

# FLORIDA DEPARTMENT OF EDUCATION



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## Technical Assistance Paper The Family Educational Rights and Privacy Act (FERPA)

**Summary:** In 2001, the Florida Department of Education disseminated the document, “Family Educational Rights and Privacy Act (FERPA),” adapted with permission from the “Family Educational Rights and Privacy Act (FERPA): NAPSA Notes.” The document provided an overview of FERPA and answered a number of frequently asked questions.

Since publication of the above document, school district representatives have identified additional questions and issues regarding FERPA, including the relationship between FERPA and the Health Insurance Portability and Privacy Act (HIPAA). The purpose of this Technical Assistance Paper (TAP) is to provide information to educators, agency personnel, and families about FERPA, including both federal and state requirements. Questions and answers about HIPAA, especially as related to FERPA, are included in this revised TAP. Throughout the TAP, citations are provided for applicable federal and state law.

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## **A. Introduction and Background**

### **A-1. Overview**

Student education records are official and confidential documents protected by one of the nation’s strongest privacy protection laws, the Family Educational Rights and Privacy Act (FERPA). FERPA, also known as the Buckley Amendment, is a federal law that affords students and the parents and legal guardians of minor students certain rights, primarily access and confidentiality, with respect to the students’ educational records<sup>1</sup> (20 U.S. Code [U.S.C.] 1232g). FERPA defines education records as all records that schools or education agencies maintain about students.

FERPA gives parents the right to review and confirm the accuracy of education records. These rights transfer to the student when the student turns 18 years old or attends a postsecondary institution. At this time, the student is designated as an “eligible student” and holds the same rights as his or her parent held with respect to education records.

This and other United States “privacy” laws ensure that information about citizens collected by schools and government agencies can be released by consent or only for specific and legally defined purposes. Since enacting FERPA in 1974, Congress has strengthened privacy safeguards of education records through this law, refining and clarifying family rights and agency responsibilities to protect those rights.

The primary rights of parents and eligible students under FERPA are:

- The right to inspect and review education records
- The right to seek to amend education records
- The right to have some control over the disclosure of information from education records

### **A-2. Legal Reference**

The legal statute citation for FERPA can be found in the U.S. Code (20 U.S.C. 1232g), which incorporates all amendments to FERPA. FERPA regulations are found in the Code of Federal Regulations (CFR) for Title 34; Part 99. In Florida, the intent of FERPA is carried out in section 1002.22, Florida Statutes (F.S.), Student Records and Reports; Rights of Parents and Students; Notification; Penalty and Rule 6A-1.0955, Florida Administrative Code (F.A.C.), Education Records of Pupils and Adult Students. The most recent amendments to the FERPA regulations, which were finalized in December of 2008, can be found at <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>.

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<sup>1</sup> Schwab, N. C., Ruben, M., Mair, J. A., Gelfman, M. H. B., Bergren, M. D., Mazyck, D., & Hine, B. (2004). *Protecting and sharing student health information: Guidelines for developing school district policies and procedures* (p. 56). Kent, OH: American School Health Association.

The 2009 Florida Legislature amended section 1002.22, F.S., and other laws dealing with student records. The amendments streamlined the statutory provisions and directed the State Board of Education to create rules that are consistent with the requirements of FERPA. These amendments allow Florida's student records laws to be brought current with the federal requirements of FERPA and allows more responsive amendments to any future changes.

### **A-3. Purpose**

The purpose of this Technical Assistance Paper is to help agency staff and families understand what information can be shared and under what conditions. Initially, FERPA applied to "any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution." The 1974 amendments substituted the term "educational agency or institution," defined as "any public or private agency or institution which is the recipient of funds under any applicable program."

This paper includes specific requirements that must be met by pre-kindergarten through twelfth grade public institutions. The mandates of FERPA are specific and far-reaching. Administrators in public education may unwittingly violate a family's right to privacy and confidentiality because they are not knowledgeable regarding the letter and spirit of this law. This publication answers frequently asked questions regarding FERPA in an effort to strengthen educators' knowledge and understanding of this important federal law.

## **B. Application of FERPA Regulations**

### **B-1. To which educational agencies or institutions do the FERPA regulations apply?**

FERPA applies to public schools and state or local education agencies that receive federal education funds. Juvenile justice educational programs are each funded by a responsible school district and are subject to these regulations. Most private and parochial schools at the elementary and secondary level do not receive these federal funds and, therefore, are not subject to FERPA. (34 CFR Part 99, §99.1)

### **B-2. Do FERPA regulations apply to charter schools?**

Yes, because charter schools are considered public schools. (Section 1002.33(1), F.S.)

