



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

October 2012

Dear Chief State School Officer:

The Department of Education (Department) is required to notify annually each State educational agency (SEA) and each local educational agency (LEA) of their obligations under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). This letter serves to provide that notification to the SEA and to provide you general guidance and reference information for each of the laws discussed below. A similar notice has been provided to the larger LEAs in the country. However, because we do not have an email address for all the LEAs, we would appreciate your ensuring that this information is forwarded to the local superintendents in your State.

It is essential that SEA officials who have access to student information understand their roles and responsibilities under FERPA to protect that information and uphold the parent and student's right to privacy under FERPA. Student education records at the SEA contain a large amount of personal and sensitive information, and SEAs should ensure that adequate controls are in place so that the education records of all students are handled in accordance with FERPA's privacy requirements.

Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.

Rights of Parents

FERPA applies to an "educational agency or institution" that receives funds under a program administered by the U.S. Department of Education. Educational agencies and institutions subject to FERPA may not have a policy or practice of denying parents the right to:

- Inspect and review education records (34 CFR § 99.10);
- Seek to amend education records (34 CFR §§ 99.20, 99.21, and 99.22); and
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

These rights transfer to the student when he or she turns 18 years of age or enters a postsecondary educational institution at any age ("eligible student").

The Family Policy Compliance Office (FPCO) in the Department has issued guidance documents about FERPA for parents and for eligible students. Those documents are available on FPCO's Web site –

<http://www2.ed.gov/policy/gen/guid/fpc/ferpa/parents.html> and
<http://www.ed.gov/policy/gen/guid/fpc/ferpa/students.html>.

While an SEA may receive funds from the Department, as a practical matter, all of the provisions of FERPA – such as notification requirements and the amendment of records requirements – generally do not apply to an SEA. This is because FERPA defines “education records” as information directly related to a “student,” which itself is defined as excluding a person who has not been in attendance at the educational agency or institution. 20 U.S.C. § 1232g(a)(4) and (a)(6); 34 CFR § 99.3. Since students generally are not in attendance at an SEA, it follows that FERPA does not generally apply to the SEA.

However, FERPA does provide parents with the right to inspect and review education records maintained by the SEA within a reasonable period of time, but not more than 45 days after it has received a request. 34 CFR § 99.10(a)(2). This includes, for example, State assessments administered by LEAs and maintained by the SEA. The SEA may make the education records available to the parent either directly, by sending them to the LEA for inspection and review, or making other appropriate arrangements. For more information on this provision, see 34 CFR § 99.10. Additionally, an SEA must protect the education records it receives from schools and may not redisclose personally identifiable information from students’ education records unless the disclosure meets one of the exceptions to FERPA’s general consent rule and the redisclosure is on behalf of the school from which it received the records.

Regulatory Changes

On December 9, 2008, and again on December 2, 2011, the Department published final regulations in the *Federal Register* amending the FERPA regulations.

Link to 2011 changes:

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf>

Link to 2011 Guidance on Reasonable Methods and Written Agreements:

http://www2.ed.gov/policy/gen/guid/fpco/pdf/reasonablemtd_agreement.pdf

Link to 2008 changes:

<http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>

Permitted Disclosures to SEAs

FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose education records to SEAs and other State educational authorities without a parent or eligible student’s prior consent under certain conditions. For a review of the exceptions to the general prior consent rule in FERPA, see 34 CFR § 99.31. You will find a copy of the FERPA regulations on FPCO’s Web site:

<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>. The most common exception that relates to disclosure to a State educational authority is found in 34 CFR § 99.31(a)(3) and § 99.35.

The disclosure must be in connection with:

- An audit or evaluation of Federal or State supported education programs; or
- The enforcement of or compliance with Federal legal requirements relating to such programs.

Information collected under this provision generally must be:

- Protected so that information is not disclosed to anyone other than the authorized representatives of the State educational authority (34 CFR § 99.35(b)(1)); and
- Destroyed when no longer needed for the purposes listed above (34 CFR § 99.35(b)(2)).

