



# **Family Educational Rights and Privacy Act (FERPA)**

*Mississippi Data Conference*

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**U.S. Department of Education**

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# What's to Come

- Applicability
- Rights of Parents and Eligible Students
- Overview of Basic Definitions
- *Note: Blue Box in Right Hand Corner*
- Exceptions to General Consent Requirement
- How to Contact Us with Questions
- Scenarios





# **Family Educational Rights and Privacy Act (FERPA)**

- **Statute: 20 U.S.C. § 1232g**
- **Regulations: 34 CFR Part 99**
- **Family Policy Compliance Office (FPCO) in U.S. Department of Education investigates violations of FERPA.**





# To which educational agencies and institutions does FERPA apply?

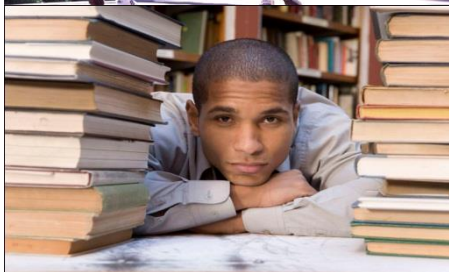
§ 99.1



Elementary



Secondary



Postsecondary

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# What is FERPA?

- Gives parents and “eligible students” the right to access and seek to amend education records;
- Protects personally identifiable information (PII) in education records from unauthorized disclosure; and
- Requires written consent before sharing PII – unless an exception applies.





# Definition of “Parent”

§ 99.3

- **“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.**
- **A parent is absent if he or she is not present in the day-to-day home environment of the child. For example, a grandparent has rights under FERPA where the grandparent is present on a day-to-day fulltime basis with the child and the parent is absent from that home. Conversely, a grandparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to such child's education records.**





# Rights of Parents (Custodial and Noncustodial)

§ 99.4

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







# 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”).**







# Eligible Student, cont.

§ 99.5

**Nothing in FERPA prevents an educational agency or institution from disclosing education records, or PII from education records, to a parent without the prior written consent of an eligible student if the disclosure meets these conditions:**

- **§ 99.31(a)(8) – The disclosure is to parents of a dependent student, as defined in section 152 of the IRS Code.**
- **§ 99.31(a)(10) – The disclosure is in connection with a health or safety emergency.**
- **§ 99.31(a)(15) – The disclosure is to a parent of a student at a postsecondary institution regarding the student’s violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, if the school determines that a student under the age of 21 has committed a disciplinary violation with respect to that use or possession.**
- **Any other provision in § 99.31(a) that might apply.**



# What are education records?

§ 99.3

**“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,” cont.

§ 99.3

- Records maintained by an educational agency or institution subject to FERPA on a student receiving services under Part B of IDEA are “education records” subject to FERPA.
- Health records on students, including immunization records, maintained by an educational agency or institution subject to FERPA are “education records” subject to FERPA.





# Education Records

§ 99.3

Exemptions to “education records” include –

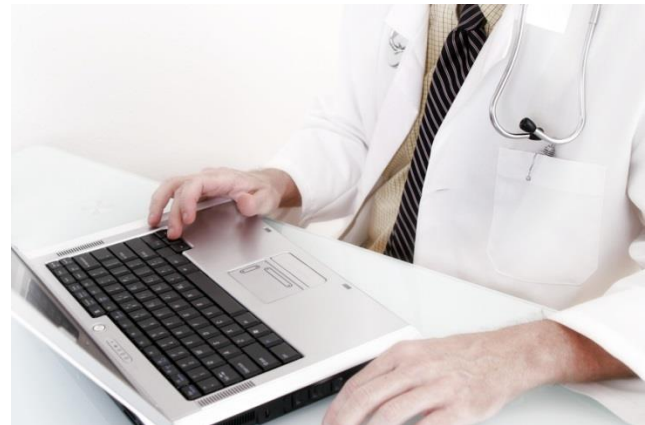
- sole possession records used as a personal memory aid; and
- law enforcement unit records.





# **Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule**

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- 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).
- Other HIPAA rules may apply.