## **C. Definitions**

### **C-1. What definitions apply to the FERPA regulations?**

- a. "Attendance" includes, but is not limited to, attendance in person, or by paper correspondence, for the period during which a person is working under a work-study program, as well as attendance by videoconference, satellite, Internet, or other electronic and telecommunication technologies for students who are not physically present in the classroom. (20 U.S.C. 1232g, §99.3)

- b. “Biometric record,” as used in the definition of personally identifiable information, means a measure of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting. (20 U.S.C. 1232g, §99.3)
- c. “Dates of attendance” means the period of time during which a student attends or attended an educational agency or institution. Examples of dates of attendance include an academic year, a spring semester, or a first quarter. The term does not include specific daily records of a student’s attendance at an educational agency or institution.
- d. “Directory information” is information not generally considered harmful or an invasion of privacy if disclosed. School districts must tell parents and students about directory information and allow reasonable time to request that the school not release directory information (Rule 6A-1.0955(6)(j), F.A.C.).

“...Any educational institution making directory information public shall give public notice of the categories of information that it has designated as directory information for all students attending the institution and shall allow a reasonable period of time after the notice has been given for a parent or student to inform the institution in writing that any or all of the information designated should not be released” (section 1002.22(3)(d)(14), F.S.).

Directory information items include, but are not limited to: (20 U.S.C. 1232g, §99.3)

- Name, address, telephone number (if listed), electronic mail address
- Date and place of birth
- Major field of study
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Dates of attendance
- Degrees, honors, and awards received (20 U.S.C. 1232g, §99.3)
- Most recent previous educational agency or institution attended (section 1002.22(2)(b), F.S.)
- Photograph (20 U.S.C. 1232g, §99.3)
- Grade level (20 U.S.C. 1232g, §99.3)
- Enrollment status (e.g., undergraduate or graduate, full-time or part-time) (20 U.S.C. 1232g, §99.3)

An educational agency or institution may not designate a student’s Social Security number or other student identification number as directory information. However, directory information may include a student’s user ID or other unique identifier used by the student to access or communicate in electronic systems, but only if the electronic identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the student’s identity, such as a personal identification number (PIN), password, or other factor. (§99.3)

- e. “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. (20 U.S.C. 1232g, §99.3)
- f. “Education records” are those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.

The term “education records” does not include: “(1) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; (2) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement; (3) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person’s capacity as an employee and are not available for use for any other purpose; or (4) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student’s choice.” (20 U.S.C. 1232g(a)(4)(A))

With respect to former students, the term “education records” excludes records that are created or received by the educational agency or institution after an individual is no longer a student in attendance and are not directly related to the individual’s attendance as a student. (§99.3)

Peer-graded papers that have not been collected and recorded by a teacher are not considered maintained by an educational agency or institution and, therefore, are not educational records under FERPA. (§99.3; see also *Owasso Public Schools v. Falvo*, 534 U.S. 426 (2007)).

- g. “Eligible student” means a student who has reached 18 years of age or is attending an institution of postsecondary education. (20 U.S.C. 1232g(d), §99.3)
- h. “FERPA,” The Family Educational Rights and Privacy Act of 1974, is a federal law that affords students and the parents and legal guardians of minor students certain rights, primarily access and confidentiality, with respect to the students’ educational records. (20 U.S.C. 1232g)



- i. “Parent” means a parent of a student and includes:
  - A natural parent
  - A guardian
  - An individual acting as a parent in the absence of a parent or guardian (e.g., surrogate parent, foster parent) (20 U.S.C. 1232g, §99.3)
  
- j. “Personally identifiable information” includes, but is not limited to:
  - Student’s name
  - Name of the student’s parent or other family members
  - Address of the student or student’s family
  - Personal identifier, such as a Social Security number, student number, biometric record, indirect identifiers (e.g., date and place of birth, mother’s maiden name)
  - Other information that, alone or in combination, is linkable to a specific student that would allow a person to identify the student
  - 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 (20 U.S.C., 1232g, §99.3)
  
- k. “Record” means any recorded information maintained in any way, including, but not limited to:
  - Handwriting
  - Print
  - Film
  - Computer media
  - Video or audio tape
  - Microfilm and microfiche (20 U.S.C. 1232g, §99.3)
  
- l. “State auditor” is a party under any branch of government with authority and responsibility under state law for conducting audits. (§99.3)

## **D. Terminology**

### **D-1. What additional terminology relates to the FERPA regulations?**

- a. Who is considered a “school official?”