Redisclosure and Recordation

Please note that, over the last few years, several changes were made to the FERPA regulations that impact SEAs. Specifically, the FERPA regulations published in December 2008 modified FERPA's prohibition on redisclosure of education records (as noted above) by State and local educational authorities, including SEAs. Under the regulations, State and local educational authorities, as well as the Secretary of Education and other Federal officials and agencies that are listed in § 99.31(a)(3), may redisclose personally identifiable information on behalf of educational agencies and institutions in accordance with the longstanding requirements in § 99.33(b) that require recordation of further disclosures that could be made by other parties that received education records. The December 2011 changes modified and expanded upon the redisclosure changes contained in § 99.35. The regulations on the FPCO Web site contain the latest changes to §§ 99.35. *See* <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>.

Section 99.33(b) also requires the educational agency or institution to comply with § 99.32(b) and record the names of the additional parties to which the receiving party may make further disclosures and their legitimate interests under § 99.31. The regulations require a State education official that rediscloses education records on behalf of an educational agency or institution to comply with this recordation requirement, if the educational agency or institution where the education records originated does not make the recordation of the redisclosure by the SEA. 34 CFR § 99.32(b)(2)(i)(A). An educational agency or institution is required to obtain a copy of the SEA's record of further disclosures and make it available in response to a parent's or eligible student's request to review the student's record of disclosures. 34 CFR § 99.32(a)(4). The SEA must make its record showing its redisclosures available to an educational agency or institution upon request within a reasonable period of time not exceeding 30 days. 34 CFR § 99.32(b)(2)(iii). The regulations permit the SEA to maintain the record by the student's class, school, district, or other grouping rather than by the name of the student. 34 CFR § 99.32(b)(2)(ii).

Safeguarding Recommendations

The 2008 regulations contain helpful recommendations for handling and protecting education records. See pages 74843-74844 of the *Federal Register* notice, *Department Recommendations for Safeguarding Education Records*.

ESEA Provision Affecting FERPA

Section 4155(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, 20 U.S.C. § 7165(b), requires a State that receives funds under the ESEA to assure the Secretary that it “has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.”

Section 99.31(a)(2) of the FERPA regulations provides specifically that an educational agency or institution may disclose education records, without parental consent, to a school in which the student seeks or intends to enroll, subject to conditions set forth in 34 CFR § 99.34. FERPA also allows disclosure of appropriate information regarding specified disciplinary actions to teachers and school officials, including those in other schools, who have legitimate educational interests in the behavior of the student. See 34 CFR § 99.36(b).

Protection of Pupil Rights Amendment (PPRA)

Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98.

PPRA applies to the programs and activities of an SEA, LEA, or other recipient of funds under any program funded by the U.S. Department of Education. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student’s parent;
2. mental or psychological problems of the student or the student’s family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student’s parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

LEAs must provide parents and eligible students effective notice of their rights under PPRA. The notice must explain that an LEA is required to obtain prior written consent from parents before students are required to submit to a survey that concerns one or more of the eight protected areas listed above, if the survey is funded in whole or in part by Department funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide the parent with an opportunity to opt his or her child out of participating. LEAs must also notify parents that they have the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum. Please see the notice to local superintendents for additional requirements under PPRA.

Please feel free to contact FPCO with any questions you may have, as well as any requests for FERPA compliance training. The address and telephone number for FPCO are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
(202) 260-3887

Informal inquiries may be sent to FPCO via the following email addresses: FERPA@ED.Gov and PPRA@ED.Gov. Requests for FERPA compliance training may be sent to FERPA.Client@ED.Gov. The FPCO Web site address is: www.ed.gov/fpco.

