



Family Education
Rights and Privacy Act
(FERPA)



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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MEMORANDUM

TO: Local and Intermediate School District Superintendents
Directors and Authorizers of Public School Academies

FROM: Sally Vaughn, Ph.D., Deputy Superintendent/Chief Academic Officer *Sally*

DATE: September 2, 2008

SUBJECT: **Annual Notice of Family Education Rights and Privacy Act (FERPA) Information**

Please find below the hyperlink to the United States Department of Education (USED) annual notice of responsibilities under the *Family Educational Rights and Privacy Act (FERPA)* and the Protection of Pupil Rights Amendment (PPRA). Also included are links to enclosures for model notification to parents and model consent opt-out forms. Please share this information with parents, students and pertinent program directors. We hope that you will find this information helpful in protecting parents' and students' privacy rights under FERPA and PPRA.

<http://www.ed.gov/policy/gen/guid/fpco/doc/pprasuper.doc>

<http://www.ed.gov/policy/gen/guid/fpco/doc/ferparights.doc>

<http://www.ed.gov/policy/gen/guid/fpco/doc/ppraconsent.doc>

<http://www.ed.gov/policy/gen/guid/fpco/doc/ppranotice.doc>

<http://www.ed.gov/policy/gen/guid/fpco/doc/directoryinfo.doc>

Please note that the U.S. Department of Education is in the process of amending the FERPA regulations to clarify issues of concern to many in the education community. The link to the Notice of Proposed Rule-making that discusses the proposed changes is <http://www.ed.gov/legislation/FedRegister/proprule/2008-1/032408a.html>. Final regulations will be published in the *Federal Register* in December or January and a notice will be sent to advise you once the changes to FERPA are finalized.

In addition, please note the School Safety and FERPA link on the USED web site at <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/>. Understanding the law empowers school officials to act quickly and decisively when problems arise. The information contained at this link will hopefully provide you with some helpful information as you strive to keep your schools safe.

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A-2



FERPA/HIPAA Quiz

This quiz is designed to test your knowledge of the Family Educational Rights and Privacy Act (FERPA) and the Health Information Portability and Accountability Act (HIPAA). Take this quiz at the beginning of the workshop and record your answers in the first column, labeled *Pre*. As you work through the workshop activities, you may learn additional information. Record any changes to your answers in the second column, labeled *Post*.

Put "T" for *True* or "F" for *False* next to each statement.

- | <u>Pre</u> | <u>Post</u> | |
|------------|-------------|--|
| ___ | ___ | 1. Schools must provide a parent with an opportunity to inspect and review his or her child's education records within 60 days of receipt of a request. |
| ___ | ___ | 2. Schools must individually notify parents of their FERPA rights by mail. |
| ___ | ___ | 3. When a student turns 18 years old and the rights under FERPA transfer from the parent to the student, the school must obtain consent from the student in order to disclose grades and other education records to the parents. |
| ___ | ___ | 4. In a legal separation or divorce situation, both parents have the right to gain access to the student's education records. |
| ___ | ___ | 5. A school may designate and disclose any information on a student as "directory information," as long as the school notifies parents and provides them with an opportunity to opt out. |
| ___ | ___ | 6. Teachers may post grades by student name or social security number. |
| ___ | ___ | 7. To be considered an "education record," information must be maintained in the student's cumulative or permanent folder. |
| ___ | ___ | 8. When a student transfers to a new school, the former school is required to send the student's education records to the new school. |
| ___ | ___ | 9. A parent of a former student has the same right to inspect and review the student's education records as a parent of a student currently attending the school. |
| ___ | ___ | 10. Schools are required by FERPA to maintain a student's transcript for 5 years. |
| ___ | ___ | 11. School nurse records are not subject to FERPA, but are subject to the HIPAA Privacy Rule. |
| ___ | ___ | 12. The disclosure of student immunization information to an outside agency such as a state health department is governed by FERPA, not HIPAA. |
| ___ | ___ | 13. Records created and maintained by a school resource officer or law enforcement unit are not subject to FERPA. |
| ___ | ___ | 14. FERPA grants parents the right to have a copy of any education record. |



Pre Post

15. The following would be an acceptable release of information without the parent's consent:
- To the state department of education in relation to an audit or evaluation of state-funded education program
 - To the student
 - To any school official within the school district
 - To potential employers or honor organizations attempting to verify grades, class rank
 - To the local newspaper, regarding the final results of a student disciplinary hearing
 - To a college at which the student intends to enroll, and the request is for the student's GPA
16. Medical records that are exempt from FERPA's definition of education records are also exempt from coverage by HIPAA.