State and federal law do not define the term “school official.” However, there is a definition of a school official in the language contained in the FERPA model notice of rights of parents. School districts may wish to consider this language as they review their student records policy. A school district has the flexibility, however, to define the term “school official.”

The model notice defines “school official” as follows: “A school official is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health and medical staff and law enforcement unit personnel); a person serving on the school board; a person or company

with whom the district has contracted to perform a special task (such as an attorney, auditor, medical consultant or therapist); a parent or student serving on an official committee such as disciplinary or grievance committee or assisting another school official in performing his or her tasks.”

Rule 6A-1.0955(6), F.A.C., states: “Each school board shall adopt a policy for educational records, which shall include: ... Criteria for determining which parties are ‘school officials’ and what the district considers a ‘legitimate interest.’” (Rule 6A-1.0955(6), F.A.C.)

- b. Is there a definition of “legitimate educational interest”?

Under FERPA, each school district must define this term and determine who has this interest. In general, legitimate educational interest refers to the right of certain school officials to access student information and records for the purpose of: (a) serving the student; (b) protecting the health, safety, and learning of this student and others; (c) maintaining the operations of the school district; (d) obtaining payment for educational programs and services; and (e) other purposes as specified federal and state law.<sup>2</sup>

## **E. FERPA Requirements**

### **E-1. What must an educational agency or institution include in its annual notification?**

Institutions must annually notify parents of students in attendance and eligible students of their rights under FERPA, including: (34 CFR §99)

- The right to inspect and review records
- The right to request amendment of records
- The right to consent to disclosure, with certain exceptions
- The right to file a complaint with the U.S. Department of Education (USDOE)

The notice is to also include the category of personally identifiable information designated as directory information. (Rule 6A-1.0955(6)(j), F.A.C.)

The annual notification must also include the following (Rule 6A-1.0955(6)(a), F.A.C.):

- Procedure to inspect and review records
- Procedure for requesting amendment of records
- Statement that education records may be disclosed to school officials without prior written consent, including:
  - Specification of criteria for identifying “school officials.”
  - Definition of “legitimate educational interest” (20 U.S.C. 1232g(e) and (f); 34 CFR 99.7).

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<sup>2</sup> Schwab, N. C., et al. (2004). p. 58.

- FERPA does not specify the means of notification other than “by any means reasonably likely to inform the parents.” Examples may be code of conduct handbooks, student handbooks, school newspapers or catalogues, local newspapers, and inclusion of information in student registration packets. Additionally, FERPA requires effective notification of parents or eligible students who are disabled or who have a primary or home language other than English.
- Military recruiters have access to student records and parents have the right to request that records not be released without prior consent.
- Statement that parents have the right to file a complaint with the Federal Policy and Compliance Office (FPCO).

## **F. Family Rights**

### **F-1. What rights exist for a parent or an eligible student to inspect and review education records?**

- The district must comply with a request within a reasonable period of time, but in no case more than 30 days after it has been made in accordance with State Board of Education Rule 6A-1.0955(6)(b), F.A.C.
- “Schools are required by FERPA to:
  - Provide a parent with an opportunity to inspect and review his or her child’s education records within 45 days of the receipt of a request
  - Provide a parent with copies of education records or otherwise make the records available to the parent if the parent, for instance, lives outside of commuting distance of the school
  - Redact the names and other personally identifiable information about other students that may be included in the child’s education records”<sup>3</sup>
 (See G-1; see §99.10)

### **F-2. What limitations exist on the right to inspect and review records?**

If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only their specific information. (§99.12(a))

### **F-3. Are districts required to provide parents with copies of psychological protocols upon request?**

FERPA and the Individuals with Disabilities Act (IDEA) give parents and eligible students the right to inspect and review education records, including psychological protocols if the test protocol contains personally identifiable information. However, neither FERPA nor IDEA requires that copies of test protocols be provided unless failure to do so would preclude the parent’s right of access (e.g., the parent lives in another state). If circumstances prevent the parent or eligible student from exercising the right to inspect and review education records, the district may provide a copy of the records requested or make other

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<sup>3</sup>U.S. Department of Education. (2004, April 26). *FERPA general guidance for parents*. Retrieved July 23, 2008, from <http://www.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>.

arrangements for the parent to inspect and review the requested records (FERPA, 34 CFR, §99.10).

**F-4. Do the rights of noncustodial parents differ from those of custodial parents?**

No. 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). This was endorsed by the 2001 Legislature through revisions to section 61.13(2)(b), F.S., which clarify that the rights of access to records and information pertaining to a minor child, including the right to in-person communication with medical, dental, and education providers, apply to either parent in the absence of a court order specifically revoking these rights.