Sincerely,

/s/

Dale King
Director
Family Policy Compliance Office

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

October 2012

Dear Superintendent:

The Department of Education (Department) is required to notify annually each State educational agency (SEA) and each local educational agency (LEA) of their obligations under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). This letter serves to provide that notification to the LEA and to provide you general guidance and reference information for each of the laws discussed below.

The Family Educational Rights and Privacy Act (FERPA)

Statute: 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.

Rights of Parents

FERPA provides that an LEA that receives Department funds may not have a policy or practice of denying parents the right to:

- Inspect and review education records within 45 days of a request (34 CFR § 99.10);
- Seek to amend education records believed to be inaccurate (34 CFR §§ 99.20, 99.21, and 99.22); and
- Consent to the disclosure of personally identifiable information from education records except as specified by law (34 CFR §§ 99.30 and 99.31).

These rights transfer to the student when he or she turns 18 years of age or enters a postsecondary educational institution at any age (“eligible student”). The Family Policy Compliance Office (FPCO) in the Department has issued guidance documents about FERPA for parents and for eligible students. Those documents are available on FPCO’s Web site – <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/parents.html> and <http://www2.ed.gov/policy/gen/guid/fpc/ferpa/students.html>.

Regulatory Changes

On December 9, 2008, and again on December 2, 2011, the Department published final regulations in the *Federal Register* amending the FERPA regulations.

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Link to 2008 changes:

<http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>

Annual Notice

LEAs must annually notify parents and eligible students of their rights under FERPA. 34 CFR § 99.7. A model FERPA notification for LEAs is enclosed and is also available on FPCO's Web site – <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html>. The annual notification must include:

- The procedure to inspect and review education records;
- The procedure to request amendment of education records;
- A specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest if the educational agency or institution discloses or intends to disclose personally identifiable information to school officials without consent; and
- The right of parents to file a complaint with the FPCO in the Department.

In addition, LEAs may want to include with their annual notification of rights under FERPA their directory information public notices, as discussed below.

Directory Information

If the LEA or educational institution under the LEA chooses to designate directory information, which can be disclosed from education records without consent, it is required by 34 CFR § 99.37 to notify parents and eligible students concerning its use of directory information. A model "directory information" notice is enclosed and is also available on FPCO's Web site – www.ed.gov/policy/gen/guid/fpco. The notice must notify parents and eligible students of:

- The types of information the LEA (or institution) has designated as directory information (see 34 CFR § 99.3 "Directory information" for definition); and,
- The right to opt out of disclosure of directory information.

An LEA or educational institution is not required to have directory information, but most institutions find that it is very useful. Proper designation of directory information permits a school to use directory information to publish items such as yearbooks, graduation announcements, newsletters, or honor roll announcements without having to get written consent from each student's parent each time information is disclosed for these types of activities.

In 2011, the Department amended the FERPA regulations, making three changes to the directory information provisions.

1. The definition of “directory information” in § 99.3 was modified to clarify that an educational agency or institution may designate as directory information and nonconsensually disclose a student ID number or other unique personal identifier that is displayed on a student ID card or badge if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.
2. Section 99.37(c) was amended to clarify that parents and eligible students may not use their right to opt out of directory information disclosures to prevent an educational agency or institution from requiring students to wear or otherwise disclose student ID cards or badges that display information that may be designated as directory information under § 99.3 and that has been properly designated by the educational agency or institution as directory information under §99.37(a)(1).
3. A new § 99.37(d) was added to clarify that an educational agency or institution may specify in the public notice concerning directory information that it provides to parents and eligible students in attendance (§ 99.37(a)) that disclosure of directory information will be limited to specific parties, for specific purposes, or both. An LEA or school that adopts a limited directory information policy must limit its directory information disclosures only to those parties and purposes that were specified in the directory information notice.

