



So You Think You Know FERPA? AKA FERPA 201

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Introduction

- FERPA is Hard
- Most audiences score 40% on our FERPA 101 pretest
- Many FERPA violations stem from a lack of understanding, or worse, a partial understanding of FERPA
- This is meant to be an interactive session, if you have scenarios you want to discuss, please bring them up

Training. Training. Training.

- What kind of training does your staff get in:
 - IT Security
 - FERPA Training
 - Other laws (State Law, IHEA etc.)
- How often are you training them?
- How are you training your faculty, adjunct faculty, student employees and other staff?

FERPA PRE-TEST

1. Does FERPA only apply to schools that receive federal education funds?
2. Once a student turns 18, may the school share education records with the parents?
3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, must the school provide the grandparent with access to the child's education records?
4. Are health records maintained by the school nurse considered to be education records?

FERPA PRE-TEST

5. Must schools provide parents with a copy of their child's education records upon request?
6. Can a school disclose student information that has previously been designated as directory information without prior written consent?
7. If a parent chooses to discuss a matter about his or her child in an open school board meeting, does that constitute "consent" under FERPA for school board members or other school officials to respond?

FERPA PRE-TEST

8. Does FERPA permit a parent to file a lawsuit against a school, district, or school board for violating their rights under FERPA?
9. Is having a data sharing agreement with an outside vendor sufficient for a school to disclose PII from education records to a vendor without consent of parents?
10. When a student transfers from School District A to School District B, can District A share all of the student's education records to District B without the consent of the parent, including disciplinary records and special education records?

Scenario 1 – Divorced Parents

Jack and Diane, two young people from a small town in Iowa, fall in love and get married. After 10 years, and two kids, they grow apart and get divorced. Jack moves to California and Diane stays in her small town, gets remarried and has sole custody of the kids.

Concerned about how his children are doing, Jack asks for access to his children's education records. Knowing that he doesn't live with his children the school denies the request. Did the school do the right thing?

Scenario 1 – But Who is a Parent?

FPCO has interpreted the term “parent” as the following:

- Natural parents
- A guardian
- An individual acting as a parent in the absence of a parent or a guardian.

Scenario 2 – Providing Access to Parents of Eligible Students

Monica enrolls in college and begins attending class. She signs a consent form permitting her parents to have access to her educational records. Later, her parents reach out to the registrar's office and requests access to her transcripts. The registrar's office successfully authenticates her parent's identity but still refuses to provide the information to the parents. Is this ok? What does the school have to do? What does it not have to do?



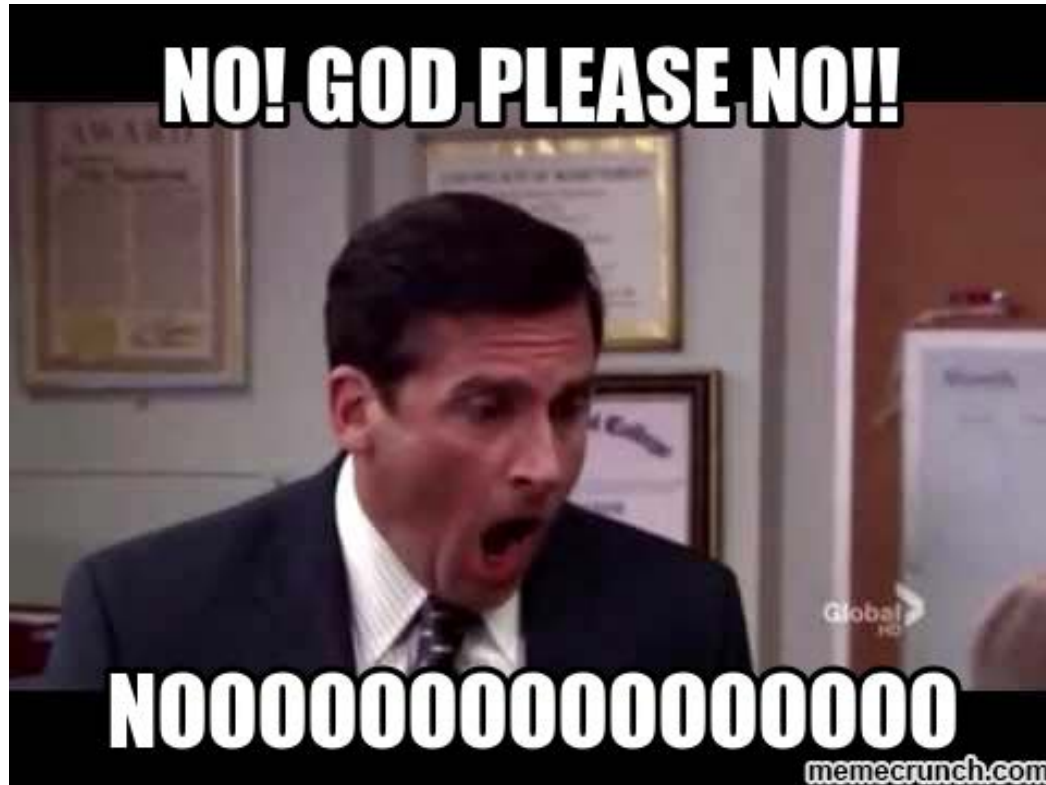
Scenario 2 – The Difference between “May” and “Must”