**F-5. Do stepparents have parental rights under FERPA?**

The USDOE has issued an advisory letter concluding that FERPA allows a stepparent to exercise all record access rights granted to a parent when the stepparent is present in the home on a day-to-day basis, together with the child and a natural parent, and the other parent is absent. In such cases, stepparents have the same rights under FERPA as natural parents. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child has no FERPA rights with respect to the child's records.

**F-6. What is the surrogate parent's right of access to education records?**

The surrogate parent has the same right to review educational records as parents have. This includes all records regarding the student to which school administrators and teachers have access. As for any parent, surrogate parents must protect the confidentiality of educational records.<sup>4</sup>

**F-7. What rights exist for a parent of an eligible student who is still a dependent?**

When a student becomes an eligible student, the rights accorded to, and consent required of, parents transfer from the parents to the student (§99.4). Prior consent, however, is not required for schools to disclose information from the education record to the parents if the eligible student is a dependent for tax purposes under the Internal Revenue Service rules.<sup>5</sup>

**F-8. Can a school disclose information in a health or safety emergency?**

Yes. In an emergency, FERPA permits school officials to disclose, without consent, education records, including personally identifiable information from those records, to protect the health or safety of students or other individuals. At

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<sup>4</sup> Florida Department of Education. (2007, February 19). *Surrogate parents for exceptional students* (Technical Assistance Paper K12: 2007-23.) Retrieved July 23, 2008, from <http://info.fldoe.org/docushare/dsweb/Get/Document-4273/k12-07-23memo.pdf>.

<sup>5</sup> U.S. Department of Education. (2007, June 7). *Disclosure of information from education records to parents of postsecondary students*. Retrieved July 23, 2008, from <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>.

such times, records and information may be released to appropriate parties, such as law enforcement officials, public health officials, and trained medical personnel. This exception to FERPA's general consent rule is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student's education records. In addition, the U.S. Department of Education interprets FERPA to permit institutions to disclose information from education records to parents of a postsecondary student if a health or safety emergency involves their son or daughter. (See 34 CFR §99.31(a)(10) and §99.36.)

An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in §99.31(a)(10) and §99.36:

- The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure
- The parties to whom the agency or institution disclosed the information (see 34 CFR §99.32)

**F-9. Can parents be informed about postsecondary students' violation of alcohol and controlled substance rules?**

Yes. A provision in FERPA permits a college or university to let parents of students under the age of 21 know when a student has violated any law or policy concerning the use or possession of alcohol or a controlled substance.<sup>6</sup>

**F-10. Are there any special provisions regarding the right to inspect records that apply to students with disabilities?**

Yes. In accordance with IDEA, a parent of a student with a disability has the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records and to have a representative of the parent inspect and review the records. (34 CFR Part 99, §99.10(b),(c),(d))

**F-11. What are the rights of parents or guardians concerning the records of their children in state-funded school readiness or Voluntary Prekindergarten Education Programs?**

The individual records of a child enrolled in the Voluntary Prekindergarten Education Program held by an early learning coalition, the Agency for Workforce Innovation, or a Voluntary Prekindergarten Education Program provider are confidential and exempt from section 119.07(1) and section 24(a), Article I of the State Constitution (section 1002.72(1), F.S.). Sections 411.011 (2) and 1002.72 (2), F.S., provide, respectively, that a parent, guardian, or individual acting as a parent in the absence of a parent or guardian has the right to inspect and review the individual school readiness program record of his or her child and obtain a copy of the record, and a parent has the right to inspect and review the individual

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<sup>6</sup> Florida Department of Education. (2007, February 19).

Voluntary Prekindergarten Education Program record of his or her child and to obtain a copy of such record.

**F-12. If a student attends a private school on a McKay Scholarship, does FERPA apply to that private school?**

McKay Scholarships are supported by state (not federal) funds. If a student attends a private school on a McKay Scholarship, FERPA requirements do not apply to that school by virtue of the acceptance of scholarship funds. Private schools can determine their own policy regarding release of student records. Many such issues are addressed through contracts that private schools have with each parent. However, FERPA does apply if the private school receives funding from the U.S. Department of Education. (34 CFR Part 99, Subpart A, §99.1)

**F-13. If a student has not reached age 18 but is dual-enrolled at a postsecondary institution (e.g., technical center, community college), would FERPA rights transfer to the student?**

Yes, if the student is dual-enrolled in a postsecondary course, no communication or records requested directly from the postsecondary institution will be released to a third party without consent of the student regardless of age. The exception is the student who is a dependent (see F-6). (§99.3, definition of eligible student; USDOE Policy Guidance, <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>)

**F-14. If a student who has graduated from high school has not yet reached age 18 but is enrolled in a postsecondary institution, would FERPA rights transfer to the student?**

Yes, when a student (at any age) enters a postsecondary institution, FERPA rights transfer to the student. (§99.3, definition of eligible student; USDOE Policy Guidance, <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>)

**G. Procedures**

**G-1. What is the time frame within which districts must comply with a request for education records?**

Florida rule prevails in that it is more stringent than FERPA (see F-1) to assist the eligible student or the parent/guardian of a student with their request for records. Rule 6A-1.0955(6)(b), F.A.C., states, “The district shall comply with a request within a reasonable period of time, but in no case more than 30 days after it has been made.”

