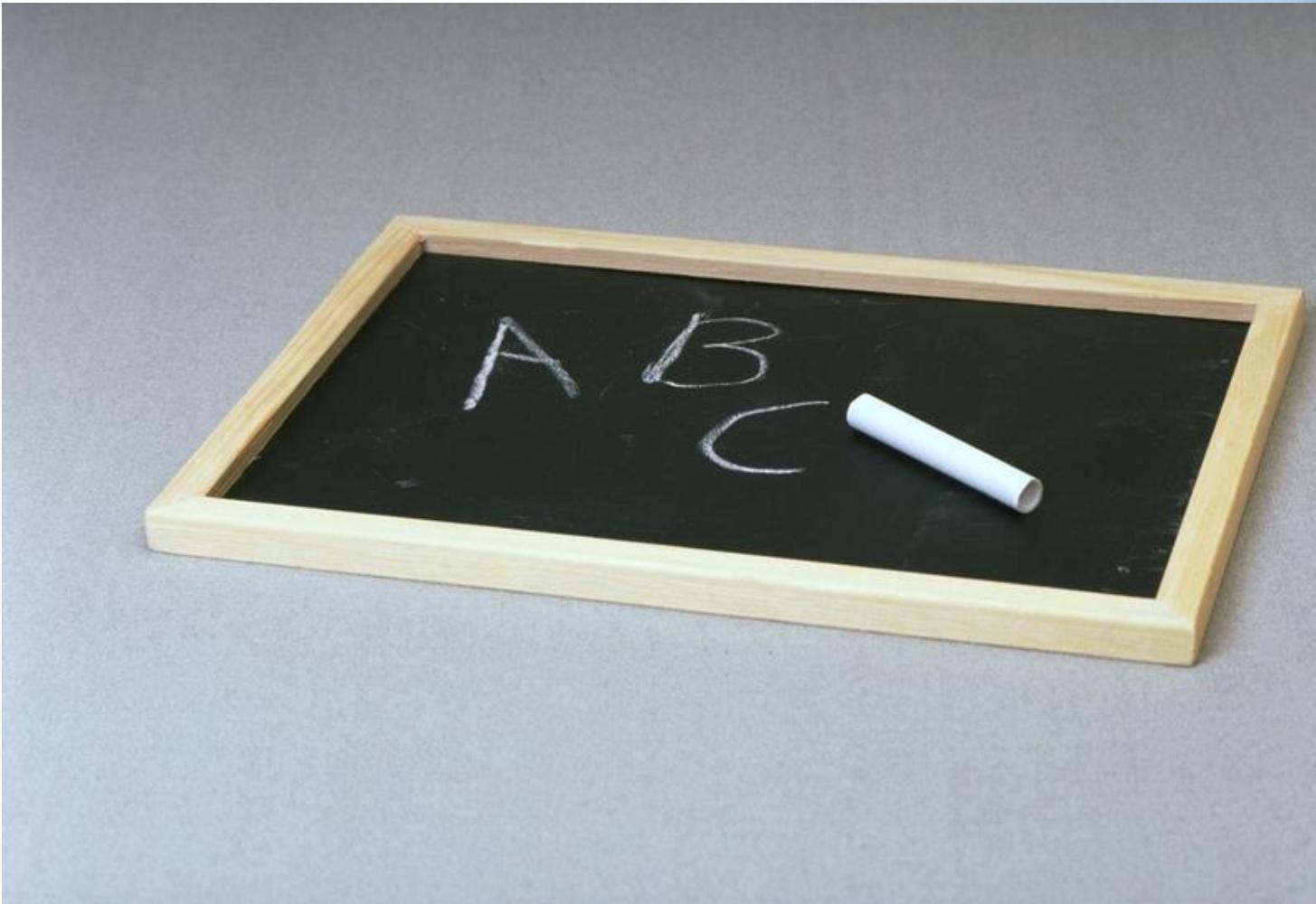
Postsecondary

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FERPA Basics





§ 99.3

What are education records?

“Education records” are records that are –

- directly related to a student; and
- maintained by an educational agency or institution or by a party acting for the agency or institution.





Education records do not include such records as –

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



What is personally identifiable information (PII)?