If a student is claimed as a dependent by either parent for tax purposes, then either parent May have access under this provision, absent a court order specifically prohibiting it.

Scenario 3 – School Employee

Mary is a Database administrator for the school district. Part of her job requires doing system updates for the Student Information system, as such she has full administrative access to the SIS. Her sister Beth's children all go to the school district. Recently, her nephew gets into a fight and winds up getting suspended. Her nephew refuses to talk about the incident and won't tell his parents who he got into a fight with. Frustrated, Beth calls Mary and asks her to look up in the system to see if she can find out who the fight was with. Mary goes into the SIS and finds the discipline incident report for the fight and lets Beth know the name of the child her nephew had fought with. Beth then calls that child's parents up to discuss the incident. Is what Mary did ok?

Scenario 3 – School Officials Exception



Exception: School official

- Schools may disclose PII from education records without consent if the disclosure is to other school officials within the school, including teachers, whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

Exception: School official (cont.)

Outsourcing services under school official exception:

- Schools 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.
- If these outside parties meet the conditions for outsourcing, they may have access to education records.



Exception: School official (cont.)

Conditions for outsourcing:

- Performs an institutional service or function for which the agency or institution would otherwise use its employees;
- Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- PII from education records may be used only for the purposes for which the disclosure was made, and may not be redisclosed without the authorization of the educational agency or institution and in compliance with FERPA;
- Meets the criteria specified in the school, LEA, or institution's annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Scenario 4 – Dual Enrollment

Janet is a 17 year old high school student at your school and is enrolled in the career and technical education Culinary Arts Program of Study. The Culinary Arts Program has an articulation agreement with local community college. As such, Janet also is dually-enrolled at the community college where she is taking the Artisan Breads and Pastries class. Janet's parents have requested access to and a copy of Janet's education records maintained at the high school and the community college.

Scenario 4 Continued

1. Must the high school and the community college honor the parent's request to access Janet's records and to receive a copy of her records?
2. How does FERPA apply in this scenario?

Scenario 5 – Deceased Students

A national newspaper is conducting research for a feature article on the increase in student suicides at local schools. The reporter approaches you with a list of student suicides over the past 5 years and requests academic and health records of the students.

Scenario 5 - Continued

1. May you disclose the requested information to the reporter as the students are deceased?
2. Would you need to obtain consent from the parents of the students?

Scenario 6 – Cyber School

Your district provides parents the option of enrolling their child in an online cyber public charter school. The district uses a third party to run the online school. The third party also has arrangements with other subcontractors to assist in running the school. In order for a parent to enroll their child in the cyber school, the parent must agree to the third party's Terms of Service which permits the third party to use, reproduce, or distribute for any purpose the information it maintains on its students.

Scenario 6 Continued

1. Can the district require a parent to agree to the terms of service of the cyber school in order to enroll their child in the school?
2. Does the fact that the cyber school is an option for parents and their children make a difference in whether they must agree to the terms of service before enrolling
3. Are cyber schools subject to FERPA?

New Guidance on Cyber Charter Schools

1. Parents cannot be required to waive their FERPA rights as a condition of enrolling in an education program.
2. Schools should use the School Official Exception, rather than consent, for the required apps and services.
3. Review vendors' Terms of Service closely to ensure that "direct control" has been properly established.

See Letter to Agora for more information:

<https://studentprivacy.ed.gov/resources/letter-agora-cyber-charter-school>

Scenario 7 – Community Based Organization

A community-based organization that has programs for children with special needs approaches you regarding their programs and asks for the name, address, and telephone number of parents with students in your school who have a disability in order to contact parents regarding their programs. You like the programs offered by the organization and believe the programs may be of benefit to the students with disabilities in your school and their parents.

Can the names and contact information for these students be disclosed to the organization?

Scenario 8 – Parent Volunteer

Mr. Spencer is a parent volunteer in your resource classroom for students with learning disabilities. He also has a child with a disability enrolled in the school, but not in your class. Mr. Spencer's assignment is to work with a small group of students on math skills. You provide him with the math achievement scores, classroom test reports and other math related information from the special education records of each individual student he is assisting.