**G-2. May an educational agency or institution charge a fee for copies of education records?**

Yes, unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review records. Rule 6A-1.0955(6)(d), F.A.C., requires that school board policy for education records include a schedule of fees for copies of

the records that does not exceed the cost of reproduction or retrieval of the records. (34 CFR Part 99, §99.11)

### **G-3. What are the procedures for amending education records?**

The following steps should be taken to amend education records:

- The parents should identify, in writing to the school, the portion of the record believed to be inaccurate, misleading, or a violation of the privacy of the rights of the student.
- The school must decide within a reasonable period of time whether to amend as requested.
- If the school decides not to amend, it must inform the parents of their rights to a hearing.
- After the hearing is held, if the decision is to not amend the records, the parents have a right to insert a statement of disagreement in the record. This statement must be maintained with the contested part of the record and disclosed whenever the corresponding part of the student record is released. If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or a violation of the privacy rights of the student, it will amend the record and inform the parent in writing of the amendment.<sup>7</sup>

(34 CFR Part 99, Subpart C, §99.20)

### **G-4. Under what conditions is prior consent not required to disclose information in education records?**

The exceptions to required prior consent for disclosure include when records are released:

- To school officials who have been determined to have legitimate educational interest. (As noted previously, school districts must define “school officials” and “legitimate educational interest” in their annual notice to parents.)
- To contractors, consultants, volunteers, and other outside parties (under direct control of the agency) to whom an educational agency has outsourced institutional services or functions that it would otherwise use employees to perform (see definition of “school official”).
- To schools or institutions of postsecondary education in which a student seeks or intends to enroll.
- To another institution even after a student has already enrolled or transferred if the purpose is related to the student’s enrollment or transfer.
- To federal, state, and local authorities involved in an audit or evaluation of compliance with education program requirements.
- To institutions in connection with financial aid, such as a college loan.
- To organizations conducting studies for or on behalf of educational institutions; however, a written agreement that specifies the purpose of the study is required.
- To parents of a dependent student as defined by the Internal Revenue Services Code.

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<sup>7</sup> U.S. Department of Education. (2004, April 26).

- To accrediting organizations.
- To comply with a judicial order or subpoena.
- To comply with an *ex parte* court order obtained by the Attorney General (or designee) concerning offenses such as domestic terrorism.
- In a health or safety emergency.
- As directory information.
- To state or local officials in connection with serving the student under the juvenile justice system in accordance with an interagency agreement as required by section 1002.22(3)(d)(13), F.S., or a cooperative agreement mandated by section 1003.52, F.S.
- If a school district initiates legal action against a parent, or if a parent initiates legal action against a school district. In such circumstances, the school district may disclose to the court, without court order or subpoena, the education records of the student that are relevant for the school district to proceed with legal action as the plaintiff or to defend itself.
- To state auditors in connection with an audit of federal- or state-supported educational programs.
- If a student is required to register as a sex offender in the state (postsecondary).

(Note: There are additional provisions that apply exclusively to postsecondary institutions.) (34 CFR Part 99, Subpart D, §99.31)

**G-5. Under what conditions is prior consent required to disclose information in education records?**

In situations other than those identified in G-4, a parent or eligible student shall provide signed and dated written consent before a school may disclose records. The consent must:

- Specify the records that may be disclosed
  - State the purpose of disclosure
  - Identify the party or class of parties to whom disclosure may be made
- (34 CFR Part 99, Subpart D, §99.30)

**G-6. Is prior consent for disclosure required when the school board is conducting an expulsion hearing?**

If the school board has been identified as a “school official” in the annual notice to parents, then they may have access to a student’s personally identifiable information in order to conduct an expulsion hearing. However, public records of the hearing may not contain any personally identifiable information on students who are the focus of the expulsion hearing. For example, public records pertaining to expulsion decisions or disciplinary actions should be reflected in the minutes as “Case #XXX: Expelled for one year for possession of a weapon on school grounds.”