Name



Mother's maiden name



address



Date of birth



Social Security Number



Parent's name



What is personally identifiable information (PII)? (Cont.)

- Other 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.



What is directory information?

- PII that is not generally considered harmful or an invasion of privacy if disclosed.
- Not a student's Social Security Number and generally not a student ID number.
- May include a student ID number displayed on a student ID badge.



What rights do parents and eligible students have?

§ 99.4

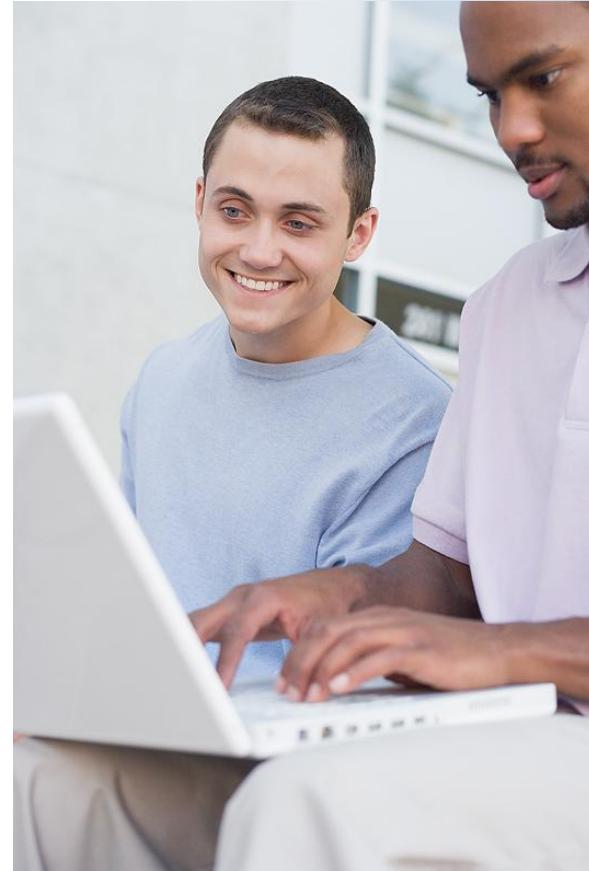
- Right to inspect and review education records;
- Right to request amendment of education records;
- Right to consent to disclosures, with certain exceptions; and
- Right to file a complaint with U.S. Department of Education.



Transfer of Rights Under FERPA

§ 99.5

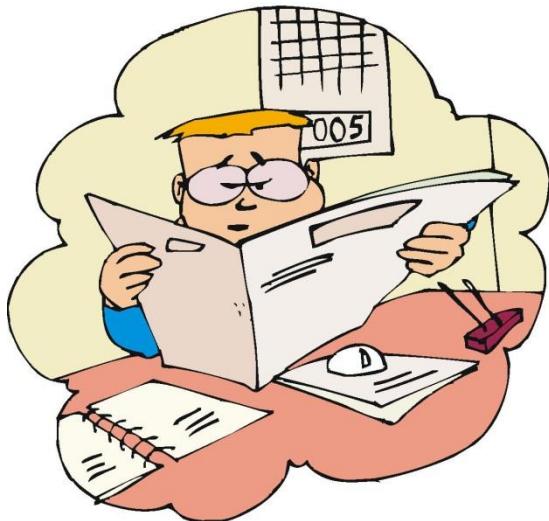
- When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").





Right to Inspect and Review Education Records

§§ 99.10-
99.12



- School must comply with a request to inspect and review education records within 45 days.
- Schools are generally required to give copies, or make other arrangements for access, only if failure to do so would effectively deny access – example would be when a parent or eligible student who does not live within commuting distance.
- School may not destroy records if request for access is pending.
- If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.



Right to Request Amendment of Education Records

§§99.20-
99.22

- Parent or eligible student should identify portion of 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.



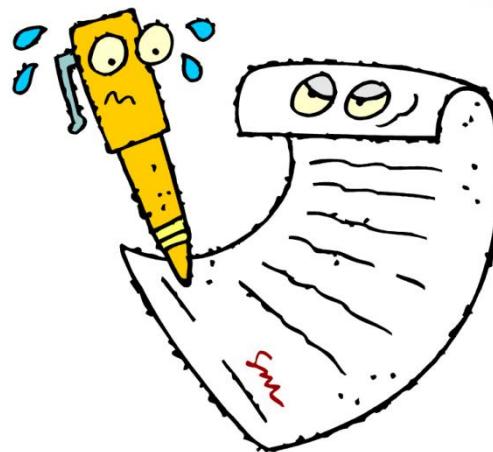


§99.30

Right to Consent to Disclosures

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.