Redisclosure and Recordation

LEAs must also comply with FERPA’s recordation and redisclosure provisions, set forth in 34 CFR §§ 99.32 and 99.33, except for disclosures that are specifically exempted. In 2008, amendments were made to both of these provisions, including: requiring a State or local educational authority or Federal official or agency that rediscloses personally identifiable information from education records to record that disclosure if the educational agency or institution does not do so under § 99.32(b); revising § 99.32(b) to require an educational agency or institution that makes a disclosure in a health or safety emergency to record information concerning the circumstances of the emergency; and amending § 99.33(b) to permit State and local educational authorities and Federal officials that receive education records under §§ 99.31(a)(3) and 99.35 to disclose education records on behalf of educational agencies and institutions in accordance with the longstanding requirements in § 99.33(b), which applied to other parties that receive education records.

Safeguarding Recommendations

The December 9, 2008, final regulations amending FERPA requirements contained helpful recommendations for handling and protecting education records. See pages 74843-74844 of the *Federal Register* notice at the following link on our Web site:
<http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>.

ESEA Provisions Affecting FERPA

- Section 4155(b) of the Elementary and Secondary Education Act (ESEA), as amended, 20 U.S.C. § 7165(b), requires that each State that receives funds under the ESEA have “a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.” Section 99.31(a)(2) of the FERPA regulations provides specifically that an educational agency or institution may disclose education records, without parental consent, to a school in which the student seeks or intends to enroll, subject to conditions set forth in 34 CFR § 99.34. FERPA also allows disclosure of appropriate information regarding specified disciplinary actions to teachers and school officials, including those in other schools, who have legitimate educational interests in the behavior of the student. See 34 CFR § 99.36(b). LEAs should include a notice in their annual notification of rights under FERPA that they forward education records to other schools that have requested the records and in which the student seeks or intends to enroll (34 CFR §§ 99.7, 99.31(a)(2), and 99.34(a)(ii)). (See enclosed model notification of rights.)
- Section 9528 of the ESEA, as amended, 20 U.S.C. § 7908, as well as 10 U.S.C. § 503(c), require LEAs to:
 - give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers; and
 - provide students’ names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information. (Military Recruiter Guidance is on FPCO Web site: <http://www.ed.gov/policy/gen/guid/fpco/hottopic/ht10-09-02.html>.)

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1. political affiliations or beliefs of the student or the student’s parent;
2. mental or psychological problems of the student or the student’s family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student’s parent; or

8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

LEAs must provide parents and eligible students effective notice of their rights under PPRA. The notice must explain that an LEA is required to obtain prior written consent from parents before students are required to submit to a survey that concerns one or more of the eight protected areas listed above, if the survey is funded in whole or in part by Department funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and provide the parent with an opportunity to opt his or her child out of participating. LEAs must also notify parents that they have the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum. (A model PPRA general notification for use by LEAs is enclosed and may also be obtained on FPCO's website at: <http://www2.ed.gov/policy/gen/guid/fpc0/hottopics/index.html>.)

PPRA requires LEAs to work with parents to develop and adopt policies on the following items, unless the LEA or SEA had established comparable policies on or before January 8, 2002:

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students and the procedure for granting a request by a parent for such access;
- Arrangements to protect student privacy that are provided by the LEA in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information);
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access;
- Administration of physical exams or screenings of students;
- The collection, disclosure, or use of personal information (including items such as a student's or parent's first and last name, address, telephone number or social security number) collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes, including the LEA's arrangements for protecting student privacy in the event of collection, disclosure, or use of information for these purposes; and
- The right of parents to inspect, upon request, any instrument used in the collection of personal information for marketing or sales purposes before the instrument is administered or distributed to a student and the LEA's procedure for granting a parent's request for such access.

LEAs must notify parents of their rights under PPRA and of these policies at least annually at the beginning of the school year. LEAs must also notify parents within a reasonable period of time if any substantive change is made to the policies. (This notification requirement may be included in the general notification of rights under PPRA.) An LEA is not required to develop and adopt new policies if the SEA or LEA had in place on January 8, 2002, policies covering the requirements set forth in this law. However, the LEA must still provide annual notice of these policies to parents.