**G-7. What conditions apply to disclosure of information to the juvenile justice system?**

Nonconsensual disclosures made in connection with the juvenile justice system that are permitted by Florida statute are now also permitted under FERPA. The requirements for disclosure are:

- The disclosure must be related to the juvenile justice system’s ability to “effectively serve” the student whose records are released.
- The disclosure must concern the juvenile justice system’s ability to serve the student prior to adjudication. Also, the officials to whom the information is disclosed must certify, in writing, that the records will not be redisclosed to any other party except as provided by state law.
- In Florida, section 1002.22(3)(d)(13), F.S., requires that such disclosures be in accordance with an interagency agreement and/or section 1003.52(13), F.S. (34 CFR Part 99, Subpart D, §99.38)

**G-8. What record-keeping requirements exist concerning requests and disclosures?**

A school 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 that may make further disclosures of personally identifiable information from the student’s education records without consent. Also, the school’s log must:

- Be maintained as long as the record is maintained
- Include the parties who have requested or received information from the records
- Include the legitimate interest parties had in receiving information

The record-keeping requirement does not apply if the request was from, or the disclosure was made to, the following (but it is best practice to keep written records of requests):

- The parent or eligible student
  - A properly designated school official with a legitimate educational intent
  - A party with written consent from the parent or eligible student
  - A party seeking directory information
  - A party with a law enforcement subpoena or court order that specifies that the existence or contents of the subpoena or court order not be disclosed
- (34 CFR Part 99, Subpart D, §99.32)

**G-9. What limitations apply to the redisclosure of information?**

When disclosing information from public school education records, the school should inform the receiving party that the information may not be further disclosed and may be used only for the purposes for which the disclosure was made. Exceptions to this include:

- Disclosure to the parent, eligible student, or parents of dependent students as defined by the Internal Revenue Code
- Receiving party discloses information on behalf of the educational agency or institution and meets the criteria for disclosure without prior consent (see G-4) and has appropriately recorded the disclosure
- Directory information
- Court order or subpoena

Disclosures to parties that improperly redisclose education records are not permitted for at least five years. This does not apply to school officials within the educational agency or institution. (34 CFR Part 99, Subpart D, §99.33)

**G-10. What conditions apply to disclosure of information to other educational agencies or institutions?**

An educational agency or institution that discloses an education record under §99.31(a)(2) shall:

- Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:
  - The disclosure is initiated by the parent or eligible student; or
  - The annual notification of the agency or institution under §99.7 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;
- Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
- Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

- The student is enrolled in or receives services from the other agency or institution; and
- The disclosure meets the requirements of paragraph (a) of this section. (34 CFR Part 99, Subpart D, §99.34)

**G-11. What conditions apply to disclosure of information for federal or state program purposes?**

Federal, state, and local officials may have access to records only:

- In connection with an audit or evaluation of federal or state-supported education programs
- For the enforcement of compliance with federal legal requirements that relate to those programs (34 CFR Part 99, Subpart D, §99.35)

**G-12. What conditions apply to disclosure of information in health or safety emergencies?**

In the event of a health or safety emergency, FERPA allows disclosure of information to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or others. An educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the safety or health of a student or other individuals. (34 CFR Part 99, Subpart D, §99.36)

**G-13. What conditions apply to disclosing directory information?**

An institution may disclose directory information if it has given public notice to parents of students regarding:

- What the school has designated as directory information
- A parent's right to refuse to let the school designate any or all of the information about the student as directory information
- The time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information

(34 CFR Part 99, Subpart D, §99.37)

For the purpose of disclosing directory information, FERPA does not define "public notice." Public notice is left to the individual school to define. The means of notice could include the student handbook or code of conduct, the school or local newspaper, or information included in the student registration packet. The school may choose to include notice regarding directory information with the annual notification of the parents' and student's rights under FERPA.

An agency or institution must continue to honor any valid request to opt out of directory information disclosures made while the individual was a student unless the parent or eligible student rescinds the decision to opt out of directory information disclosures.

Parents and students may not use their right to opt out of directory information disclosures to prevent school officials from identifying the student by name or disclosing the student's electronic identifier or email address in a class in which the student is enrolled.

An educational agency or institution is prohibited from using a Social Security number to identify or help identify a student or the student's records when disclosing or confirming directory information unless the student has provided written consent.

**G-14. What are the enforcement procedures for FERPA?**

The Family Policy Compliance Office is authorized by the U.S. Secretary of Education to investigate, process, and review complaints and violations under FERPA. Parents and eligible students may file complaints with the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW,

Washington, DC, 20202-4605. Complaints must be filed in a timely manner, which is considered within 180 calendar days of the date of the alleged violation or of the date that the complainant knew or should have known of the alleged violation.<sup>8</sup>

Under section 1002.22(5), F.S., parents and students have the right to petition a circuit court for an injunction to enforce their rights. If successful, they may recover attorney fees and costs.

