


Family Educational Rights and Privacy Act (FERPA)


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Ellen Campbell
Team Leader
Family Policy Compliance Office


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How Much Do You Really Know About FERPA?



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Top Five Issues


- List your top five FERPA issues or questions that you would like addressed today.

1. _____
2. _____
3. _____
4. _____
5. _____


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 **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 administers FERPA.




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 **The world has changed**


FERPA was passed in 1974:

- Gerald R. Ford was President.
- The Cold War was hot.
- The first Macintosh personal computer was 10 years in the future.
- The World Wide Web was 16 years in the future.
- Clouds were not places to store data.




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 **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.



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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. Accordingly, 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.



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Rights of Parents (Custodial and Noncustodial)

§ 99.4

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights (§ 99.4).




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 **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").



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 **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.

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 **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.




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 "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.




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 Education Records § 99.3

Exemptions to "education records" include –


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



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 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.



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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”

<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

FPCO website / “Hot Topics” / November 2008

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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.



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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.




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 Annual Notification of Rights § 99.7




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


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 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.



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 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.

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Copy v. Access

§ 99.10

While FERPA requires a school to provide a parent or eligible student access to education records, it is not generally required to provide *copies* of education records. However, if circumstances effectively prevent a parent or eligible student from exercising his or her right to inspect and review education records, the school would be required to either provide a copy of the records requested or make other arrangements that would allow for the parent or eligible student to inspect and view the requested records. For example, a school could be required to provide copies, or make other arrangements for inspection and review, if the parent or eligible student did not live within commuting distance of the school.



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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.



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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.



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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.



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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.



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Consent (cont.)

§ 99.30

- "Signed and dated written consent" under FERPA may include a record and signature in electronic form that -
 - identifies and authenticates a particular person as the source of the electronic consent; and,
 - indicates such person's approval of the information contained in the electronic consent.




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 **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."*




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 **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 :
 - <http://www2.ed.gov/policy/gen/guid/fpc0/ferpa/ps-officials.html>




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 **School Officials, cont.** § 99.31(a)(1)

- Outsourcing services under school official exception (§ 99.31(a)(1)(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.


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 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;




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 School Officials, cont. § 99.31(a)(1)

- Conditions for outsourcing institutional services or functions to outside parties, cont.:
 - 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.

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 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.



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

- A former school may disclose to another school where a student has *already* enrolled, if the disclosure is for purposes related to the student's enrollment or transfer.
- A school may (or may not) release a portion or all of a student's education records, under the "seeks or intends to enroll" exception in FERPA, at its discretion.
- However, the Elementary and Secondary Education Act (ESEA) requires that each State that receives funds under the ESEA to have a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, to any private or public elementary school or secondary school in which the student enrolls or seeks to enroll.

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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)(i)).



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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.




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 **Judicial Orders & Subpoenas, cont.** § 99.31(a)(9)


- *Ex Parte* Orders – School may, without consent or knowledge of parent or eligible student, disclose PII from education records to the U.S. Attorney General or his designee in response to an *ex parte* order in connection with the investigation or prosecution of terrorism crimes specified in §§ 2332b(g)(5)(B) and 2331 of title 18, U.S. Code. See 34 CFR § 99.31(a)(9)(ii)(C).
- Notification and recordation requirements in FERPA do not apply.

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 **Judicial Orders & Subpoenas, cont.** § 99.31(a)(9)

- *Law Enforcement Subpoenas* – School may disclose PII from education records to the entity or persons designated in a subpoena issued for a law enforcement purpose.
- Issuing court or agency may, for good cause shown, order the institution not to disclose to anyone the existence or contents of the subpoena or the response.
- If court or agency issues such an order, the notification and recordation requirements in FERPA do not apply.

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 **Judicial Orders & Subpoenas, cont.** § 99.31(a)(9)

- *Grand Jury Subpoenas* – School may disclose PII from education records to the entity or persons designated in a Federal grand jury subpoena.
- The court may order the institution not to disclose to anyone the existence or contents of the subpoena or the response.
- If court orders, the notification and recordation requirements in FERPA do not apply.

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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.



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Student in Foster Care, cont.

- The CWA can disclose (or re-disclose) the records to "an individual or entity engaged in addressing the student's education needs."
- This individual or entity must be authorized to receive the records and the disclosure (or re-disclosure) must be consistent with State law.



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Student in Foster Care, cont.

- Uninterrupted Scholars Act amended the notification requirement in FERPA's subpoena or judicial order exception (§ 99.31(a)(9)). Notification is not required when the parent is a party to a court order proceeding involving child abuse, neglect, or dependency.




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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.

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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.




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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.



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 **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.


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 **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 FPCO's website.




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 **Threat Assessment Teams** § 99.31(a)(1)


Threat Assessment Team (TAT) –

- A group of officials that convene to identify, evaluate, and address threats or potential threats to school security.
- Review incidents of threatening behavior by students (current and former), parents, school employees, or other individuals.
- Assist in determining whether a health or safety emergency exists in order to know whether a disclosure may be made under the FERPA emergency exception.
- More common in university settings but also being instituted in elementary and secondary schools.


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 Threat Assessment Teams, cont. § 99.31(a)(1)

- TATs may include officials who can assist in making decisions –
 - School administrators, deans, counselors, school law enforcement unit officials, and school attorneys.
 - Outside medical and mental health professional and local law enforcement officers.
- Information on establishing a threat assessment program and other resources for emergency situations:
<http://www.ed.gov/admins/lead/safety/edpicks.jhtml?src=ln>




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 Threat Assessment Teams, cont. § 99.31(a)(1)

- Disclosing PII from education records to TAT members who are not employees –
 - Must qualify as “school officials” with “legitimate educational interests.”
 - Must meet requirements for “outsourcing” institutional service or function. See § 99.31(a)(1)(i)(B).
 - Must only use PII from education records for purposes for which it was disclosed, i.e., to conduct threat assessments.
 - May not redisclose PII from education records. See § 99.33(a).
 - While not a requirement, school may wish to have a written agreement with members of team specifying privacy requirements and responsibilities.

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 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.



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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.



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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.



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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.

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“This is all so very confusing.”



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Guidance Documents & FERPA Regulations on FPCO's Website

- Addressing Emergencies on Campus
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- Joint FERPA-HIPAA Guidance
<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- FERPA regulations:
<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>
- Model Notification for Elementary/Secondary Schools:
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>
- Guidance for Parents:
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>

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Contact Information

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

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



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

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FPCO ListServ

- To sign up for the FPCO GovDelivery Announcement ListServ, please visit our website page for school officials at <http://familypolicy.ed.gov/ferpa-school-officials>.



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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.



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