In addition, an LEA must “directly” notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys listed below and provide an opportunity for parents to opt their child out of participation in the specific survey or activity. The notification must be provided at least annually at the beginning of the school year and must provide the specific or approximate dates during the school year when activities described below are scheduled, or expected to be scheduled. If the LEA is unable to identify the specific or approximate dates of the activities or surveys requiring specific notification at the beginning of the school year, it must provide this notification to parents once the activity or survey is scheduled. Parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as be provided with an opportunity to review any pertinent surveys. A model specific notification for use by LEAs is attached and may also be obtained on the Web site noted at the end of this guidance. LEAs must offer an opportunity for parents to opt their child out of participating in the following activities:

- The administration of any survey concerning one or more of the eight protected areas listed above if it is not funded in whole or in part with Department funds. (LEAs must obtain active consent, and may not use an opt-out procedure, if the survey is funded in whole or in part with Department funds);
- Activities involving the collection, disclosure, or use of personal information collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes; and
- Any non-emergency, invasive physical examination or screening that is 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.

PPRA does not preempt applicable provisions of State law that require parental notification. Also, requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:

- 1) College or other postsecondary education recruitment, or military recruitment;
- 2) Book clubs, magazines, and programs providing access to low-cost literary products;

- 3) Curriculum and instructional materials used by elementary schools and secondary schools;
- 4) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students (or to generate other statistically useful data for the purpose of securing such tests and assessments) and the subsequent analysis and public release of the aggregate data from such tests and assessments;
- 5) The sale by students of products or services to raise funds for school-related or education-related activities; and
- 6) Student recognition programs.

DEFINITIONS OF SOME TERMS USED IN PPRA:

“Instructional Material” – instructional content that is provided to a student, regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

“Invasive Physical Examination” – any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

“Personal Information” – individually identifiable information including –

- (1) a student’s or parent’s first and last name;
- (2) a home or other physical address (including a street name and the name of a city or town);
- (3) a telephone number; or
- (4) a social security number.

Our address and telephone number are as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202
(202) 260-3887

Informal inquiries may be sent to FPCO via the following email addresses: FERPA@ED.Gov and PPRA@ED.Gov. The FPCO Web site address is: www.ed.gov/fpc.

Sincerely,
/s/

Dale King
Director
Family Policy Compliance Office

Enclosures

Model Notification of Rights under FERPA for Elementary and Secondary Schools

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the [Name of school ("School")] receives a request for access.

Parents or eligible students should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the [School] to amend a record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the school discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

[Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, § 99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student –

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in § 99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§ 99.31(a)(1))
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of § 99.34. (§ 99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency (SEA) in the parent or eligible student's State. Disclosures under this provision may be made, subject to the requirements of § 99.35, 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. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§ 99.31(a)(3) and 99.35)

- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§ 99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to § 99.38. (§ 99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§ 99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§ 99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§ 99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§ 99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to § 99.36. (§ 99.31(a)(10))
- Information the school has designated as "directory information" under § 99.37. (§ 99.31(a)(11))

Model Notification of Rights Under the Protection of Pupil Rights Amendment (PPRA)

PPRA affords parents certain rights regarding our conduct of surveys, collection and use of information for marketing purposes, and certain physical exams. These include the right to:

