



Family Educational Rights and Privacy Act

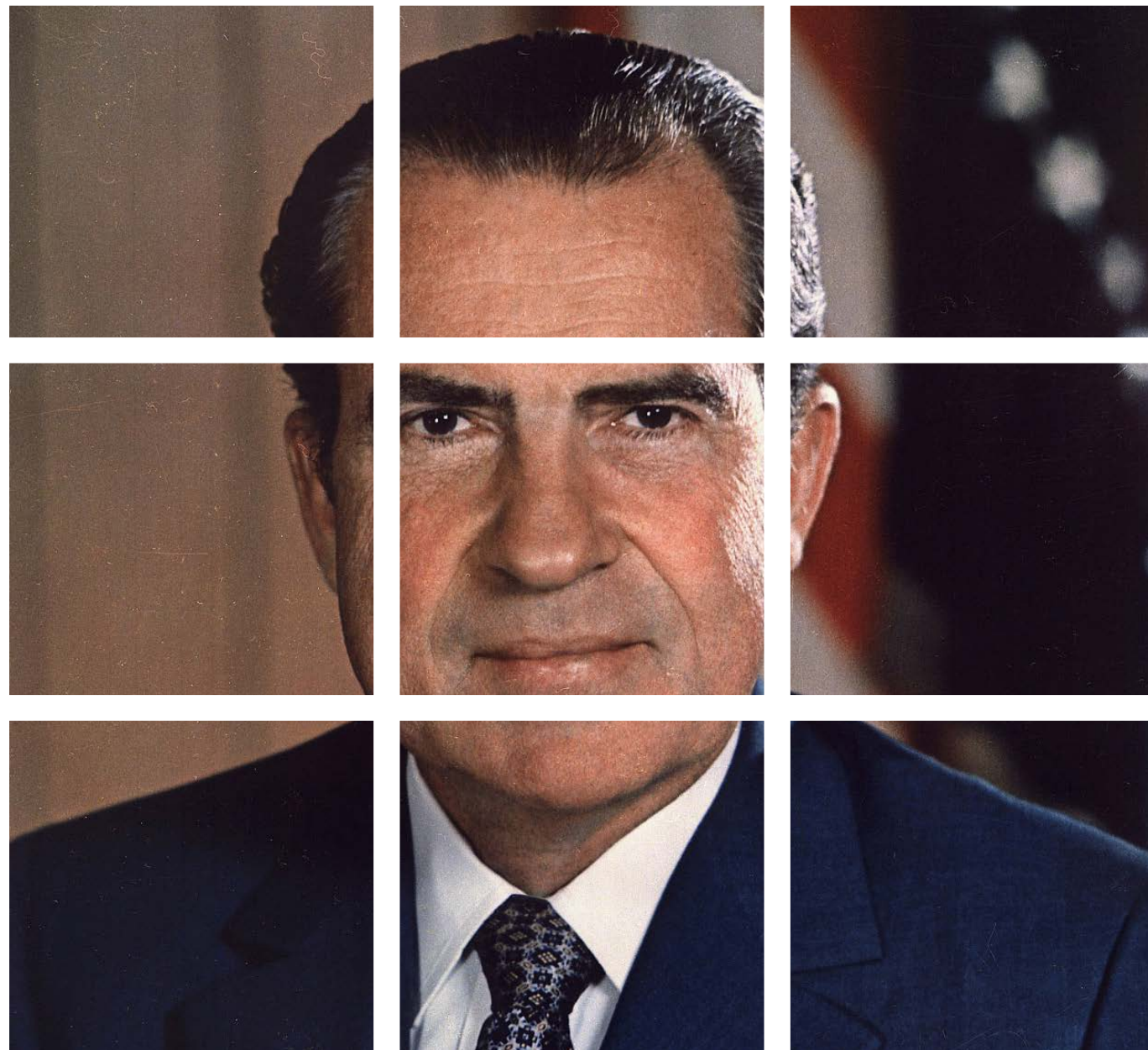
What School Board Members Need to Know About the Federal Law Governing Student Records



What led to the adoption of FERPA?