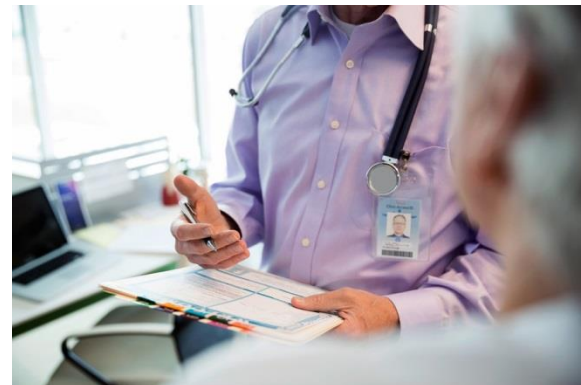




# HIPAA & FERPA, cont.

**“Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records”**

**[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/ferpa-hipaa-guidance.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa-hipaa-guidance.pdf)**





# Personally Identifiable Information (PII)

§ 99.3

**“Personally identifiable information” includes, but is not limited to:**

- The student’s name;
- Name of the student’s parent or other family members;
- Address of the student or student’s family;
- A personal identifier, such as a social security number, student number, or biometric record;
- Other direct identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;







# Personally Identifiable Information (PII), cont.

§ 99.3

- 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.





# Annual Notification of Rights

§ 99.7



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



# What must an educational agency or institution include in its FERPA annual notification of rights?

§ 99.7

- 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.





# Right to Inspect and Review Education Records

§§ 99.10-99.12



- Schools 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, if failure to do so would effectively deny access – example would be when a parent or an eligible student no longer lives within commuting distance.
- If the records contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about him or her.
- Schools may not destroy records if request for access is pending.



# Limitations on Right to Inspect and Review

§ 99.12

- If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.





# Limitations on Right to Inspect and Review, cont.

§ 99.12

- A parent or eligible student has a right to inspect and review a record that is directly related to the student, even if that statement contains information that is also directly related to another student, IF the information cannot be segregated and redacted without destroying its meaning. See the Preamble to Final Rule, 73 Fed. Reg. 74806, 74833 (Dec. 9, 2008).
- Example: Stay away orders.
- Does not include disciplinary results.





# 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.







# Limitations on Amendment

§§ 99.20-  
99.22

- A school is not required by FERPA to override its procedures for making academic assessments, disciplinary rulings, or placement determinations.
- This intent was set forth in the legislative history of FERPA, which states that FERPA was "not intended to overturn established standards and procedures for the challenge of substantive decisions made by an educational institution." (Emphasis added.) FERPA was intended to require only that schools conform to fair recordkeeping practices.
- Parent and eligible students have the right to seek to amend education records which contain information that is inaccurate, misleading, or in violation of the student's rights of privacy,
- This right cannot be used to challenge a grade or an individual's opinion, unless the grade or the opinion has been inaccurately recorded.



# Prior Written Consent Requirement

§ 99.30

**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.**





# Exceptions to General Consent Requirement

§99.31

- School officials
- Transfer to new school
- Judicial order or subpoena
- Caseworker of student in foster care
- Directory information
- Health or safety emergency
- Law Enforcement Unit Records\*



*\*Exemption to definition of "education records."*



# School Officials

§ 99.31(a)(1)

- **School officials with legitimate educational interests (§ 99.31(a)(1))**
  - Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
  - Model notification on FPCO website :  
<https://studentprivacy.ed.gov/resources/ferpa-model-notification-rights-elementary-secondary-schools>





# School Officials, cont.

§ 99.31(a)(1)

- **Outsourcing services under school official exception (§ 99.31(a)(1)(i)(B))**
  - **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.**
  - **May consider utilizing non-employees as members of its threat assessment team, as counselors, nurses, and as security staff.**
  - **If these outside parties meet the conditions for outsourcing, they may have access to education records.**



# School Officials, cont.

§ 99.31(a)(1)

- **Conditions for outsourcing institutional services or functions to outside parties:**
  - **Performs an institutional service or function for which the agency or institution would otherwise use employees;**
  - **Is under the direct control of the agency or institution with respect to the use and maintenance of education records;**
  - **Is subject to the requirements in § 99.33(a) that the PII from education records may be used only for the purposes for which the disclosure was made and governing the re-disclosure of PII from education records; and**
  - **Meets the criteria specified in the institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.**





# Transfer to a New School/College/University

§ 99.31(a)(2) &  
§ 99.34

- To schools in which a student seeks or intends to enroll.
  - A school that discloses education records under this provision must make a reasonable attempt to notify the parent or eligible student of the disclosure, unless
    - the disclosure is initiated by the parent or eligible student, or
    - the school's annual notification of rights includes a notice that it forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll.