**G-15. What conditions apply to state auditors' access to education records?**

Records may be disclosed to state auditors in connection with an audit of federal- or state-supported educational programs. (34 CFR Part 99, Subpart D, §99.35)

**G-16. What conditions apply to contractors' and consultants' access to education records?**

Education records may be disclosed (without consent) to contractors, consultants, volunteers, and other outside parties to whom an educational agency has outsourced institutional services or functions that it would otherwise use employees to perform. The outside party must be under direct control of the agency and subject to the same conditions governing the use and redisclosure of education records. (§99.31(a)(1)(i)(B))

**G-17. What obligations do educational agencies have with regard to teachers' and other school officials' access to educational records?**

Educational agencies are required to use reasonable methods to ensure that teachers and other school officials obtain access to only those education records in which they have legitimate educational interests. (§99.31(a)(1)(ii))

**G-18. May records or information from records that have been de-identified be released without consent?**

Objective standards under which educational agencies may release, without consent, education records or information from education records that have been de-identified through the removal of all personally identifiable information will be provided. "The Department encourages educational agencies and institutions to be sensitive to publicly available data on students and to the cumulative effect of disclosures of student data." (§99.31(b))

**G-19. What process must be used to properly identify a party to whom it discloses personally identifiable information from education records?**

FERPA states that an educational agency or institution must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the agency or institution discloses personally identifiable information from education records. (§99.31(c))

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<sup>8</sup> U.S. Department of Education. (2004, April 26).

**G-20. Do military recruiters have access to student information?**

Yes. Section 9528 of the No Child Left behind Act (NCLB) requires local education agencies (LEAs) to provide military recruiters with the name, address, and telephone listing of secondary students. School districts that are currently releasing directory information to military recruiters should continue to do so. Individual districts that are not supplying this information to military recruiters must establish policies and begin this procedure. The established policies must give parents the option to request that the information not be released without prior written consent, and the LEA or private school shall comply with any request. (Public Law (P.L.) 107-110, Subpart 2, Sec. 9528; Division of Public Schools Memo #03-042)

**G-21. Are peer-graded papers a violation of FERPA?**

No. Peer-graded papers that have not been collected and recorded by a teacher are not considered maintained by an educational agency or institution and, therefore, are not educational records under FERPA. (§99.3; see also *Owasso Public Schools v. Falvo*, 534 U.S. 426 (2007))

**G-22. What does a model notice of rights look like?**

A model notice must include the rights of parents as identified in the response to F-1. A model notice of rights provided by the U.S. Department of Education is available at:

<http://www.ed.gov/policy/gen/guid/fpco/doc/ferpamodelnotice04.doc> (English)  
<http://www.ed.gov/policy/gen/guid/fpco/doc/rnevarezcomments.doc> (Spanish)

**H. Health Insurance Portability and Accountability Act (HIPAA)**

**H-1. What is HIPAA?**

HIPAA, the Health Insurance Portability and Accountability Act of 1996, is a federal law enacted to: (1) encourage the development of a health information system; (2) establish standards and requirements for electronic transmission of certain health information; and (3) protect the privacy and security of individually identifiable health information (i.e., “protected health information”).

**H-2. How does HIPAA define “protected health information”?**

“Protected health information” means information held or disclosed by the covered entity in any form that: (1) identifies an individual; and (2) relates to the individual’s health condition, the provision of health care to the individual, or payment for provision of health care to the individual. Note: Exceptions to definitions of FERPA—If the information falls within the FERPA definition of

“education record” (20 U.S.C. 1232g), it will not be considered protected health information under HIPAA.<sup>9</sup>

### **H-3. What are the requirements of HIPAA’s Privacy Rule?**

HIPAA established new health privacy rights, enforced by the Office for Civil Rights (OCR), and to ensure these rights, the Privacy Rule requires certain entities who routinely handle protected information to: (1) limit uses and disclosures of protected health information; (2) develop reasonable safeguards, policies, and procedures to protect the privacy of health information; (3) train personnel in the policies and procedures of document completion; (4) designate personnel to handle privacy violation complaints and issues; (5) notify individuals about privacy practices and their health privacy rights; and (6) keep track of certain disclosures of protected health information not authorized by the individual or related to treatment, payment, or health care operations.<sup>10</sup>

### **H-4. How are health records of youth under the jurisdiction of the Department of Juvenile Justice treated under HIPAA?**

The Department of Juvenile Justice and all contracted service providers operating under its authority are defined as “correctional institutions” under HIPAA. As such, covered entities (e.g., health and mental health providers, hospitals, etc.) may disclose protected health information to the Department, and those acting under its authority, pursuant to 4 CFR section 164.512(k)(5), without consent or authorization from the youth, his/her parent, or guardian.<sup>11</sup>

### **H-5. How do HIPAA and FERPA apply to student health records?**

When a student’s health information is in a public school record, then it is considered part of the “educational” record. In this case, FERPA applies but HIPAA does not apply.