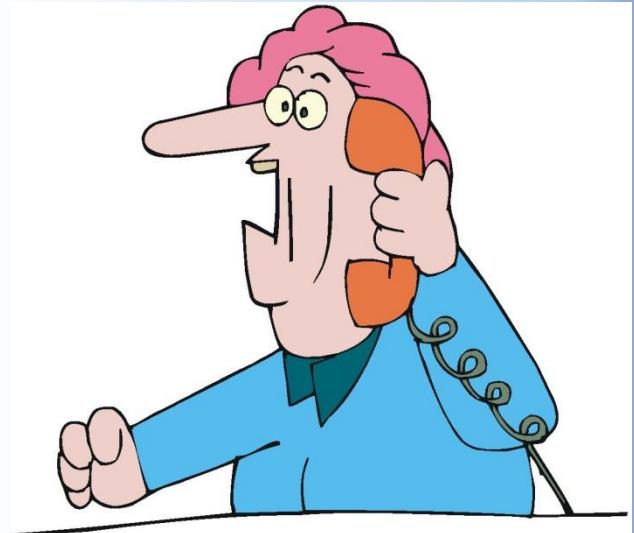




Right to File a Complaint

§§99.63-
99.64

- Parent or eligible student may file a written complaint with FPCO regarding an alleged violation under FERPA.
- Complaint must be submitted to FPCO within 180 days of the date of the alleged violation.





Annually Notified of Rights

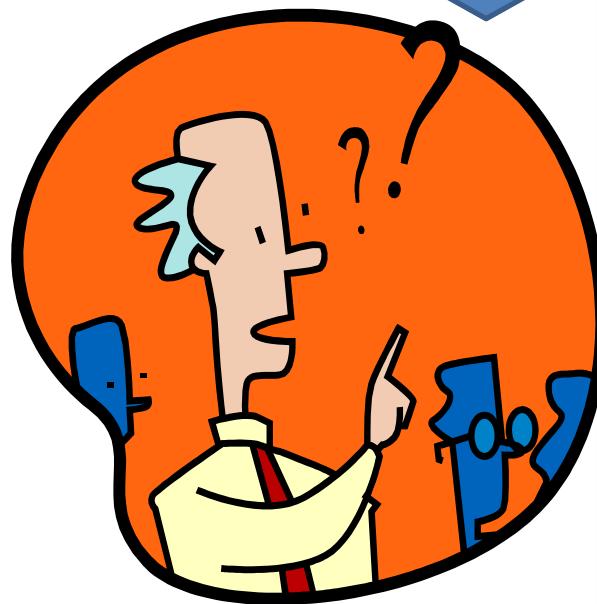
§99.7



- Schools must annually notify parents of students and eligible students in attendance of their rights under FERPA.



*So, when is prior consent
NOT required before
disclosing PII in education
records?*





What are the exceptions to general consent?

§99.31

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



What are exceptions to general consent? (cont.)

- To parents of a dependent student;
- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency; and
- Directory information.



Audit or Evaluation

§99.35

- Federal, State, and local officials listed under § 99.31(a)(3), or their authorized representative, may have access to education records only –
 - in connection with an audit or evaluation of Federal 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.



Who is an authorized representative?

§99.3

- Any entity or individual designated by a State or local educational authority or an agency headed by an official listed in § 99.31(a)(3) 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.





What is an education program?

§99.3



- 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.





Studies Exception

§ 99.31



- 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



What are written agreements?

- Mandatory for 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 rediscovering for, or on behalf of, school or LEA.





Reasonable Methods

§99.35



- In disclosing to a designated authorized representative under audit/evaluation exception, LEA must ensure to the greatest extent practicable that an authorized representative
 - Uses PII only to carry out an audit or evaluation of education programs, or for the enforcement of or compliance with, Federal legal requirements related to these programs.
 - Protects the PII from further disclosures or any unauthorized use.
 - Destroys the PII records when no longer needed for the audit, evaluation, or enforcement or compliance activity.