- *Consent* before students are required to submit to a survey that concerns one or more of the following protected areas (“protected information survey”) if the survey is funded in whole or in part by a program of the U.S. Department of Education (ED)–
 1. Political affiliations or beliefs of the student or student’s parent;
 2. Mental or psychological problems of the student or student’s family;
 3. Sex behavior or attitudes;
 4. Illegal, anti-social, self-incriminating, or demeaning behavior;
 5. Critical appraisals of others with whom respondents have close family relationships;
 6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
 7. Religious practices, affiliations, or beliefs of the student or parents; or
 8. Income, other than as required by law to determine program eligibility.
- *Receive notice and an opportunity to opt a student out of* –
 1. Any other protected information survey, regardless of funding;
 2. Any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of a student, except for hearing, vision, or scoliosis screenings, or any physical exam or screening permitted or required under State law; and
 3. Activities involving collection, disclosure, or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others.
- *Inspect*, upon request and before administration or use –
 1. Protected information surveys of students;
 2. Instruments used to collect personal information from students for any of the above marketing, sales, or other distribution purposes; and
 3. Instructional material used as part of the educational curriculum.

These rights transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

[School District will/has develop[ed] and adopt[ed]] policies, in consultation with parents, regarding these rights, as well as arrangements to protect student privacy in the administration of protected information surveys and the collection, disclosure, or use of personal information for marketing, sales, or other distribution purposes. **[School District]** will directly notify parents of these policies at least annually at the start of each school year and after any substantive changes. **[School District]** will also directly notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted below and will provide an opportunity for the parent to opt his or her child out of participation of the specific activity or survey. **[School District]** will make this notification to parents at the beginning of the school year if the District has identified the specific or approximate dates of the activities or surveys at that time. For surveys and activities scheduled after the school year starts, parents will be provided reasonable notification of the planned activities and surveys listed below and be provided an opportunity to opt their child out of such activities and surveys. Parents will also be provided an opportunity to review any pertinent surveys. Following is a list of the specific activities and surveys covered under this requirement:

- Collection, disclosure, or use of personal information for marketing, sales, or other distribution.
- Administration of any protected information survey not funded in whole or in part by ED.
- Any non-emergency, invasive physical examination or screening as described above.

Parents who believe their rights have been violated may file a complaint with:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

PPRA Model Notice and Consent/Opt-Out for Specific Activities
[LEAs should adopt the following model form as appropriate]

The Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, requires **[School District]** to notify you and obtain consent or allow you to opt your child out of participating in certain school activities. These activities include a student survey, analysis, or evaluation that concerns one or more of the following eight areas (“protected information surveys”):

1. Political affiliations or beliefs of the student or student’s parent;
2. Mental or psychological problems of the student or student’s family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of others with whom respondents have close family relationships;
6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
7. Religious practices, affiliations, or beliefs of the student or parents; or
8. Income, other than as required by law to determine program eligibility.

This requirement also applies to the collection, disclosure or use of student information for marketing purposes (“marketing surveys”), and certain physical exams and screenings.

Following is a schedule of activities requiring parental notice and consent or opt-out for the upcoming school year. This list is not exhaustive and, for surveys and activities scheduled after the school year starts, the **[School District]** will provide parents, within a reasonable period of time prior to the administration of the surveys and activities, notification of the surveys and activities and be provided an opportunity to opt their child out, as well as an opportunity to review the surveys. (Please note that this notice and consent/opt-out transfers from parents to any student who is 18 years old or an emancipated minor under State law.)

Date: On or about October 30, 2012

Grades: Five and Six

Activity: ABC Survey of At-Risk Behaviors.

Summary: This is an anonymous survey that asks students questions about behaviors such as drug and alcohol use, sexual conduct, violence, and other at-risk behaviors. The survey also asks questions of a demographic nature concerning family make-up, the relationship between parents and children, and use of alcohol and drugs at home.

Consent [for ED funded, protected information surveys only]: A parent must sign and return the attached consent form no later than [insert return date] so that your child may participate in this survey.

Opt-out [for any non-ED funded protected information survey]: Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

Date: November 27 - 29, 2012
Grades: One through Six
Activity: Flu Shots
Summary: The County Department of Public Health Services will administer flu shots for influenza types A and B.

Opt-out: Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

Below are two examples dealing with the collection, use and distribution of personal information for student-based commercial services. Administrators should *particularly* note the difference in the type of consent required for each activity depending on what personal information is being collected, used or distributed.