“Education records in public schools are covered by FERPA and are specifically exempted from the HIPAA Privacy Rule. Nonetheless, there are multiple practice considerations for schools that relate to HIPAA. For example, if publicly funded schools transmit personally identifiable student health information electronically to Medicaid or an insurance company for health services, they must comply with applicable requirements of the HIPAA Transaction Rule.”<sup>12</sup>

“When a qualified minor gives informed authorization to allow information from a HIPAA-covered entity to be released to the school district, the minor student must understand that, under FERPA, parents will have the right to access that information once it becomes part of the student’s education record. School Health

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<sup>9</sup> Florida Department of Education. (September 22, 2008). *Release of student records* [Memorandum].

<sup>10</sup> Florida Department of Juvenile Justice. (2006, October). *Florida Department of Juvenile Justice health services manual* (chapter 4 (XVI)(B), pp. 4–14). Retrieved July 23, 2008, from [http://www.djj.state.fl.us/manuals/approvedmanuals/health\\_services/index.html](http://www.djj.state.fl.us/manuals/approvedmanuals/health_services/index.html).

<sup>11</sup> Florida Department of Juvenile Justice. (2006, October).

<sup>12</sup> Schwab, N. C., et al. (2004). p. 18

Professionals and other school officials should seek information about potential conflicts regarding confidentiality...”<sup>13</sup>

“The term ‘authorization’ in HIPAA is consistent with the meaning of ‘consent’ under FERPA. HIPAA does not require authorization for the exchange of personally identifiable health information among health care providers for treatment purposes, payment, or health care operations. In other words, a HIPAA-covered provider may, without authorization, share medical/health information with a school therapist, medical advisor, nurse, or health aide about a treatment order for health care in school (e.g., physical therapy, tube feeding, administration of oxygen or of medication).”<sup>14</sup>

HIPAA permits such communication, but does not require it. When school officials request student health information from HIPAA-covered entities for educational reasons rather than for treatment reasons, however, these entities will require HIPAA-compliant authorization signed by the parent.<sup>15</sup>

## **H-6. How does HIPAA apply to students’ education records?**

The HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above. (See <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>.)

### **I. Technical Assistance and Resources**

#### **I-1. Where can public school officials obtain advice and technical assistance regarding FERPA?**

Public schools and parents can contact:

The Florida Department of Education  
Student Support Services Project  
310 Blount Street, Suite 215  
Tallahassee, FL 32301  
Phone: (850) 922-3727  
Fax: (850) 921-4752

For informal requests for technical assistance, please email [bhyle@tempest.coedu.usf.edu](mailto:bhyle@tempest.coedu.usf.edu)

Requests can also be sent to:

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<sup>13</sup> Schwab, N. C., et al. (2004). p. 19.

<sup>14</sup> Schwab, N. C., et al. (2004). p. 18.

<sup>15</sup> Schwab, N. C., et al. (2004). p. 19

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-5920  
Phone: (202) 260-3887  
Fax: (202) 260-9001

For formal requests for technical assistance, please email:  
[FERPA@ed.gov](mailto:FERPA@ed.gov)

For the Family Policy Compliance Office Web site, please contact:  
<http://www.ed.gov/policy/gen/guid/fpco/index.html>

This document is available on the Florida Department of Education Web site at  
<http://www.fldoe.org/ese/pdf/ferpa.pdf>

**I-2. What are some of the available resources addressing FERPA and HIPAA?**

Resources from:

The Family Policy Compliance Office, U.S. Department of Education:

Email: [FERPA.Customer@ED.Gov](mailto:FERPA.Customer@ED.Gov)

Web site: <http://www.ed.gov/policy/gen/guid/fpco/index.html>

*Balancing Privacy and School Safety: A Guide to the Family Rights and Privacy Act for Elementary and Secondary Schools* (Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-5920, (202) 260-3887)

*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* (November, 2008)

*Parents' Guide to the Family Rights and Privacy Act: Rights Regarding Children's Education Records* (Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-5920, (202) 260-3887)

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