



Hot Topics in FERPA

SUNY Online Summit
March 10, 2023

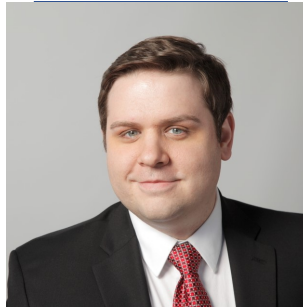
SUNY THE STATE UNIVERSITY OF NEW YORK



Hot Topics in FERPA



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FERPA Refresh



What is FERPA?

- The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of students' **education records**.
- Eligible students have the right, in general, to:
 - Control the disclosure of their "education records" to others
 - Inspect and review their own "education records"
 - Seek amendment of their "education records"
 - File a complaint with the Student Privacy Policy Office of the U.S. Department of Education
- An eligible student is anyone currently or formerly in attendance at the institution regardless of age.



Education Records

- "'Education records' . . . means those **records** that are:
 - (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"
- Education records can appear in any form (printed, handwritten, electronic) and can be found in multiple locations (hard copies, databases, software)



Education Records

- “**Record**” means any information recorded in any way
 - But does not include personal knowledge
- A record is “**directly related**” to a student if it contains “personally identifiable information” about that student
- **Personally identifiable information** is information that would enable a reasonable person in the school community, with no personal knowledge of the circumstances, to identify a student (ex: name, address, personal identifiers)
- “**Maintain**” is not defined



Disclosures

- In general, an institution may not disclose “education records” or information from “education records” to anyone other than the relevant student unless:
 1. The student provides prior written consent; or
 2. One of 16 exceptions applies. The most common are:
 - **Directory information**
 - **School officials** with a **legitimate educational interest**
 - Parents (if certain conditions are met)
 - Threat to health or safety
 - Litigation
 - Audits and evaluation



School Officials Exception

- Disclosure of PII may be made to school officials when they have a "legitimate educational interest"
- A school official has a "legitimate educational interest" if they need the information to fulfill their professional responsibilities for the institution.
 - This includes employees of the school and vendors and contractors. Both academic duties and business duties are encompassed
 - Explained in an institution's Annual FERPA Notice



School Officials Exception

- Vendors, contractors and other outside entities may be considered school officials with a **legitimate educational interest**. Specifically, the outside party must:
 - Perform an institutional service or function for which the LEA or school would otherwise use employees
 - Be under the control of the institution with regard to use and maintenance of education records
 - Be subject to FERPA requirements governing use and redisclosure of PII from education records
 - Use the information only for the purpose for which it was disclosed



National Perspective



A 1980's Infrastructure

- The Family Educational Rights and Privacy Act (FERPA) was passed in 1974
- Much of the regulations implementing FERPA date back to the 1980's
 - Recent amendments in 2000, 2004, 2008, and 2011
- The law not kept up with the times



Current Guidance

- SPPO has been trying to fill in gaps with guidance and interpretations
 - 2014 PTAC Guidance
 - 2020 Guidance Regarding COVID-19
- Many institutions are working through how to apply new technologies and education strategies to current FERPA landscape
- A lot of “it depends” or “grey areas”



New Regulations on the Horizon?

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View Rule

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ED/OPEPD

RIN: 1875-AA15

Publication ID: Fall 2022

Title: Family Educational Rights and Privacy Act

Abstract:

The Department plans to propose to amend the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR part 99, to update, clarify, and improve the current regulations by addressing outstanding policy issues, such as clarifying the definition of "education records" and clarifying provisions regarding disclosures to comply with a judicial order or subpoena. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

Agency: Department of Education(ED)

Priority: Other Significant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Proposed Rule Stage

Major: No

Unfunded Mandates: No

CFR Citation: [34 CFR 99](#)

Legal Authority: [20 U.S.C. 1232g](#) [20 U.S.C. 1221e-3](#) [20 U.S.C. 3474](#)

Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	04/00/2023	





Data Privacy and Security

- Recent emphasis from U.S. Department of Education on data privacy and security issues
- Understanding vendor contracts is a significant part of compliance
 - How does the contract address FERPA (if at all)?
 - Is student participation on listservs or blog posts captured and retained?
- Gramm-Leach-Bliley Act (GLBA)
 - Privacy Rules: Institutions comply with GLBA privacy rules by complying with FERPA.
 - Security Rules: Institutions must comply with the FTC's GLBA Safeguards Rule