FERPA can be traced directly to Watergate



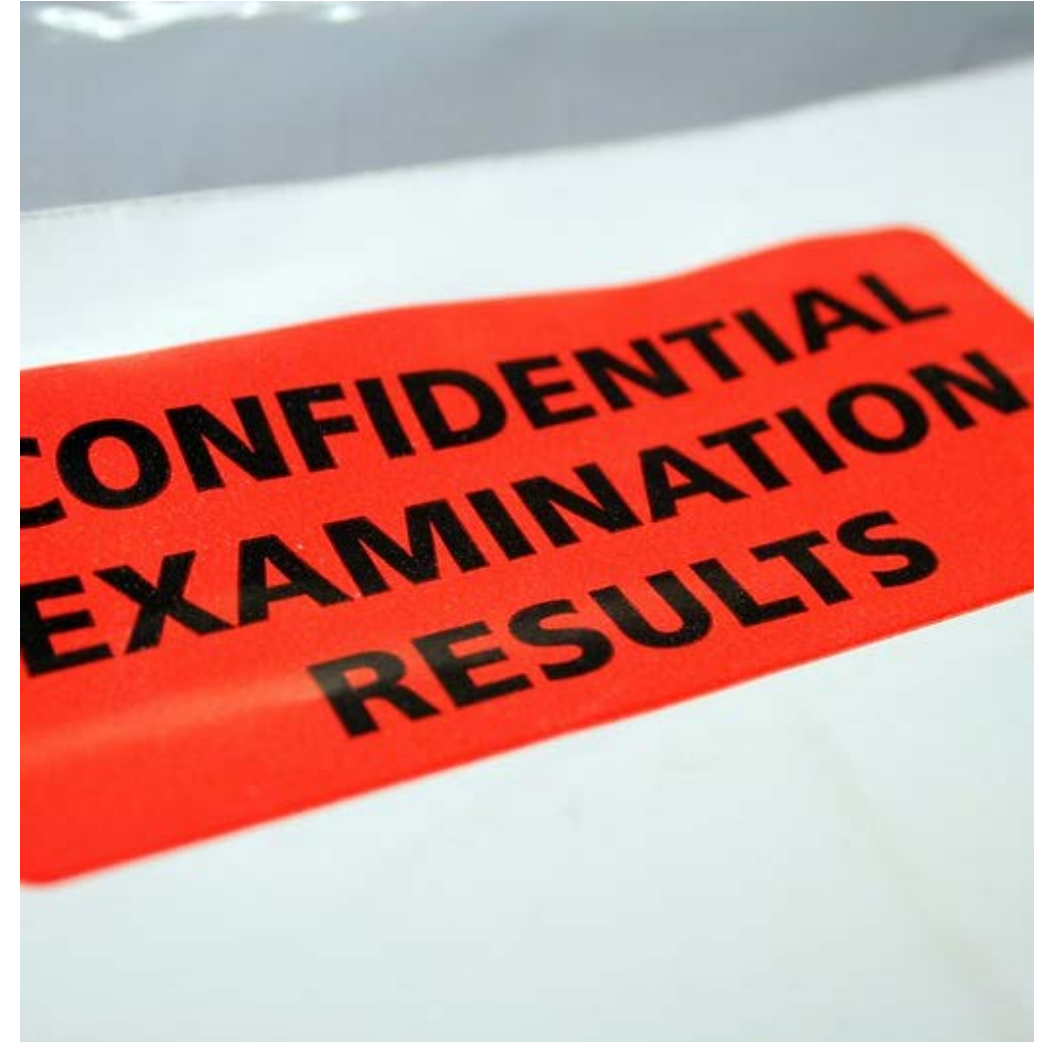
Renewed Interest in Privacy Rights

Nixon's focus on individual privacy

- Nixon pressed for legislation protecting individual privacy.
- For example, the Fair Credit Reporting Act passed in 1970.
- Appointed Domestic Council Committee on the Right to Privacy to address the collection, storage and use of public data.