# **Transfer to a New School/College/University, cont.**

- **A parent or eligible student does not have the right to prevent a school from transferring the student's education records or from communicating information about the student to the student's new school.**
- **Schools or school districts should include a notice in their annual notification of rights under FERPA that it forwards education records to other schools that have requested the records and in which the student seeks or intends to enroll (34 CFR §§ 99.7 and 99.34(a)(ii)).**





# Judicial Orders & Subpoenas

§ 99.31(a)(9)

- 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 the parent or student an opportunity to seek protective action.
- Some judicial orders and subpoenas are exempt from FERPA's notification requirement.

**United States District Court**  
SUBPOENA  
District of Massachusetts  
Case No. 13-cv-01018  
In re: **W.S. Grace & Co., et al.**  
Plaintiff vs. Defendant  
Defendant: **W.S. Grace & Co., et al.**  
Plaintiff: **Keeper of the Records, United States Geological Survey, 330 Causeway Street, Suite 1201, Boston, Massachusetts 02114-2128**  
YOU ARE HEREBY COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above entitled case.  
United States District Court  
J. W. McCormack Post Office and Courthouse  
Boston, Massachusetts  
Date: **Monday, June 11, 19**  
Time: **9:00 a.m.**  
YOU ARE ALSO COMMANDED to bring with you the following documents or objects:  
SEE ATTACHED SCHEDULE  
EXHIBIT: A TRUE COPY  
This subpoena shall remain in effect until the date specified herein or until the date of the trial, whichever is later.  
F. MCCORMACK  
Date: **June 11, 19**  
OFFICIAL'S NAME AND ADDRESS:  
Carl M. Perkins  
P.O. Box 1, Elliot  
One Post Office Square  
Boston, MA 02269 (617)482-1200  
\*\* You may not be needed on the date indicated; please call Carl Perkins  
Eric O'Brien, tel. 617-482-1200 to discuss scheduling.



# Student in Foster Care

## *Uninterrupted Scholars Act (USA)*

New exception to the general consent requirement passed by Congress January 2013 (not yet in FERPA regulations):

- Permits disclosure of PII from education records of children *placed in foster care* to “agency caseworker or other representative” of a State or local child welfare agency (CWA) who has the right to access a student’s case plan under State or tribal law.
- Disclosure permitted when the CWA is “legally responsible ... for the care and protection of the student.”
- Provisions for tribal organizations as well.





# Directory Information

§ 99.31(a)(11)

- **Directory Information (§ 99.31(a)(11) and § 99.37)**
  - Defined as information in a student's education records that would not generally be considered harmful or an invasion of privacy.
  - Name, address, telephone number, e-mail address, photograph, date and place of birth, grade level, 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, and most recent school attended.
  - Can never include an SSN.
  - Generally may not include student ID number, except under specified circumstances.



# Directory Information, cont.

§ 99.37

- Public notice must be given to parents of students in attendance and eligible students in attendance concerning “directory information” providing an opportunity to opt out.
- Parents and eligible students 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.