Is it permissible for you to share the individual math test scores and other related information with Mr. Spencer without the consent or knowledge of the parents of the students?

Scenario 9 – Official Transcript

Sam is a recent graduate of your high school. After his graduation he comes to the main office and requests a copy of his official transcript. You notice that he owes several hundred dollars in unpaid fees and refuse him access. He states that refusal to honor his request is a FERPA violation. What do you do?

Scenario 10 – School Bus Video

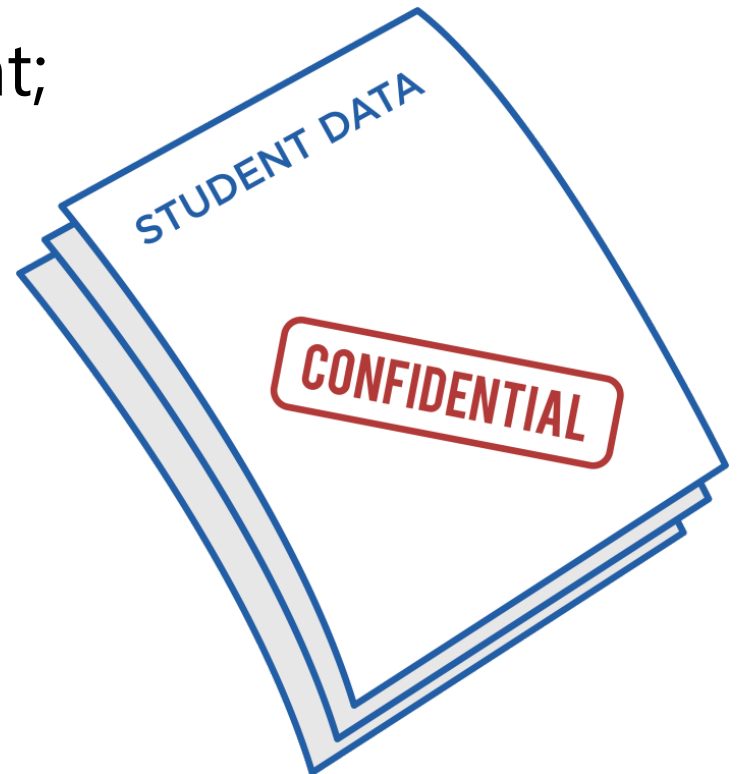
Bernie and Ricky get into a fight on the school bus on the way home. Frank, another student, tries to break up the fight and is pushed down by the fighting students and is injured. The incident is recorded by the school bus camera. The bus driver reports the incident to you, the principal, and you review the video. You suspend both Bernie and Ricky from school. Frank returns to school with a cast on his arm as a result of the fight. The parents of all three students are upset and independently request access to video citing FERPA.

1. How would you handle the request from the parents to review the video?
2. What limitations, if any, would FERPA place on permitting you to provide access to the parents?
3. After reviewing the video, Frank's parents request a copy video as they intend to sue Bernie, Ricky and the school district. May you provide them a copy of the video? Are you required to provide them a copy?

Just what is an education record?

“Education records” are records that are:

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



Directly Related?! That sounds like FERPAish

Directly related is context specific considering the following factors...

- Used for disciplinary action or other official purposes
- Depictions of activities that:
 1. Resulted in disciplinary action
 2. Shows a violation of the law
 3. Shows an occurrence of student injury, attack, illness or health emergency
- Intent to make a specific student the subject
- Audio or visual record contains content that includes PII from a student's education record.

When Videos and Photos are NOT Education Records

- Students in the background
- Photos or videos without a focus on a specific student
- Records maintained by a law enforcement unit of an educational agency or institution for a law enforcement purpose
 - however, if unit provides a copy to the school, that copy may become an education record

Videos and Photos that are Records of Multiple Students

- A video can be the education record of multiple student (e.g. fights)
- In such an instance, educational agencies and institutions are required to allow a parent or eligible student, upon request, the opportunity to inspect and review the record without the consent of the other parent/ eligible student.
 - a) Prior to providing access institutions are required to redact or segregate when reasonable if it does not destroy the meaning of the video
 - b) Schools cannot charge for the redaction or segregation
 - c) Copies are allowed but not required

FERPA test

1. FERPA only applies to schools that receive federal education funds. ☒ T ☐ F
2. Once a student turns 18, the school can't share education records with the parents. ☐ T ☒ F
3. If a child is living with a grandparent who is responsible for the day-to-day care of the child, the school must provide the grandparent with access to the child's education records. ☒ T ☐ F
4. Student health records maintained by the school nurse are not education records. ☐ T ☒ F
5. FERPA permits a parent to file a lawsuit against a school, district, or school board for violating his or her rights under FERPA. ☐ T ☒ F

FERPA test (cont.)