The Buckley Amendment (i.e., FERPA)

- After Watergate, the idea of “secret” and inaccurate files that could be disclosed and harm students motivated many senators to act.
- Amendment to General Education Provisions Act. Passed in 1974-- a mere 5 days after it was offered -- and adopted by voice vote without a roll call after less than one hour of debate.
- Signed into law 12 days after Nixon's resignation.



Statement of Senator James L. Buckley

“Mr. President, as more stories come out in the media about the abuses of personal data by schools and Government agencies, the public and Congress have come increasingly aware of the problems such abuses pose. In addition, the revelations coming out of Watergate investigations have underscored the dangers of Government data files, and have generated increased public demand for the control and elimination of such activities and abuses. It is appropriate, therefore, that we take this opportunity to protect the rights of students and their parents and to prevent the abuse of personal files and data in the area of federally assisted educational activities. “

“Many absurd and sometimes tragic examples of similar abuses exist. Let me recount one of the cases described in the recent article, “How Secret School Records Can Hurt Your Child,” in Parade magazine: The parents of a junior high student are told their daughter won’t be able to attend graduation ceremonies because she’s a “bad citizen.” What has she done that’s bad, the parents ask? Well, the principal says, the school had a whole file on her “poor citizenship,” but the parents can’t know what’s in that file.” 120 Congr. Rec. 14580 (May 14, 1974).



Random Fun Fact:

Buckley voted against the Buckley amendment:

“I must say, confess that . . . as it was accepted, I voted against the bill as amended because I do not believe . . . the US government has the Constitutional authority to concern itself with education, which is a state priority.”

Source: <https://whydontweknow.com/2020/11/episode-10-education-records-2/>

Picture:
http://www.senate.gov/artandhistory/history/common/generic/Photo_Collection_of_the_Senate_Historical_Office.htm



The School Board Governance Improvement Act required every board to adopt a Board Code of Conduct.

The model Code of Conduct developed by ALSDE is the minimum standard for local boards.

It requires each of you to “safeguard[] the confidentiality of nonpublic information.

The Alabama Educator Code of Ethics states that:

An educator should comply with state and federal laws and local school board policies relating to confidentiality of student and personnel records, standardized test material, and other information covered by confidentiality agreements.





FERPA BASICS

Access and Confidentiality



Who has rights under FERPA?



Parents

Eligible Students
(Students over 18 or attending a postsecondary institution)



Definition of Parent Includes

- Natural parent
- Guardian
- Individual Acting as Parent in the Absence of Parent or Guardian

Includes noncustodial parent
(unless court order says otherwise)

Can include foster parent or other legally
appointed guardian

Can include grandparents, stepparents,
or others caring for child if natural parent
is not present in the home



General Rule

A school system must allow parents and eligible students an opportunity to inspect and review educational records within 45 days.



Definition of Educational Records

- Directly Related to a Student
- Maintained by the School System



Includes:

- Records
- Files
- Other materials that contain personally identifiable information concerning the student

Examples of Records

Date and Place of Birth

Special Education
Records

Grades, Test Scores,
and Courses Taken

Attendance, Schools
Attended, Awards
Conferred, Degrees
Earned

Parent/guardian
addresses and phone
numbers

Medical and Health
Records

[HIPAA does not typically
apply to schools because
they are not HIPAA
covered entities]

Disciplinary Records

Social Security Number



General Rule

School systems may not release education records without the written consent of parents or eligible students.





Wait!
What?



**My Board shares student
information that meets
the definition of
“educational record” all
the time!**



FERPA CONTAINS SEVERAL EXCEPTIONS TO THE GENERAL RULE AGAINST DISCLOSURE



COMMONLY USED EXCEPTIONS

- DIRECTORY INFORMATION
- SUBPOENAS AND COURT ORDERS



- HEALTH AND SAFETY EMERGENCY
- SCHOOL OFFICIALS

**My board
announces
noteworthy
student
achievements at
our meetings.**

**We even send
our press
releases
afterwards.**

**Is that OK or am I
smiling, clapping, and
breaking the law at the
same time?***

**It better be OK because our attorney sits
there and lets us do it!*



Directory information

Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.

