

Table of Contents

About the Authors	i
Preface	iii
CHAPTER ONE	
Introduction	1
CHAPTER TWO	
FERPA At-A-Glance	5
CHAPTER THREE	
Definition of Terms	11
CHAPTER FOUR	
FERPA Basics for Faculty and Instructors.....	23
CHAPTER FIVE	
FERPA Basics for Administrative Staff.....	29
CHAPTER SIX	
General Data Protection Regulation (GDPR) and State Privacy Laws.....	35
CHAPTER SEVEN	
Remote Work and Virtual Learning during Emergencies	43
APPENDICES	
APPENDIX A	
Family Educational Rights and Privacy Act Regulations	55
APPENDIX B	
FERPA Section-by-Section Analysis.....	101
APPENDIX C	
Major Points Summarizing the 2012 Regulatory Changes.....	105
APPENDIX D	
Model Notification of Rights under FERPA for Postsecondary Institutions	107

APPENDIX E	
FPCO/SPPO Guidance Brochure for Colleges	113
APPENDIX F	
GDPR FAQ	119
APPENDIX G	
FERPA Guidance for Contracts and Written Agreements	123
APPENDIX H	
True/False Quiz & Answer Key	137
References.....	141

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LeRoy Rooker, now a Senior Fellow at AACRAO, is the nation's leading authority on FERPA. As the director of the Department of Education's Family Policy Compliance Office (FPCO) for twenty-one years, he administered laws and policies designed to help protect the rights of America's fifty-eight million students. Mr. Rooker is well known in the postsecondary world because of his extensive outreach to the higher education community. His many appearances at state, regional, and national meetings have been invaluable to the profession and we are honored that he continues to share his expertise through AACRAO FERPA Consulting where he conducts FERPA compliance training.

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Preface

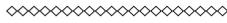
The *FERPA Quick Guide* was written for higher education administrators entrusted with the task of storing, handling and releasing student records. It provides a basic overview of the *Family Educational Rights and Privacy Act of 1974*, as amended, and the full text of its regulations. In addition, this guide highlights how the Act applies to various school officials, including brief outlines of key terms and issues as well as commonly asked questions. It also offers guidance on recent international and state privacy laws, potential issues related to remote work, as well as a comparison of FERPA and HIPPA regulations.

The *Quick Guide* is a useful introduction to FERPA. To obtain a more detailed analysis and application of the Act, as well as extensive FERPA training materials and case studies, refer to the *AACRAO 2012 FERPA Guide*. To order this and other professional development resources published by AACRAO, visit <aacrao.org/bookstore>.

AACRAO FERPA Training Options

For those institutions interested in a more hands-on approach, AACRAO FERPA Consultants are available to help your institution develop policies and procedures for protecting records. AACRAO FERPA Consulting can bring *2020 FERPA Quick Guide* author LeRoy Rooker to your campus to provide your faculty and staff FERPA training tailored to your institution. AACRAO FERPA Consulting is also available to provide an independent third party review of a vendor's product to evaluate its compliance with FERPA. For more information about these services, please visit <aacrao.org/resources/ferpa>.

CHAPTER ONE



Introduction

Under the *Family Educational Rights and Privacy Act* (hereafter referred to as *The Act* or FERPA), students are given three primary rights. They have the right to:

- ◆ Inspect and review their education records.
- ◆ Have some control over the disclosure of information from their education records.
- ◆ Seek to amend incorrect education records.

Essence of The Act

FERPA deals specifically with the education records of students, affording them certain rights with respect to those records. For purposes of definition, education records are those records which are 1) directly related to a student and 2) maintained by an institution or a party acting for the institution.

FERPA gives students who reach the age of 18, or who attend a postsecondary institution, the right to inspect and review their own education records. Furthermore, students have other rights including the right to request amendment of records and to have some control over the disclosure of personally identifiable information from these records.

FERPA applies to all educational agencies and institutions that receive funding under most programs administered by the Secretary of Education (34 C.F.R. 99.1). Almost all postsecondary institutions, both public and private, generally receive such funding and must, therefore, comply with FERPA.

Institutions must annually notify students currently in attendance of their rights by any means that are likely to be read by students. The most common examples are found in the student handbook, catalog, student newspaper or via email. This notice also applies to any students pursuing education via distance education or any other non-traditional educational delivery processes. (See Appendix D, on page 107, for a sample of a model annual notification statement provided by the Student Privacy Policy Office.)