Health and Safety Emergencies

§ 99.31(a)(10)
& § 99.36



What conditions apply to disclosure of information in health or safety emergencies?

- 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.
- Must record pertinent information when it discloses PII.



Directory Information

§ 99.37

- Public notice must be given to parents of students in attendance and eligible students in attendance concerning “directory information.”
- Parent or eligible student may not use the right to opt out of directory information disclosures in order to prevent a school from requiring a student to wear, to display publicly, or to disclose a student ID card or badge.
- 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.





The exceptions to consent are permissible NOT required





What are the recordkeeping requirements?

§ 99.32

- An educational agency or institution must maintain a record of each request for access to and each disclosure from an education record, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under § 99.33.



What limitations apply to the redisclosure of PII?

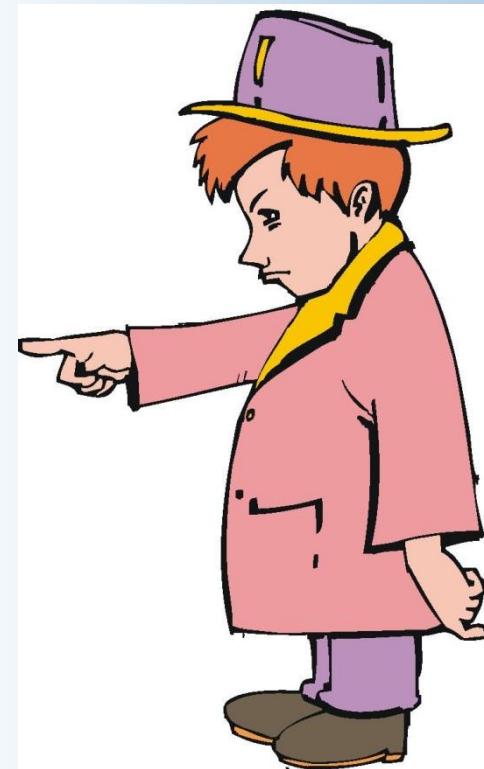
- Receiving party should be informed that the information may not be further disclosed, except when the disclosure is:
 - to the parent or eligible student;
 - on behalf of the school under § 99.31;
 - pursuant to a court order, subpoena, or in connection with litigation between the school and parent/student;
 - to the parents of a dependent student; or
 - directory information.



What are the Enforcement Provisions?

§§ 99.60-
99.67

- The Family Policy Compliance Office (FPCO) investigates complaints and violations under FERPA.
- Parents and eligible students may file timely complaints (180 days) with FPCO.
- If an SEA or another entity that receives Department funds violates FERPA, FPCO may bring an enforcement action against that entity.
- Enforcement actions include the 5-year rule as well as withholding payment, cease and desist orders, and compliance agreements.





Where Do I Go for Help?





FPCO ListServ

To sign up for the FPCO Announcement ListServ, go to:

<http://www2.ed.gov/policy/gen/guid/fpco/tps/index.html>

1. Click either “Local and State” or “Postsecondary” Training Partner Services.
2. Type word “privacy” in both User Name and Password pop-up box.
3. Once in Training Partner Services page, click “Register for Listserv.”
4. Follow direction and enter your contact information and click “ADD” button.
To remove your contact information, follow directions above and click
“Remove.”



Guidance Documents & FERPA Regulations

- Addressing Emergencies on Campus
<http://www2.ed.gov/policy/gen/guid/fpcos/pdf/emergency-guidance.pdf>
- Joint FERPA-HIPAA Guidance
<http://www2.ed.gov/policy/gen/guid/fpcos/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters
<http://www2.ed.gov/policy/gen/guid/fpcos/pdf/ferpa-disaster-guidance.pdf>
- Balancing Student Privacy & School Safety
<http://www2.ed.gov/policy/gen/guid/fpcos/brochures/elsec.html>
- Current FERPA Regulations <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- New Amendments to FERPA Regulations (Effective 1/3/12)
<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>
- New Model Notifications
LEAs: <http://www2.ed.gov/policy/gen/guid/fpcos/ferpa/lea-officials.html>