Source: Adapted from "A FERPA Final Exam" available on the website of the American Association of Collegiate Registrars and Admissions Officers (AACRAO). Used with permission.



FERPA/HIPAA Quiz Answer Key

T=True; F=False

F	1. Schools must provide a parent with an opportunity to inspect and review his or her child's education records within 60 days of receipt of a request.	<i>FERPA requires that educational agencies and institutions comply with a parent's request to inspect and review education records within a reasonable period of time, but not longer than 45 days after receiving the request. See 34 CFR § 99.10(b). Some states require that schools provide parents with access to education records in less than 45 days, and some school districts may have their own requirements.</i>
F	2. Schools must individually notify parents of their FERPA rights by mail.	<i>Schools are not required to mail to each parent the required FERPA notification, but they must "provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights." See 34 CFR § 99.7(b). This may include website notices, inserting the notice in the registration package, or printing the notice in the local or school newspaper.</i>
F	3. When a student turns 18 years old and the rights under FERPA transfer from the parent to the student, the school must obtain consent from the student in order to disclose grades and other education records to the parents.	<i>When a student turns 18 years old—or enters college at any age—he or she becomes an "eligible student" and the rights transfer from the parents to the student at that time. However, a school is permitted to disclose any information from a student's education records to the parent if one or both of the parents claim the student as a dependent for IRS tax purposes. See 34 CFR § 99.31(a)(8).</i>
T	4. In a legal separation or divorce situation, both parents have the right to gain access to the student's education records.	<i>FERPA provides rights to either parent, regardless of custody, unless the school has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. See 34 CFR § 99.4.</i>
F	5. A school may designate and disclose any information on a student as "directory information," as long as the school notifies parents and provides them with an opportunity to opt out.	<i>A school may only designate "directory information" items about a student that would not generally be considered harmful or an invasion of privacy if disclosed. (See the definition of "directory information" in 34 CFR § 99.3 for examples of the type of information that may be included.) Information such as a student's social security number or special education status may not be designated as "directory information."</i>
F	6. Teachers may post grades by student name or social security number.	<i>A student's grades may only be publicly posted by a randomly assigned code or number that is known only to the student (and parent) and the teacher.</i>
F	7. To be considered an "education record," information must be maintained in the student's cumulative or permanent folder.	<i>The terms "cumulative folder" and "permanent folder" do not appear in FERPA. The term "education record" is broadly defined in FERPA as any record that is (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.</i>
F	8. When a student transfers to a new school, the former school is required to send the student's education records to the new school.	<i>While FERPA permits the transfer of education records, it does not require schools to transfer records to third parties. Rather, it permits disclosures to officials of another school, school system, or post-secondary institution where the student seeks or intends to enroll. (However, please note that the No Child Left Behind Act of 2001 requires that states have in place a procedure for transferring a student's disciplinary records, and individual states also have specific requirements relative to transfer of educational records. In Michigan, MCL 380.1135 requires receiving district to request in 14 days and sending districts to transfer within 30 days.)</i>