A Few Common Issues

- Remember, FERPA only applies to education records. In the digital learning environment, there are many instances where FERPA just may not apply
- A student may not use his or her right to opt out of directory information disclosures to prevent school officials from identifying the student by name or disclosing the student's electronic identifier or institutional e-mail address in class. 34 CFR 99.37(c)(1)
- For one-off situations, policies and consent can be your friend

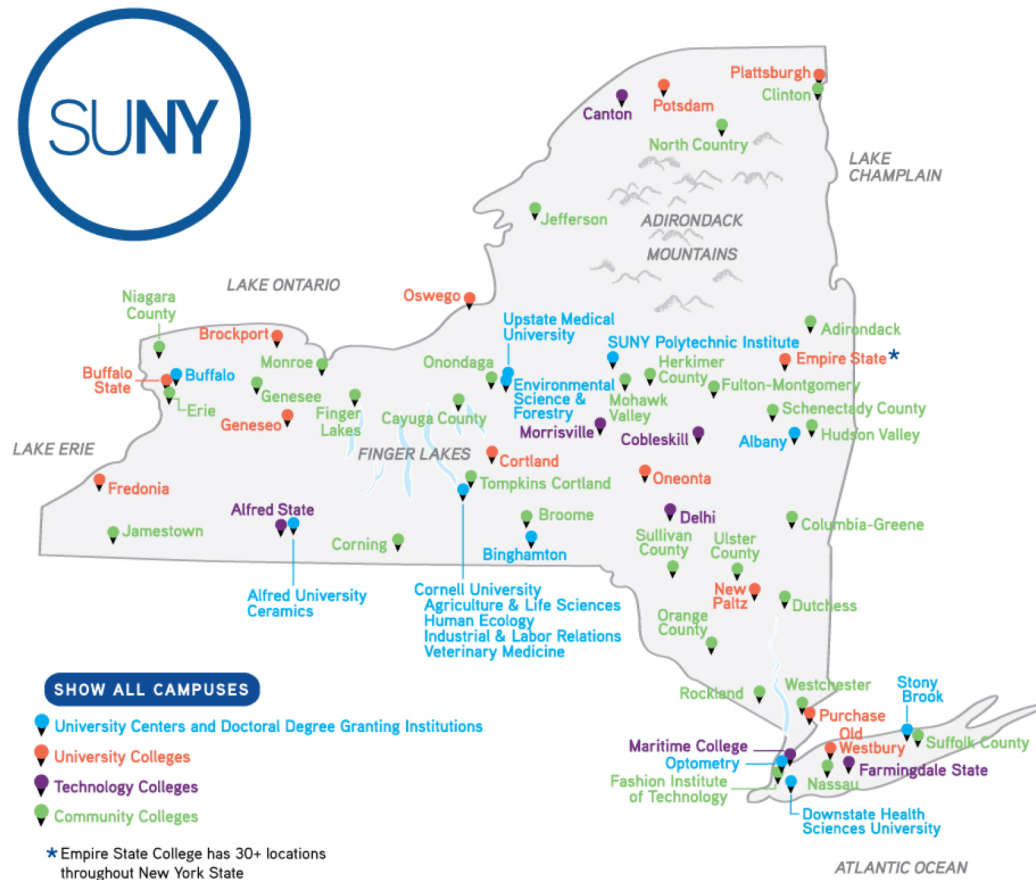


SUNY Perspective

The SUNY System

- For those that aren't aware, SUNY is a system of 64 campuses that all bear the SUNY name but are not part of the same legal entity.

- 29 State-Operated Campuses
- 30 Community Colleges
- 5 Statutory Colleges



SUNY System Administration

- Based in Albany, NY and is charged with supporting the SUNY System as a whole as well as the SUNY Board of Trustees and other components
- Supports IT services, institutional research, System level record keeping, many procurements, and Systemwide Initiatives





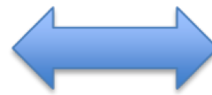
Systemwide Compliance with FERPA

- Creates policies and procedures at the System level to support and reinforce student privacy and data security
 - E.g., All State University of New York campuses shall inform students annually of their rights under the Family Educational Rights and Privacy Act of 1974 (FERPA) This notice may be contained in campus handbooks, catalogs of general circulation which are distributed on an annual basis, or by whatever means the campus deems appropriate.
 - Expansion of School Official Exception to specifically include:
 - member of University's Board of Trustees;
 - a person employed by the University's System Administration.