Contact Information

**Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202-8520**

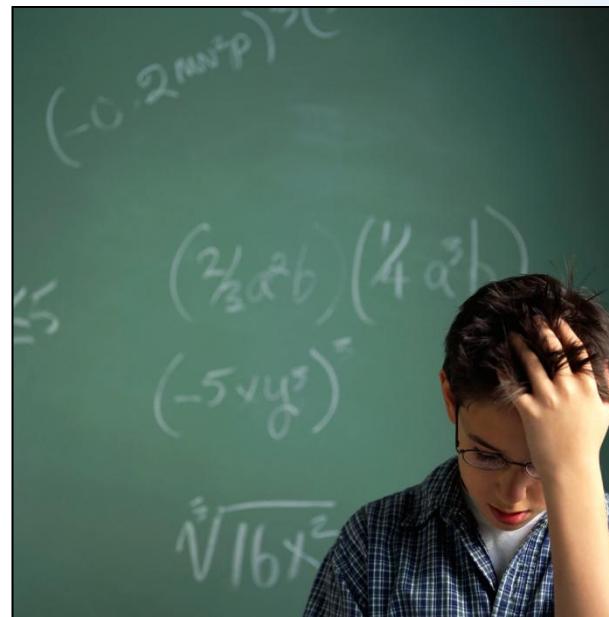
Telephone: (202) 260-3887
Website: www.ed.gov/fpcos

For informal requests for technical assistance, email us at:
FERPA@ed.gov.



Scenarios

Why Is FERPA So Complicated?





Directory Information: Reporter Request

- A school designates name, address, telephone listing, email address, and honors 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”?

NO



Directory Information: Disability

- A school designates name, address, telephone listing, email address, and honors and awards received as directory information. A non-profit organization that has programs for special needs children asks the school for directory information on students who have a certain disability. Can the names and contact information for these students be disclosed to the organization as directory information?

NO



Disclosure to Police Officer

- A police officer shows up at the main office of a high school and he asks if a certain student is attending school today. The police officer does not have a search warrant or a subpoena. The police officer wants to speak to the student regarding some gang violence that occurred three weeks ago. Can the school tell the officer whether or not the student is attending school today?

TECHNICALLY, NO



Law Enforcement Unit Maintaining Records

- A student is expelled from high school. A copy of his disciplinary record is sent to the school district's law enforcement unit so that school security can keep the student off campus. The law enforcement unit maintains that record and discloses it to a reporter in response to a State open records request. Is that permissible under FERPA?

NO



Teacher as Witness

- A teacher personally witnesses an incident, such as one student bullying another. Can the teacher call the victim's parents and tell them what she observed and who she saw bullying their child?

YES



Overdue Library Books

- A public school district lists the names of students who have overdue library books on their website, as well as posts the list on the school bulletin board. Is this permissible under FERPA?

NO



Disciplinary Records Request

- A student who attended a New York high school has relocated to Massachusetts and is having a hard time being admitted to the local Boston high school because the new high school wants the student's disciplinary records from his previous school. Does the New York high school have to disclose the student's discipline records to the new school?

FERPA WOULD PERMIT



Dually-Enrolled Students

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

IT'S COMPLICATED



Student ID Badge

- A student refuses to wear an ID badge and his parents opted out of the disclosure of directory information on their child in order to prevent the student from having to wear an ID badge. Can the school make him wear the ID badge anyway?

YES



Disclosing Eligible Student Records to Parents

- 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 an eligible student's education records to his parents absent consent of the student? If yes, how?

YES



Student Health Records

- The school nurse at a middle school wants to share information with teachers and administrators. Which law, FERPA or the HIPAA Privacy Rule, protects the privacy of student health records?

FERPA



After School College Prep Program

- The local YMCA offers an after school college prep program for high school students. How would the YMCA be able to access education records from the high school in order to assist the students in this program?

CONSENT



College Prep Advisor

- A college prep advisor is housed at the local high school to provide guidance and counseling to students regarding college opportunities. The advisor is not an employee of the school system, but of the local college or college consortium. How would the advisor be able to obtain access to students' education records?

CONSENT



U.S. Department of Education Grantees

- A college has received a grant from the U.S. Department of Education to work with students in the local high schools to encourage college attendance. How can the program obtain records from the local high schools on the student participants?

CONSENT