[Survey A: Limited to personal information designated as “directory information”]

Date: 2012-2013 School Year
Grades: Nine through Twelve
Activity: Student-Based Commercial Services
Summary: [School] collects, or allows businesses to collect, use, and disclose personal information on students, including names, addresses, and telephone listings. These businesses provide student-based products and services, such as computer equipment, sports clothing, school jewelry, and entertainment products.

Opt-out: Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

[Note to schools: This information – names, addresses, and telephone listings – may be designated and disclosed as “directory information” under the Family Educational Rights and Privacy Act (FERPA). Instead of using this Model Notice format, schools *may* meet PPRA notice requirements for specific marketing activities that involve only designated “directory information” by allowing parents to opt of “directory information” at the start of each school year, which would include all marketing activities.]

[Survey B: Collects personal information beyond designated directory information]

Date: 2012-2013 School Year
Grades: Nine through Twelve
Activity: Student-Based Commercial Services
Summary: [School] collects, or allows businesses to collect, use, and disclose personal information on students, including names, addresses, telephone listings and social security

numbers. These businesses provide student-based products and services, such as computer equipment, sports clothing, school jewelry, and entertainment products.

Consent: A parent must sign and return the attached consent form no later than **[insert return date]** so that your child may participate in this activity.

[Note to schools: While some of the information – names, addresses, and telephone listings – may be designated and disclosed as “directory information” under the Family Educational Rights and Privacy Act (FERPA), schools that permit marketing activities that involve the collection, use, and disclosure of students’ social security numbers may not use an opt-out procedure and must obtain prior written consent in accordance with § 99.30 of the FERPA regulations.]

If you wish to review any survey instrument or instructional material used in connection with any protected information or marketing survey, please submit a request to **[school official, address]**. **[School official]** will notify you of the time and place where you may review these materials. You have the right to review a survey and/or instructional materials before the survey is administered to a student.

I [parent’s name] give my consent for [child’s name] to take the ABC Survey of At-Risk Behaviors on or about November 8, 2012.

Parent’s signature

Please return this form no later than [insert date] to the following school official: [Provide name and mailing address.]

**Family Educational Rights and Privacy Act (FERPA)
Model Notice for Directory Information**

[Note: Per § 99.37(d), your school may adopt a limited directory information policy. If you do so, the directory information notice to parents and eligible students must specify the parties and/or purposes that may receive directory information.]

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires that [School District], with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child's education records. However, [School District] may disclose appropriately designated "directory information" without written consent, unless you have advised the District to the contrary in accordance with District procedures. The primary purpose of directory information is to allow the [School District] to include this type of information from your child's education records in certain school publications. Examples include:

- A playbill, showing your student's role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as for wrestling, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent's prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the *Elementary and Secondary Education Act of 1965* (ESEA) to provide military recruiters, upon request, with the following information – names, addresses and telephone listings – unless parents have advised the LEA that they do not want their student's information disclosed without their prior written consent. **[Note: These laws are Section 9528 of the ESEA (20 U.S.C. § 7908) and 10 U.S.C. § 503(c).]**

If you do not want [School District] to disclose directory information from your child's education records without your prior written consent, you must notify the District in writing by [insert date]. [School District] has designated the following information as directory information: **[Note: an LEA may, but does not have to, include all the information listed below.]**

**-Student's name
-Address
-Telephone listing
-Electronic mail address
-Photograph
-Date and place of birth
-Major field of study
-Dates of attendance
-Grade level**

**-Participation in officially
recognized activities and sports
-Weight and height of members of
athletic teams
-Degrees, honors, and awards
received
-The most recent educational agency or
institution attended
-Student ID number, user ID, or other unique
personal identifier used to communicate in electronic
systems that cannot be used to access education**

records without a PIN, password, etc. (A student's SSN, in whole or in part, cannot be used for this purpose.)