Directory information



the student's name;



address;



telephone listing;



electronic mail address;



photograph;



date and place of birth;



major field of study;

Directory information



grade level;



enrollment status (e.g., undergraduate or graduate, full-time or part-time);



dates of attendance;



participation in officially recognized activities and sports;



weight and height of members of athletic teams;



degrees, honors, and awards received;



and the most recent educational agency or institution attended.

Uses of Directory Information



YEARBOOK



FOOTBALL PROGRAM



NEWSLETTER



PRESS RELEASE



A PLAYBILL SHOWING STUDENT'S ROLE IN A DRAMA PRODUCTION



HONOR ROLL




GRADUATION PROGRAM


Directory information

The school system must annually notify parents and eligible students of types of personally identifiable student information the district has designated to be directory information and provide an opportunity for parent to opt-out of disclosure.

The notice has to provide the period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.



The workers in the front office at my kid's school told me they get subpoenas for student records on a regular basis and have to stop what they are doing to make copies to send to attorneys.



Responding to those must be OK because a subpoena is a court order, right?

Subpoenas

FERPA allows disclosure without consent to comply with a judicial order or lawfully issued subpoena.

You must make a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance, so that the parent or eligible student may seek protective action.

Exceptions exist—you will not provide notice if the court orders that the existence of the subpoena not be disclosed

My top priority is school safety. I've read news reports about school shootings in the past where that school staff did not share information about a student that may have prevented the tragedy because they felt stymied by confidentiality laws.



If sharing information about a student can prevent a tragedy on campus, then I want school staff to share it no matter what FERPA says.




Health and Safety Exception

FERPA's "health and safety" exception was updated after the Virginia Tech shooting and is designed to give educators the ability to share information to protect the health and safety of the student in question or others.



Health and Safety Exception

An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.



Health and Safety Exception



How do you determine what constitutes a health and safety emergency?

Take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.

If you determine that there is an articulable and significant threat to the health or safety of a student or other individuals, you may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Health and Safety Exception



If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.



In other words, if you make this determination in **good faith** and are **reasonable**, it will not be second-guessed!

Health and Safety Exception



This exception to FERPA's general consent requirement is **limited to the period of the emergency** and generally **does not allow for a blanket release of PII** from a student's education records.


Rather, these disclosures must be related to an **actual, impending, or imminent emergency**, such as a natural disaster, a terrorist attack, a campus shooting, or the outbreak of an epidemic disease.




Health and Safety Exception

The school system must record the following information when disclosing personally identifiable information from education records under the health or safety emergency

- The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
- The parties to whom the agency or institution disclosed the information.



We recently signed a contract with a technology company to help manage the school system's on-line security and to help maintain our databases.



I'm pretty sure the company's employees have the ability to access educational records.

Is that a violation of FERPA?



School-official exception

You can disclose records school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

Stated another way: does the person need to see the records to do their job?





School-official exception

The Dep't of Ed generally interprets the term "school official" as: a teacher; administrator; board member, support or clerical staff; attorney, nurse and health staff; counselor; human resources staff; information systems specialist; school security personnel; and a contractor, consultant, volunteer or other party to whom the school has outsourced institutional services or functions

