



PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

FERPA: *What you Need to Know*

Marysville School District

Patricia Buchanan

pkb@pattersonbuchanan.com

Michael Kitson

mtk@pattersonbuchanan.com

Roadmap

- Family Educational Rights and Privacy Act (FERPA)
- Public Records Act (PRA)
- Social Media as it relates to the PRA



Q & A Regarding FERPA



What is FERPA & What Does FERPA do?

- FERPA = Family Educational Rights and Privacy Act
- FERPA:
 - prevents the disclosure of a student's education records to third parties
 - Thereby protecting the privacy of a child's education records
 - gives parents/guardians the right to inspect their child's education records
- Applies to all schools receiving federal funding



What is an **Education Record**?

- Records that are directly related to a student and maintained by an educational agency or a party acting for or on behalf of the agency.
 - Records include, but are not limited to:
 - Grades
 - Transcripts
 - Class lists
 - Student course schedules
 - Health records
 - Student discipline files
- Records can be recorded in any format
 - 34 CFR § 99.2



Can All School Officials Access Education Records Without Consent?

- **NO**- Only school officials with “legitimate educational interests” in the information may access the information.
 - 34 CFR § 99.31(a)(1)
- **“School Official”**- A teacher, school principal, president, chancellor, board member, trustee, registrar, counselor, admissions officer, attorney, accountant, human resources professional, information systems specialist, and support or clerical personnel
 - Can include contractors, consultants, volunteers, or other party to whom district has outsourced services



Who can Request to Inspect/Review under **FERPA**?

- Parents/guardians of students 18 or under
 - In the case of a divorced couple, both parents generally retain rights
- Eligible students (meaning rights transfer from parent/guardian to student)
 - Student who reaches age of 18; or
 - Students who attend a school beyond a high school level



What if...

- Student under 18 is enrolled at both a high school and a local college (i.e. running start program)?
 - Parents/guardians retain rights @ the high school; parents/guardians may inspect/review records sent by the college to the high school.
 - College may disclose personally identifiable information from the student's education records to the student's parents/guardians without consent IF student is a dependent for tax purposes.



How long do we have to keep student records?

- Washington State Records Retention Schedule for School Districts applies
- **“Official Student Record”** (high school and middle school/junior high transcripts, elementary enrollment hx. and grade progression, and records regarding successful request for changes to an official record) must be retained for **100 years** after graduation or withdrawal
- **Cumulative File** must be retained for **3 years** after graduation or withdrawal
- **Student Discipline Files** must be retained for **3 years** after graduation or withdrawal



What Must Schools do Under FERPA?

- Notify parents and eligible students ANNUALLY of their rights under FERPA
 - Thus, schools must notify parents and eligible students by informing them in one or more of the following ways (school's discretion)
 - Special letters
 - PTA bulletins
 - Student Handbooks
 - Newspaper Article



What Rights do Parents and Eligible Students Possess?

- Right to inspect and review education records and the procedures to do so.
- Right to seek amendment to records believed to be inaccurate.
- Right to consent to disclosures of education records (other than disclosures lawfully made without consent).
- Right to file a complaint concerning alleged violations.

34 CFR § 99.7



How to Respond to Requests under **FERPA?**

- Timing of response:
 - “Reasonable time” not to exceed 45 days.
- Duty to explain or interpret education records?
 - Yes, if requested.
- 34 CFR § 99.10(b)-(c)



Responding to Challenges of the Content of an Education Record

- Parents/eligible students have right to a hearing within a *reasonable time* if the information in an education record is challenged as inaccurate, misleading, or in violation of the privacy rights of the student
 - School must provide notice of date, time, & place of hearing in advance (reasonable time)
 - Parent/eligible student can have an attorney present at the hearing



What **CAN** a School Disclose **Without Consent**?

- “Directory Information”
 - Student’s name, address, phone number, date & place of birth, honors & awards (not GPA), dates of attendance
 - 34 CFR § 99.3
- Limits
 - Schools must inform parents and students of directory information to allow parents/students to request non-disclosure of such information.



Disclosure Without Consent (cont.)

- **FERPA** allows schools to disclose the following records to the following parties *without* parental consent:
 - School officials with a legitimate educational interest
 - Schools to which a student is transferring
 - Specified officials for audit/evaluation purposes
 - Appropriate parties for financial aid purposes
 - Organizations conducting studies for/on behalf of the school
 - Accrediting organizations
 - Complying with a judicial order or lawfully issued subpoena
 - Appropriate officials in cases of health/safety *emergencies*
 - State/local authorities, within a juvenile justice system, pursuant to WA State law.



How to Obtain Consent to Disclose?

- Requirements
 - Signed and dated
 - Oral consent will NOT meet **FERPA's** requirements
 - Specificity as to the records to be disclosed
 - Purpose of disclosure
 - Identify party or entity to whom the disclosure may be made
- 34 CFR § 99.30



Can Schools Disclose Information Telephonically?

- **FERPA** does not prohibit telephonic disclosure
 - However, schools must employ reasonable efforts to identify and authenticate the identity of parents, students, school officials, or other parties to whom the information will go
- 34 CFR § 99.31(c).



What is Exempt From Disclosure?

- Education records which are kept in the sole possession of the maker of the records.
 - “Memory jogger” records
 - School official’s notes regarding phone or face-to-face conversations



What About Law Enforcement Records?

- Records created by a law enforcement unit at an educational agency, created for a law enforcement purpose, and maintained by the law enforcement unit are **NOT** “education records” subject to FERPA’s protections
 - Meaning these records CAN be disclosed without parental consent



What if...

- School receives a request for education records regarding one student, but the record displays information on one or more other students...
- Answer:
 - The requestor may inspect/review or be informed of ONLY the specific information regarding the student in question



What if...(cont.)

- Teacher witnesses a bullying incident and wants to call the victim's parents about what she observed and who she saw bullying the student...can the teacher do this under **FERPA**?
- YES
 - **FERPA** prohibits disclosure of information obtained through **education records**, NOT information obtained through observation or hearsay that is not specifically contained in an educational record.



FERPA Summary

- Ensure the protection of the privacy of a student's education records.
- Make sure that only school officials with **LEGITIMATE EDUCATIONAL PURPOSE** accessing records
- Notify parents/guardians + eligible students **ANNUALLY** of their rights under **FERPA**.
- Respond to requests in a reasonable time (not exceeding 45 days).
- Obtain written consent before disclosing.
- Remain mindful of the exceptions to the general non-disclosure without consent rule.