# Directory Information (cont.)

§ 99.3

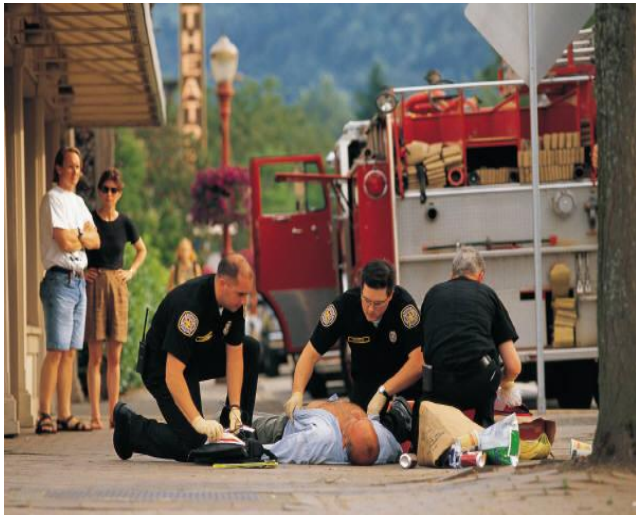
- **“Directory information” may include a student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.**





# 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.
- School must record pertinent information when it discloses PII.





# Health and Safety Emergencies, cont.

§ 99.31(a)(10)  
& § 99.36

- Disclosure to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.
- “Appropriate parties” may include parents of an eligible student.
- See “Addressing Emergencies on Campus”; “FERPA and Disclosures Related to Emergencies and Disasters”; and other guidance documents on StudentPrivacy website.

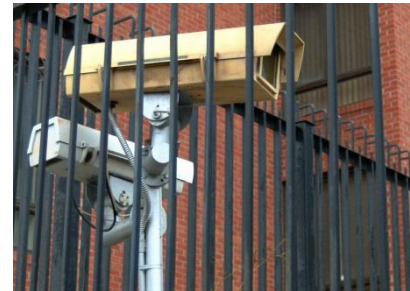




# Law Enforcement Units & Records

§ 99.8

- **“Law enforcement unit” (LEU) 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.**

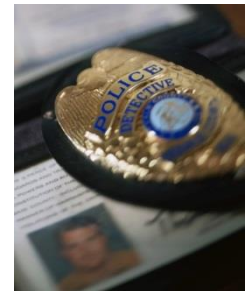




# Law Enforcement Units & Records, cont.

§ 99.8

- **LEU 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.
  
- **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.





# Personal Knowledge or Observation

- FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records.
- This general rule does not apply where a school official learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education records.





# Recordkeeping

§ 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 PII from the student's education records without consent under § 99.33. Exceptions apply.**





# Enforcement Provisions

- **§§ 99.60 – 99.67 Enforcement provisions of FERPA**
- **Parents and eligible students may file complaints under FERPA with the Family Policy Compliance Office.**
- **Complaint must be timely (180 days).**
- **If an educational agency or institution does not comply with FERPA, the Secretary has several enforcement options available including terminating eligibility to receive funding under any applicable program.**



# Contact Information

**Student Privacy Policy & Assistance Division  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520**

**Telephone: (202) 260-3887**

**For informal requests for technical assistance and/or to sign up for the Student Privacy GovDelivery Announcement ListServ, click the “Contact” button on <https://studentprivacy.ed.gov/>.**







