A REVIEW OF FERPA

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Introduction

Three objectives:

- Review of FERPA
- Update on recent amendments to FERPA
- Scenarios
The federal Family Educational Rights and Privacy Act (FERPA)

- The philosophy of FERPA: access and protection
- Colleges and universities have a lot of information about students
- Lots of people have access to that information
- Many more want to have access to that information
- We have the legal and ethical responsibility to protect that information, as well as to disclose it when appropriate to authorized individuals
- Enforced through our own sensibilities (morals), policies, compliance with laws, and DoE (no private right of action)
- For some, the new amendments have raised concerns about whether FERPA is truly aimed at protecting student information privacy
FERPA Review

- Four main goals or purposes:
  - Students’ right to inspect, review, and amend
  - Students’ right to nondisclosure (except in limited circumstances)
  - Students’ right to notice about FERPA
  - Students’ right to file complaint with DoE
FERPA Review

- FERPA applies to “education records” of “eligible students”
  - Definition of education record is broad (emails, paper documents, computer records, video)
    - Directly related to student
      - Personally-identifiable information includes information which alone or in combination can identify the student
    - Maintained by institution
  - What it is not: sole possession records, certain employment records, law enforcement records, medical records
    - The HIPAA privacy rule expressly excludes student health records maintained by institutions; be careful of state law requirements on medical and mental health records
FERPA Review

- Eligible student:
  - An individual who is or has been in attendance at the institution
    - Institution defines “in attendance”
    - In attendance includes correspondence or on-line
    - The age of the student is irrelevant for rights under FERPA
FERPA Review

- Notice Requirements—Annual
  - Advise students of:
    - Right to inspect and review their own records
    - Right to seek amendment
    - Right to consent to disclosure
    - Right to file a complaint with DoE
    - Right to opt out of directory information (provide definition)
    - Definition of school officials and legitimate educational interest
    - Records transfer policy
How can education records be disclosed?

- Disclosure is always permissive under FERPA

- Student consent:
  - Written
  - Signed
  - States the purpose
  - States to whom
  - Identifies records
FERPA Review

- If directory information
- Without consent, under some circumstances
  - To parents of a dependent student
  - To parents regarding a violation of law or policy concerning alcohol or controlled substances, under certain circumstances
  - To victims of certain violent offenses, certain information
  - To an institution at which a student seeks to transfer/enroll or is already enrolled but only about transfer and enrollment
To others:

- School officials with legitimate educational interest, including contractors
- Directory information
- To comply with subpoena or judicial order
- In connection with a health and safety emergency
- Certain disciplinary records
- For research, under certain circumstances
- For audit and evaluation by certain state and local officials
- Information about sex offenders at the institution
- Final results of a disciplinary proceeding involving a crime of violence or non-forcible sex offense, under certain circumstances
Directory Information

- Name
- Address
- Telephone number
- Email address
- Date and place of birth
- Major field of study
- Dates of attendance
- Grade level
- Enrollment status

- Participation in activities and sports
- Weight and height of athletes
- Degrees, honors, awards
- Most recent educational institution attended
- Photograph
- Other information generally not considered harmful or an invasion of privacy
FERPA Review

• The health and safety exception
  o Look at totality of circumstances
  o If justifiable, DoE will not second-guess
  o Institution must keep a record of threat that formed the basis for the decision to disclose records, and to whom those records were disclosed
FERPA Review

Disclosures to parents of dependents

- Must be able to show that student is a dependent for tax purposes

- DoE has developed a model form—can also serve as a consent form
Institutions must use “reasonable methods” to identify and authenticate the identity of those who access records.

- Possible methods might include a combination of some of the following: requiring photo ID; all or part of a student ID number or SSN; date of birth; PINs; personal security questions; passwords.
FERPA Review

• Note: It is not a disclosure of an education record or information contained in an education record for a school official to share personally-identifiable information about a student that is based on the official’s personal knowledge

  ○ However, if the official has also created a record about it, the disclosure of the record may be a violation of FERPA