T/F	9. A parent of a former student has the same right to inspect and review the student's education records as a parent of a student currently attending the school.	Generally, this is true. However, if a student has either turned 18 or entered a postsecondary institution, the rights under FERPA have transferred to the student. Only if the student is still a minor and is not yet attending a post-secondary institution would the parent have a right under FERPA to have access to the student's education records. If the student is still a dependent for tax purposes, the school may disclose information to the parent without the student's consent.
F	10. Schools are required by FERPA to maintain a student's transcript for 5 years.	FERPA does not require that education records be maintained for any specific period of time and does not generally prohibit the destruction of education records. There may be other requirements for retention of records that schools must follow. However, FERPA does prohibit a school from destroying education records if there is an outstanding request by a parent or eligible student to inspect and review the education records.
F	11. School nurse records are not subject to FERPA but are subject to the HIPAA Privacy Rule.	School nurse records are subject to FERPA because they are "education records." Education records, including individually identifiable health information contained in such records that are subject to FERPA, are specifically exempt from the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. The reason for this exemption is that Congress, through FERPA, previously addressed how education records should be protected.
T	12. The disclosure of student immunization information to an outside agency such as a state health department is governed by FERPA, not HIPAA.	School officials must comply with FERPA in releasing immunization records and other health records to outside local and state health authorities. Generally, parents must provide consent before such information is released. FERPA does permit disclosure of education records to appropriate officials in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of the student or other persons. See 34 CFR § 99.31(a)(10) and § 99.36.
T/F	13. Records created and maintained by a school resource officer or law enforcement unit are not subject to FERPA.	Records of a school's law enforcement unit are not subject to FERPA if they are (1) created by the law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit. A "law enforcement unit" can be any individual, office, department, division, or other component of the educational agency or institution that is officially authorized or designated by the agency or institution to enforce laws or maintain the physical security and safety of the school. See 34 CFR § 99.8. The answer could be either T or F because the records created and maintained by the unit must be maintained for a "law enforcement purpose." If the records are created and maintained for disciplinary purposes, for example, they are subject to FERPA.
T/F	14. FERPA grants parents the right to have a copy of any education record.	If circumstances effectively prevent a parent from exercising the right to inspect and review the student's education records (such as when the parent no longer lives in commuting distance), then the school shall provide the parent with a copy of the records requested or make other arrangements for the parent to inspect and review the requested records. See 34 CFR § 99.10(d).
15. The following would be an acceptable release of information without the parent's consent.		
T	a. To the state department of education in relation to an audit or evaluation of state-funded education program	Schools may disclose information to state and local educational authorities in connection with an audit or evaluation of federal or state supported education programs or for the enforcement of or compliance with federal legal requirements that relate to those programs. See 34 CFR § 99.31(a)(3) and § 99.35.



T	b. To the student	<i>Schools may have a policy of disclosing education records to a student who is not an eligible student, without consent of the parents. See 34 CFR § 99.5(b).</i>
F	c. To any school official within the school district	<i>Only school officials with a legitimate educational interest may have access to a student's education records. Schools are required to include in the annual notice of FERPA rights the criteria for whom they consider to be a "school official" and what it considers to be a "legitimate educational interest." (Check the Family Policy Compliance Office's website for a model notice with suggested language: http://www.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html.)</i>
F	d. To potential employers or honor organizations attempting to verify grades, class rank	<i>These entities are not listed in the FERPA regulations (§ 99.31) as entities to which information may be disclosed without consent. Therefore, parents or eligible students must provide consent for this disclosure.</i>
F	e. To the local newspaper, regarding the final results of a student disciplinary hearing	<i>While there are some types of disciplinary disclosures that may be made public at the college level, at the K-12 level no disciplinary information may be publicly disclosed without consent.</i>
T	f. To a college at which the student intends to enroll, and the request is for the student's GPA	<i>If the student is seeking or intending to enroll in the college, information from the student's education records may be disclosed to the college (§ 99.34).</i>
T	16. Records subject to FERPA are not subject to the HIPAA Privacy Rule.	<p><i>Under FERPA, certain types of treatment records on a student who is 18 years or older or who is attending a postsecondary institution are exempt from the definition of "education records," such as records that that are</i></p> <ul style="list-style-type: none"> <i>made or maintained by a physician or other recognized medical professional;</i> <i>made, maintained, or used only in connection with treatment of the student; and</i> <i>disclosed only to individuals providing the treatment.</i> <p><i>However, if these treatment records are used for purposes other than providing treatment to the student or are made available to persons other than those providing treatment, they would then be considered to be education records. These types of records are also exempt from HIPAA's Privacy Rule. For students under the age of 18, there is no distinction between "medical" or "treatment" records and "education records." Thus, a K-12 student's health records maintained by an educational agency or institution subject to FERPA, including records maintained by a school nurse, would generally be education records subject to FERPA because the are (1) directly related to a student; (2) maintained by an educational agency or institution, or a party acting for the agency or institution; and (3) are not excluded from the definition as treatment records.</i></p>