Systemwide Compliance with FERPA

NOTE: While a campus can share information with System Administration and System can share information back with the campus... two SUNY campuses cannot automatically share FERPA protected information with each other.





Systemwide Compliance with FERPA

US Dep't of Education Family Policy Compliance Office recently opined that while SUNY functions in many ways as a system, it is **NOT** one single educational institution for FERPA purposes.

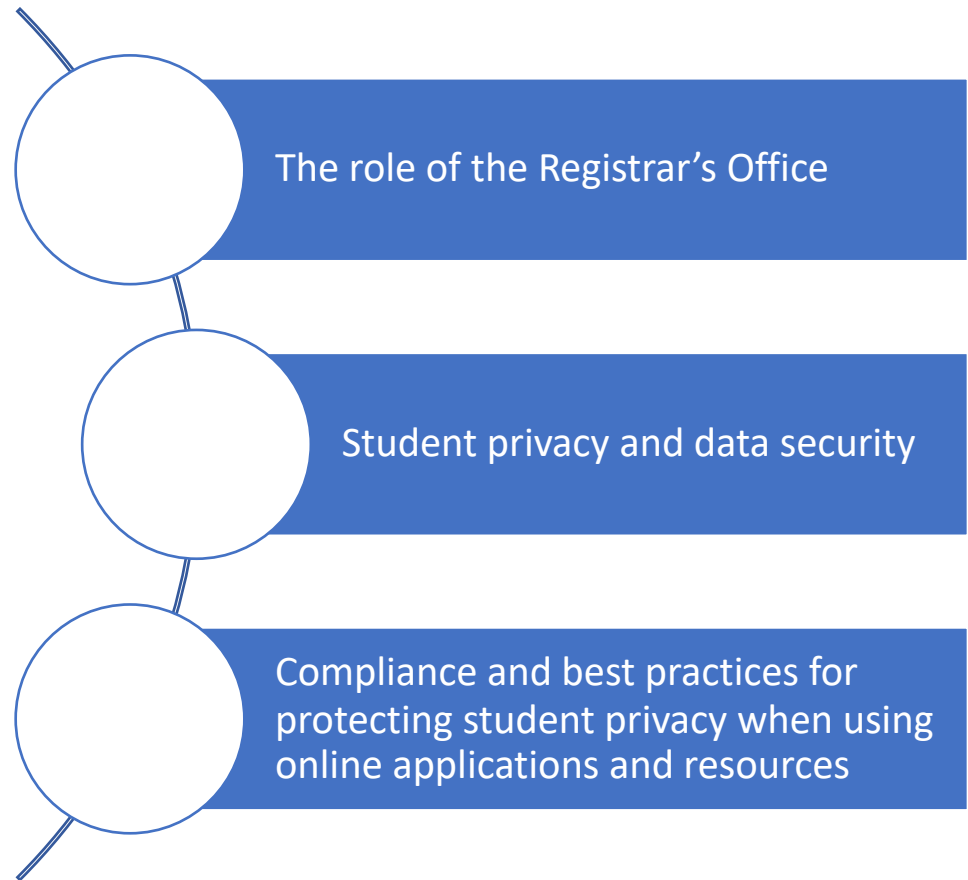
- Relevant factors considered include:
 - students cannot transfer seamlessly between SUNY campuses,
 - faculty are hired and appointed at individual campuses,
 - degrees are conferred by individual campuses,
 - FERPA annual notification of rights notices at most individual SUNY campuses are inconsistent and not issued by a single entity, and
 - students are admitted and graduate from individual campuses.



Campus Perspective



Campus Compliance with FERPA





Security and Your Role



Physical security

Electronic security

Your role



Questions





Helpful Resources

- [Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices](#)
- [Online Training Modules](#)
- [Photos and Videos](#)
- [Email and FERPA](#)
- [FERPA](#)