School-official exception



A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party–



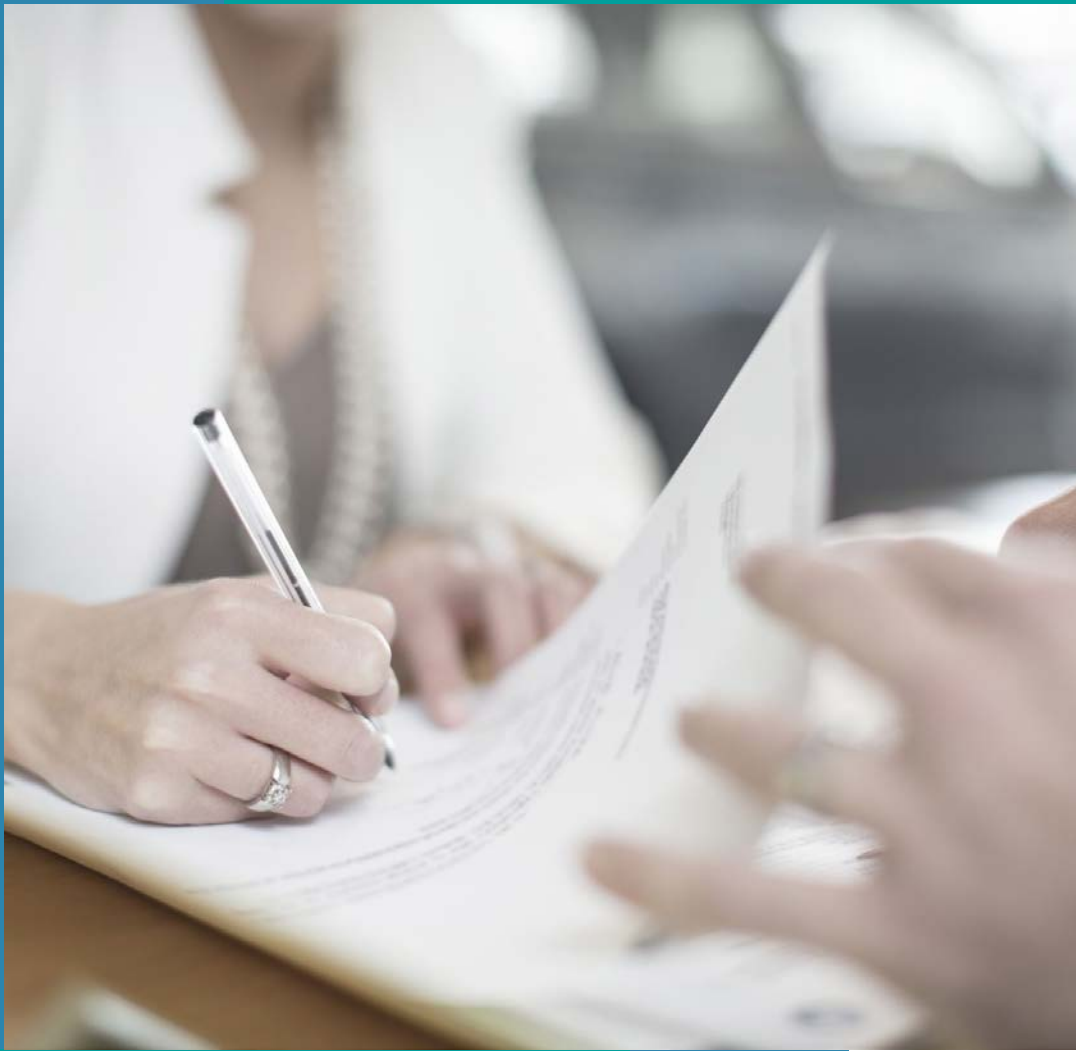
(1) Performs an institutional service or function for which the agency or institution would otherwise use employees;



(2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and



(3) Is subject to the requirements governing the use and redisclosure of personally identifiable information from education records.



If you share student educational records with a contractor, make sure you have a contractual provisions that protect the records.

Some basic considerations:

- The information will only be accessed and used for purposes of performing the contract.
- The information will not be redisclosed to another third party (or only with the school system's permission).
- The contractor's responsibilities if there is a breach.
- Handling the records/information in the contractor's possession at the end of the contract (will the information be destroyed or returned to you?).

OTHER FERPA EXCEPTIONS

- STUDIES
- AUDIT OR EVALUATION
- DISAGGREGATED DATA



- SCHOOL WHERE STUDENT SEEKS TO ENROLL
- ACCREDITING ORGANIZATIONS
- LEGAL ACTION BY OR AGAINST STUDENT



Only Required Disclosure is to the Parent or Eligible Student

All other disclosures are permitted, but not required by FERPA



**FERPA is great
and all, but I
just want to
know one
thing. . . .**



**Can we be sued for
any of this?!**

Enforcement



There is no private right of action for a violation of FERPA

The Student Privacy Policy Office receives and investigates complaints regarding violations of FERPA

Questions?



The Privacy Technical Assistance Center and the Student Privacy Policy Office have a website with training and materials regarding student privacy.



<https://studentprivacy.ed.gov/>