

FERPA OVERVIEW & UPDATE 2014

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A. BASICS (NOT SPECIFIC TO NEW REVISIONS)

- **WHAT IT IS – A FEDERAL LAW EFFECTIVE 1974 PRIMARILY IMPLEMENTED AND ENFORCED VIA FEDERAL REGULATIONS FROM THE U.S.D.E. THAT ADDRESS (i) STUDENT/PARENT ACCESS RIGHTS TO EDUCATION RECORDS; (ii) STUDENT/PARENT RIGHTS TO CHALLENGE ACCURACY OF STUDENT RECORDS; and (iii) DISCLOSURE OF STUDENT RECORDS**



A. BASICS (NOT SPECIFIC TO NEW REVISIONS)

- **WHAT IT IS NOT – Not a records retention law; Not a records security or maintenance law; Not a records creation law.**
Not a law that provides a “private right of action” for persons to sue schools or educators for violations.



A. BASICS (NOT SPECIFIC TO NEW REVISIONS)

- **APPLICABILITY – ANY SCHOOL THAT RECEIVES \$ DIRECTLY OR INDIRECTLY FROM ANY PROGRAM ADMINISTERED BY THE U.S. SEC. OF EDUCATION.**



A. BASICS (NOT SPECIFIC TO NEW REVISIONS)

- Definitions – key to most FERPA issues. FERPA focuses on access to, release of and challenges to “accuracy” of “education records” in regard to “students” and “parents”. The non-consensual release of education records also turns on whether or not the records at issue are education records and contain “personally identifiable information regarding a student” or instead contain only “directory information” and/or other non-personally identifiable information.



B. Rights of Access (“Inspect & Review”)

- **Parent or eligible student** has a FERPA right to review **that student’s education records** within a reasonable time of request but no longer than 45 days thereafter. Copies upon request not per se required by FERPA, but *are* by state law (79-2,104(1)). Both FERPA and state law permit a copy fee. FERPA prohibits search or retrieval fees, and charging of any fee amount that “effectively prevents a parent or eligible student” from exercising their inspection/review rights.



C. Challenge accuracy of education record and request amendment

- After a review, a parent or eligible student can request amendment to alleged inaccurate or misleading information in an ed. record. School has to provide response to request “within a reasonable time.” If answer is ‘no’, parent or student can have a hearing and must be informed of that in the answer.



D. Non-Consensual Disclosure

- If you are covered by FERPA, you cannot disclose **personally identifiable information** about **a student** from their **education record** without the written consent of the parent or eligible student, except in some **20+ cases (34 CFR 99.31)**.
- Before venturing down the exceptions rabbit hole, apply the key terms and see if the prohibition still applies and/or if you can do something so the disclosure prohibition would not apply.



E. New Regulations

- Effective 1/3/12
- “Directory Information” definition expanded to allow for it to include a student’s unique student i.d. number or code, including one displayed on a required student i.d. card or badge, so long as that # or code alone cannot be used to gain access to ed. records. No opt-out of required badge or card.
- Directory information designation rules now provide that a school may adopt “limited directory information policies.” Meant to allow a school to be able to disclose information to certain parties for certain purposes as “directory”, but only to them and/or for that purpose.
*May not work with Nebraska state public records law.



E. New Regulations

- Expansion of non-consensual disclosure exception- FERPA had always allowed a school to disclose, without consent, personally identifiable ed. records to “authorized representatives” of “state or local education authorities” for purposes of “an audit or evaluation of Federal or State supported education programs, or for enforcement of or compliance with Federal legal requirements...”

New revisions add a definition of such an “authorized representative” and allow for a more liberal approach as to what entities might have authority to conduct such an evaluation, meaning a school district could, for example, designate (in writing) a college as a representative to conduct such an evaluation of how its former students perform in college. Also, even a non-education agency could fulfill this role, i.e. a department of labor or workforce development agency could be so designated by a school district to evaluate the vocational preparedness of its graduates.