6. Schools are required to provide parents with a copy of their child's education records upon request. T **F**
7. Can a school disclose student information that has previously been designated as directory information without prior written consent? **T** F
8. If a parent discusses a matter about his or her child in an open school board meeting, that constitutes "consent" under FERPA for school board members or other school officials to respond by disclosing PII from the child's education records. T **F**

FERPA pre-test (cont.)

9. Having a data-sharing agreement with an outside vendor is sufficient for a school to disclose PII from education records to a vendor without consent of parents or eligible students. T **F**
10. When a student under 18 transfers from School District A to School District B, District A can share all of the student's education records with District B without the consent of the parent, including disciplinary records and special education records. **T** F

Considerations for the Enterprise

- How are you tracking directory opt-outs?
- Have you seen your directory policy?
- Have you verified that the only records you are releasing under the directory exception are a part of your directory policy?

Considerations for the Enterprise

- What is in your annual notice?
 - Does it cover what you are doing under this exception?
- How do you manage access control in your organization?
 - Just because someone may have access to the SIS does not mean they have legitimate educational interest.

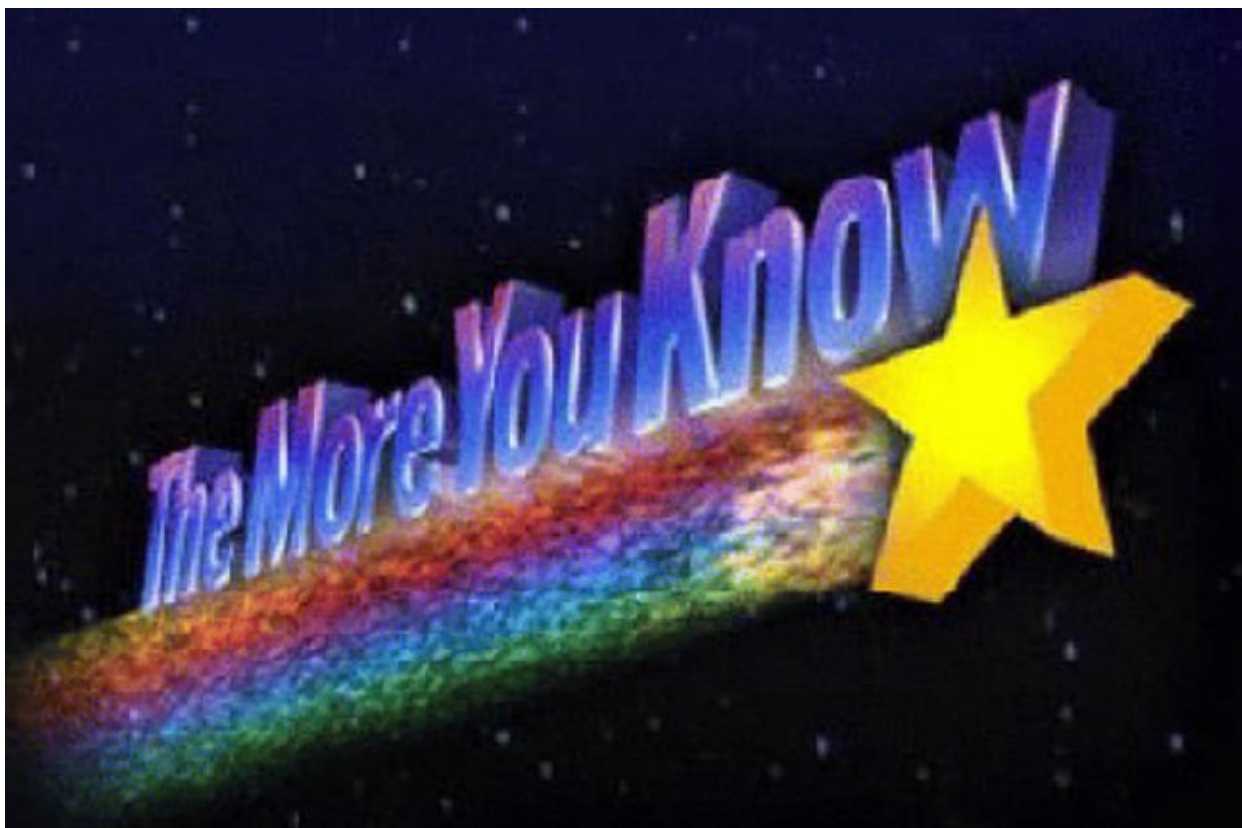
Next Steps

- What are you going to do differently at your district?
- What are some things that the U.S. Department of Education can do that would help you in this area?

Resources

- [Letter to Agora Cyber Charter School](#)
- [Letter to Wachter Regarding Surveillance Video of Multiple Students](#)

Questions?



Contact information

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