ver. November 2008

Source: U.S. Department of Education Family Policy Compliance Office



Maintaining Confidentiality and Security of Student Data

To protect the privacy of students and their families, school staff are legally and ethically responsible for safe-guarding the information collected about and from their students. Schools, school districts, and state education agencies maintain and use personal information for a variety of educational purposes while students are in school. Rights for students and parents and requirements for local education agencies are many and complex under the Family Educational Records and Privacy Act (FERPA) and the Health Insurance Portability and Access Act (HIPAA).

When talking about data security, both the physical security of the data (preventing inappropriate taking of data) and confidentiality (protecting data to prevent the casual or deliberate imparting of private information through conversation or carelessness) are at issue. Security and confidentiality are issues that relate to paper records, electronic records, and conversations.

The following resources located on the National Center for Education Statistics Web support schools and districts in understanding the federal and state laws and regulations related to maintaining, protecting and releasing student information as well as providing examples of good policies and procedures to ensure the privacy of student information.

Guide to Confidentiality provides examples of policies and procedures as well as guidelines for deciding what is needed to ensure the privacy of student information.

FERPA/HIPAA Quiz gives educators a chance to test their understanding of these laws. The **FERPA/HIPAA Quiz Answer Key** provides answers and explanations.

Examples of Data Security Best Practices provides a checklist of good general and technical practices that includes password issues and physical security.

Security and Confidentiality Lesson Plan is one of four workshops that serve as an introduction to building a culture of quality education data. In this workshop, participants will learn about the security component of quality data, specifically the Family Educational Records and Privacy Act (FERPA) and Health Insurance Portability and Access Act (HIPAA) regulations that govern school confidentiality issues. Participants will also identify practices that compromise security.



Examples of Data Security Best Practices

General Practices

- Password issues
 - Keep passwords strictly confidential. Do not share them with others.
 - Change passwords frequently: every 30 to 60 days.
 - Create passwords containing both numbers and letters and using upper and lower case (e.g., t6UG88).
 - Do not use passwords identifying a personal fact about yourself (e.g., birthdate, child's name).
 - Learn your password. If you must write it down, keep the information stored somewhere private and secure.
- Physical security
 - Make it possible to lock desks, offices, and filing cabinets.
 - Emphasize the importance of physical security practices in all data training.
- Send personally identifiable information from education records by email only after using an encryption program or some other means of protecting the integrity of the information.
- Put confidential information into a locked cabinet or drawer when leaving the area where it is in use.
- Have an acceptable-use policy in place regarding both Internet access and confidential data files and establish a procedure for monitoring use.
- Hold all conversations regarding confidential information in nonpublic areas.
- Do not allow confidential data to be worked on at home.
- Institute confidentiality agreements with vendors, employees, and service providers.
- Include acknowledgement of security processes in all appropriate job descriptions.
- Develop and disseminate written security practices.
- Provide ongoing training regarding confidentiality issues and the sensitivity of data.
- When recycling computers, pull or reformat hard drives.

Technical Practices

- Implement an authentication system for logging on to computers and into computer networks. Include an automated prompt to change passwords frequently.
- Set reasonable timeout intervals on computers (5 to 15 minutes), so that after the specified interval of inactivity, the machine will log off the network and its screen will lock, requiring a password to re-access.
- Make sure that wireless networks are secure.
- Implement an appropriate backup system.
- Establish an audit-trail mechanism for identifying users who enter or change critical data.
- Update anti-virus and anti-spyware software frequently.
- Establish plans for reacting to data security breaches.
- When deleting confidential materials, use overwriting software to be sure data are completely deleted.