E. New Regulations

- While not a new provision in the FERPA regs themselves, the Sec. of Education made statements that broadened NDE's abilities to re-disclose personally identifiable information in ed. records districts disclose to us, such as through the NSSRS.
NDE can now clearly re-disclose such records to an entity of its choosing if NDE determines that the entity will be conducting studies to improve instruction or that relate to predictive tests. It can do it without specifically notifying districts or even over a district's objection. Previously, the common wisdom was that NDE had to notify the districts and have an "agreement" with them about such re-disclosures (hence the legalize that appeared on the NSSRS screens). NDE and the entity must follow FERPA written confidentiality data exchange provisions.



F. New FERPA Law

- **“The Uninterrupted Scholars Act (USA)” – adds new federal statutory provision to FERPA law eff. 1/14/13. Makes it easier for child welfare agencies to obtain PII student records from a school.**
 - Used to need to rely primarily on “court order” non-consensual disclosure exception, which also meant advance notice to parent before disclosure to child welfare authority. Now, if that parent was a party to the child welfare proceeding, that does not apply. Also specifically created a child welfare agency representative exception.

Rule 6: Data Sharing Update

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Context

- LB 262 State Statute 79-2,104

The State Board of Education shall adopt and promulgate rules and regulations providing for and requiring the uniform sharing of student data, records, and information among school districts, educational service units, learning communities, and the department.



Advisory Committee

- Representatives from:
 - School districts (Urban, Rural)
 - ESU's
 - Learning Community
 - Department of Education
- Met in January 2014
 - Guiding Principles
 - Intent of Legislation
 - Drafted Rule
- Follow up meeting March 2014



Guiding Principles

- Improvement of Education
- Protecting Student Privacy
- Commitment to Security of Data
- Follow FERPA rules
- Strike a balance (sharing data needed)
- Support Data Standards
- Clear purpose and people using data
- Can as well as can't do's
- Support educational continuity



Main Consideration Pieces

- **ONLY** pertains to:
 - Schools
 - ESU's
 - Learning Community
 - Department of Education
- Clarify expectations and reasons to share
- Clarify Directory Information
- Ensure process and security of data



Next steps

- Commissioner to Approve hearing draft
- Establish Public Hearing Date
- Bring back to State Board for review and adoption
- Moves on to Attorney General and Governor's offices'
- Final Adoption of Rule Secretary of State

SecureMail Overview

Ginny Carter
NDE Helpdesk





Sending Data Securely

- **Corresponding with NDE Helpdesk**
- **Sending confidential data over e-mail**
- **Providing information to Assessment**
- **Types of Data Elements**
 - **NDE Uniq ID**
 - **Performance Data**
 - **Student Characteristics, etc.**
- **Secure communications approaches**



SecureMail

- New secure system offered by state of Nebraska
- Provides a secure environment to communicate
- Requires an account to access email
 - Similar to system used by banks and other financial institutions
- Must be initiated initially from NDE to create account
- Can use account for future interactions



SecureMail

From: Carter, Ginny <Ginny.Carter@nebraska.gov>
To: youremail@mail.com
Subject: **[Send Secure] Test**

To open this message, first click the button to register. After registering, come back to continue opening the message.

REGISTER

From: email@nebraska.gov
To: 
Subject: another test
Password:

Click Open. If the Open button does not appear, forward the original email to mobile@res.cisco.com.

New users, select your email address and click Open to create an account.

 [Help](#)

Personal Security Phrase
Your personal phrase is not enabled on this computer.

[More info](#)

Open



SecureMail

EMAIL ADDRESS CONFIRMED

You have activated the account for
`youremail@email.com` Registration for this email
address is now complete. To exit this page, close your
browser window. After exiting this page, return to
your Registered Envelope and enter your password to
open it.



SecureMail

- Go to the following link to Send SecureMail
<https://res.cisco.com/websafe/login.action>



Sending securemail

Not only will you now be able to receive and open encrypted emails, but you can send encrypted emails with attachments from your account that was created when you registered.



1. Go to the following link
<https://res.cisco.com/websafe/login.action>
2. Type your email address and click the login button.

Note: Make sure you use the same email address that you registered with.

ACCOUNT LOGIN

Welcome, please log in:

Email Address

Login



Future

- Initial step
- Identifying ways to integrate with Portal or other tools
- Open to ideas for improving process



Questions

- More information or resources:
- www.education.ne.gov

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