The regulations do not specify the means to be used for annually notifying students regarding their FERPA rights. Schools are not required by FERPA to notify former students of their FERPA rights. Although it is highly recommended that each institution publish its annual notification on its website, this method is only acceptable for fulfilling the annual notification requirement if all students are required to have personal computers or are provided with free and convenient access to computers that can access the institution's website.

If every enrolled student is given an institutional email address, schools may send their annual notification via email to their students.

Institutions may not disclose information contained in education records without the student's written consent except under conditions specified in The Act. An institution is not required to disclose information from a student's education records to the parents of dependent students but may exercise its discretion to do so. It is the responsibility of an institution to ensure that information is not improperly disclosed to the parents of students.

To Whose Records Does The Act Apply?

FERPA applies to the education records of persons who are, or have been, in attendance in postsecondary institutions, including students in cooperative and correspondence study programs and in any non-traditional educational delivery processes, such as distance learning.

FERPA does not apply to records of applicants for admission who are denied acceptance or, if accepted, do not attend an institution. Furthermore, rights are not given by FERPA to students enrolled in one component of an institution who seek to be admitted in another component of a school (*e.g.*, a student, admitted to one college within a university, but denied admission in another college, does not have any FERPA rights in the college which denied him/her admission).

To What Records Does The Act Apply?

The Act applies to all education records maintained by a postsecondary institution, or by a party acting for the institution, which are directly related to a student. Records containing a student's name, social security number or other personally identifiable information, in whatever medium, are covered by FERPA unless identified in one of The Act's excluded categories (*see* "Education Records" [on page 15] for excluded categories).

To Which Institutions Does The Act Apply?

The Act applies to all institutions that receive funds administered by the Secretary of Education. This funding can either be in direct grants to the institution or to students attending the institution (financial aid). The Act applies to the entire institution even if only one component, *e.g.*, department or college, of the institution receives such funding.

Enforcement and Penalties

Responsibility for administering The Act is currently assigned to the Student Privacy Policy Office within the Department of Education. This office reviews and investigates complaints, whether brought by the affected eligible student or otherwise brought to the attention of that office. When a violation has been found, the SPPO attempts to bring about compliance through voluntary means, including any changes to the policies or practices of the institution. The penalty for noncompliance with FERPA can be withholding payments of Department of Education funds from the institution, issuing a cease and desist order, or terminating eligibility to receive funds; such actions generally will be taken only if compliance cannot be secured by voluntary means. *See* "Enforcement Procedures" (on page 92) for more information.

Conflict with State Law

FERPA may be more permissive than the privacy laws of some states. If a conflict exists between FERPA and a state or local law, and if an institution determines that it cannot comply with the requirements of The Act, it should advise the Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5920; phone: (202) 260-

3887; email: <ferpa@ed.gov>, within 45 days of that determination, giving the text and legal citation of the conflicting law. These guidelines, therefore, should not be interpreted to reduce the stringency of such state laws. They counsel common sense, good judgment, perspective, and integrity for compliance by postsecondary institutions in the implementation of The Act.

Several challenges to FERPA were made during the 1990s based on various states' open records/meetings laws. In general, sunshine/open records laws do not supersede FERPA; thus, schools must continue to comply with FERPA. Any perceived conflict between a state open records law and FERPA should be brought to the attention of the Student Privacy Policy Office.

The “Musts” and “Mays” in FERPA

Throughout The Act, the words “may” and “must” are used. These words are usually used in connection with sections of The Act that either permit or require an institution to perform an action to comply with FERPA. In the former case, the institution has control over a decision; in other words, it *may* do something. In the latter case, the institution has no choice; in other words, it *must* do something.

There are many “mays” and a few “musts” in FERPA. The reader should be aware of these words and not consider an institution legally obliged to release education record information when FERPA actually states that the institution *may* release education record information. For example, FERPA states that each institution may identify certain items as directory information; however, this is an institutional decision. By deciding not to identify any items as directory information, the institution would be making a decision that could have a major administrative impact on all offices. For example, consider the challenges of producing a commencement program if the names of all the graduates and their degrees were not identified as directory information.

Note that the “may” under FERPA could become a “must” for public institutions in a state where the Open Records Law requires release of information that FERPA permits to be released, or under other legislation that might require all institutions in that state to release information releasable under FERPA.