Lesson: Security and Confidentiality

Participants: All Key Players*

Description

This lesson is one of four workshops that serve as an introduction to building a culture of quality education data. All participants should complete all four workshops. In this workshop, participants will learn about the security component of quality data, specifically the Family Educational Records and Privacy Act (FERPA) and Health Insurance Portability and Access Act (HIPAA) regulations that govern school confidentiality issues.

Objectives

- Identify practices that compromise security.
- Distinguish confidential and public student and staff information based on FERPA and HIPAA regulations.

Instructor Preparation

- Familiarize yourself with the correct answers to the **FERPA/HIPAA Quiz** by thoroughly reading the **FERPA/HIPAA Quiz Answer Key**.
- Make a copy of the **FERPA/HIPAA Quiz Answer Key** for you to refer to during the workshop.
- Make a single copy of the following lesson resources (which can be found on the pages following the lesson plan) for each participant:
 - FERPA/HIPAA Quiz
 - Forum Guide to the Privacy of Student Information: A Resource for Schools (available at <http://nces.ed.gov/pubs2006/2006805.pdf>)
 - Health Records: FERPA and HIPAA
 - FERPA/HIPAA Quiz Answer Key
 - FERPA Scenarios and Answers
 - Examples of Best Practices Regarding Data Security

Essential Learnings

- Rights for students and parents and requirements for local education agencies (LEAs) are many and complex under the Family Educational Records and Privacy Act (FERPA) and the Health Insurance Portability and Access Act (HIPAA).
- When talking about data security, both the physical security of the data (preventing inappropriate taking of data) and confidentiality (protecting data to prevent the casual or deliberate imparting of private information through conversation or carelessness) are at issue.
- Security and confidentiality issues arise with regard to paper records, electronic records, and conversations. The arrangement of desks and computer screens and the ability to lock desk and file drawers are important factors in data security.
- Directory information (that information published in a district's directories) is normally not confidential. Parents have a right to define any of the normal directory information for their child as confidential.

* Key players include board members, superintendents, principals, data stewards/coordinators, teachers, technology support staff, and office staff.



Introduction

Item

- Have participants complete the **FERPA/HIPAA Quiz** by recording their “before learning” answers in the *Pre* column blank. (Participants will revise their answers to the questions as they progress through the activities of the workshop and record their “after learning” answers in the *Post* column blank for comparison when the correct answers are reviewed later in the workshop.)

Lesson Resources for the Introduction

- FERPA/HIPAA Quiz

Activities and Instruction

Item

- Provide participants with the *Forum Guide to the Privacy of Student Information: A Resource for Schools*. Have participants search for correct answers to the **FERPA/HIPAA Quiz** completed in the Introduction section. This may be completed in small groups or pairs. Participants should record what they now think are the correct answers in the second blank provided on the quiz.
- Have participants share the answers to the **FERPA/HIPAA Quiz** that they recorded during the search of the regulations and their discussion of the scenarios.
- Pass out the **FERPA/HIPAA Quiz Answer Key** to participants. Have participants put the correct answers in the *Post* column blank and then discuss which questions they got wrong and why, as well as the questions whose correct answer most surprised them. Note the several questions where the correct answer is both True and False, and discuss the implications of these ambiguities for policies and practice.
- Break group into groups to review the **FERPA Scenarios** and discuss possible answers. Distribute answers and have individual groups share their conversation with the whole group.

Lesson Resources for Activities and Instruction

- FERPA/HIPAA Quiz
- FERPA/HIPAA Quiz Answer Key
- FERPA Scenarios and Answers

Supplementary Resources for Activities and Instruction

- Family Educational Rights and Privacy Act (FERPA)
- Family Educational Rights and Privacy Act Regulations
- *Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies* (<http://nces.ed.gov/pubs2004/2004330.pdf>)

Summary/Wrap-Up

Item

- On the **Examples of Best Practices Regarding Data Security** handout, have participants check off those items already in place in their LEA. Then discuss what barriers exist to implementing the practices not in place and what steps would be necessary to implement them.

Lesson Resources for the Summary/Wrap-Up

- Examples of Best Practices Regarding Data Security