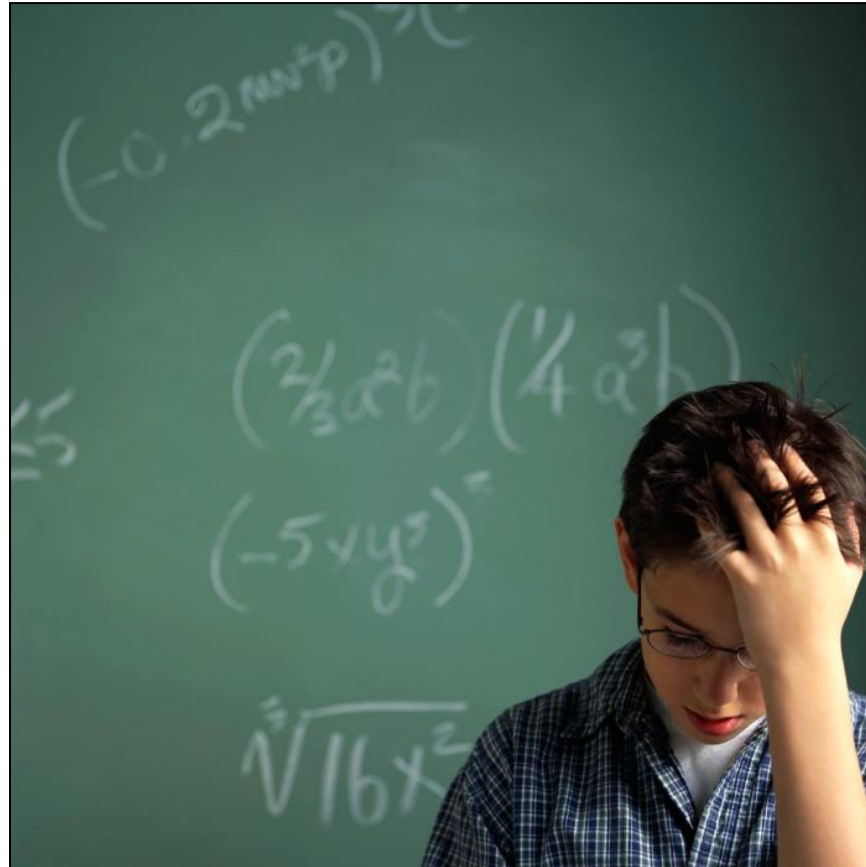
**FERPA is a *privacy* statute. Its purpose is to protect the privacy interests of parents and students in education records maintained by educational agencies and institutions on students. Therefore, these privacy interests – and the prior written consent requirement under FERPA – should not be viewed as barriers or challenges to be minimized and overcome but important public safeguards to be protected and strengthened.**





# Scenarios

## Why is FERPA So Complicated?



**1. A teacher overhears two students talking about selling drugs to other students. The teacher is prohibited by FERPA from disclosing information about a student, so he doesn't alert the authorities.**

- **False. Personal knowledge and observation are not protected by FERPA if knowledge did not come from education records. The teacher can share this information with anyone without violating FERPA.**

**2. A police officer appears one afternoon in the principal's office demanding information on a student. Because he is a law enforcement officer, FERPA permits the principal to share that information.**

**False. FERPA does not include a specific exception to its general consent requirement permitting disclosure to federal, state, or local law enforcement officials. Typically, the officer needs to issue a subpoena or judicial order.**

**If the officer believes that a health or safety emergency exists, the school would need to make the determination that it does indeed exist before disclosing the information, and then record the disclosure indicating the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the disclosure was made.**

**3. An eligible student in high school who is being treated by the school counselor has exhibited suicidal tendencies. Because the rights under FERPA have transferred to the student and because this information is in a counseling record, FERPA does not permit the counselor to call the student's parents and discuss her situation.**

- **False. These records are NOT covered by HIPAA, but by FERPA. FERPA's health or safety emergency exception may permit necessary disclosures, as well as the dependent student exception.**

**4. The school nurse wants to share information (on a student about his or her condition) with teachers and administrators. However, the HIPAA Privacy Rule prohibits this sharing of information.**



**False. The HIPAA Privacy Rule does not apply to these records.**

**At the elementary/secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered “education records” subject to FERPA – not the HIPAA Privacy Rule.**

**A school nurse may share information on students with other school officials if these school officials have a legitimate educational interest in the records. Typically, if there is a health condition about which other teachers and school administrators need to be aware in order to provide a safe and healthy environment for the student, then the school could include such a criteria for what it considers to be a “legitimate educational interest.”**

**5. A student refuses to wear an ID badge and his parents opt out of the disclosure of directory information on their child in order to prevent the student from having to wear an ID badge. Because the parents opted out of directory information, the school cannot make him wear the ID badge.**

**False. The 2011 amendments to the FERPA regulations clarified that a parent or eligible student may not opt out of directory information in order to prevent a school from requiring a student to wear a student ID badge that exhibits information that has been properly designated by the school as “directory information.”**

**6. A student, age 16, is still in high school but is also taking classes at the local college. The student's parents want to see information on the student's progress at the college, but FERPA does not permit the disclosure because the student is an "eligible student" and the rights have transferred to the student.**

**False. At the high school, the rights under FERPA have NOT transferred to the student because the student is under 18. However, at the local college, the student is considered an “eligible student” and the rights belong to him/her for those records at the college.**

**The high school and college may share records on students who are attending the schools at the same time. 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.**