

# **Family Educational Rights and Privacy Act (FERPA)**

**Regulation Changes - 34 CFR Part 99**

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# **Family Educational Rights & Privacy Act (FERPA)**

## **What is the purpose of FERPA?**

As it relates to community colleges, the main purpose of FERPA is to protect the privacy of “a student who has reached 18 years of age or is attending an institution of postsecondary education.”

# **FERPA --**

## **Changes to Definitions – 34 CFR 99.3**

# FERPA --

## Changes to Definitions – 34 CFR 99.3

▶ **Attendance** – The Code expands the definition to include the following methods of attendance:

- 1. In person
- 2. By paper correspondence
- 3. Videoconference
- 4. Satellite
- 5. Internet
- 6. Other electronic information and telecommunications technologies for students who are not physically present in the classroom

**Rationale for modification:** The updated definition contributes to preventing the FERPA regulations from becoming outdated.

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

- ▶ **Biometric record** – This definition was added to the Code of Federal Regulations and is a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual such as:
  - Fingerprints
  - Retina & iris patterns
  - Voiceprints
  - DNA sequence
  - Facial characteristics
  - Handwriting

**Rationale for modification:** This definition has been added to clarify the term as it's used in the definition of “personally identifiable information.”

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

- ▶ **Directory information** is information in a student's education record that would not generally be considered harmful or would not be considered an invasion of privacy if it's disclosed. This general definition of directory information was expanded to provide more clarity.

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Directory information cont'd

- ▶ The definition for **directory information** was expanded to specify that it includes “a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems” to the extent the number cannot be used to access education records in the absence of some other authentication tool possessed solely by the authorized user.
  - The definition was also expanded to include more specificity about what “**directory information**” does NOT include such as social security numbers or student identification numbers ONLY if student identification numbers cannot be used to gain access to education records except when used with one or more other factors to authenticate the user’s identity.

## FERPA --

### Changes to Definitions - 34 CFR 99.3 cont'd

- ▶ **Disclosure** – The Code expanded this definition; disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, *to any party except the party identified as the party that provided or created the record.*
  - **Rationale for modification:** This change colleges to send records (i.e. transcripts/letters of recommendation) back to the school or institution that sent or created the record without consent of the student in order to verify the authenticity of the record and prevent the FERPA privacy statutes from being a shield for fraud. The change is also designed to allow State or local education agencies who maintain consolidated student records containing personally identifiable information to allow the local school districts who sent the records to gain access to the specific records they sent to the consolidated records system.



## FERPA --

### 34 CFR 99.3 - Changes to Definitions : Disclosure

## EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ A college may not send a student's current college records to a student's high school under the revised definition of disclosure because the high school is not the stated source of those records.<sup>1</sup> However, a college (School B) may send a transcript/letter of recommendation, or other record that appears to have been falsified back to the institution or school official identified as the creator or sender of the record (School A) for confirmation of its status as an authentic record.<sup>2</sup> School A may confirm or deny that the record is accurate and send the correct version back to School B under § 99.31(a)(2), which allows an institution to disclose education records without prior written consent to an institution in which the student seeks or intends to enroll, or is already enrolled.<sup>2</sup>

<sup>1</sup> Notice of Proposed Rulemaking (NPRM), 73 FR 74810 (9 December 2008)

<sup>2</sup> NPRM, 73 FR 15576 (24 March 2008)

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

- ▶ **Education record** - An educational record is any information that is maintained by an institution which directly relates to a student including:

Demographic Information

Admission Records

Grades

Disciplinary Records

Class Schedules

Printed Class Lists

Graded Test Papers

Medical Records

## FERPA --

### Changes to Definitions - 34 CFR 99.3 cont'd

#### Education record cont'd

- ▶ The term **education record** was amended to provide that it does not include:
  - (b)(5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
  - Previously, if a person was no longer a student at an educational institution, their records did not constitute an education record.

## FERPA --

### Changes to Definitions - 34 CFR 99.3 cont'd

#### Education record cont'd

- ▶ **Rationale for modification in (b)(5):** To clarify that records created or received by an educational institution after an individual is no longer a student in attendance at the institution but still relate to the individual's attendance as a student are considered "education records" under FERPA and are not excluded from the definition. The exclusion is really meant for records created or received by an institution after the individual no longer attends that are not related to the individual's attendance as a student, such as records relating to alumni activities. The revision simply states more clearly how the Department of Education has always interpreted the regulation and does not change the scope of the exclusion.

# FERPA –

## Changes to Definitions - 34 CFR 99.3 cont'd

### Education record cont'd

- ▶ The Department of Education amended the term, **education record**, to provide that it does not include:
  - (b)(6) Grades on peer-graded papers before they are collected and recorded by a teacher.
  - **Rationale for modification in (b)(6):** The addition of this paragraph is intended to implement the U.S. Supreme Court decision in *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 534 U.S. 426 (2002), where the Court held that peer grading does not violate FERPA because the grades would not be covered under FERPA until the teacher has collected and recorded the grades. The reason is that grades are not maintained by an educational institution until recorded. The Department of Education interprets FERPA as also allowing the discussion of individual or group grades on group projects in class.

## FERPA --

### 34 CFR 99.3 - Changes to Definitions : Education Record

## EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ “Institutions have told us that there is some confusion about the provision in the definition of education records that excludes certain alumni records from the definition. Some schools have mistakenly interpreted this provision to mean that any record created or received after a student is no longer enrolled is not an education record under FERPA. The new regulations clarify that the exclusion is intended to cover records that concern an individual or events that occur after the individual is no longer a student in attendance, such as alumni activities. The exclusion is not intended to cover records that are created and matters that occur after an individual is no longer in attendance but that are directly related to his or her previous attendance as a student, such as a settlement agreement that concerns matters that arose while the individual was in attendance as a student.”<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15576 (24 March 2008)

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

- ▶ **Personally identifiable information** – in addition to the standard descriptions of personally identifiable information, the regulations add, “indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name” OR any other compilation of information linked to a specific student that would permit any reasonable person to identify the student to a reasonable degree of certainty.
  - **Rationale for modification:** <sup>(1)</sup>There is no disclosure under FERPA when education records are released when all identifiers and “personally identifiable information” are removed. However, even if direct identifiers are removed, such as name, Social Security Number, and other student IDs, other information can identify someone if released, depending on the amount or combination of information released.

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Personally identifiable information cont'd

- ▶ **Rationale for modification of “personally identifiable information” definition cont'd:**
  - (2) Moreover, the release of certain information can lead to identification in conjunction with previously released information and publicity. Thus, sometimes releasing a redacted document still provides too much information. The revisions are meant to address these issues by altering the meaning of “personally identifiable information.”
  - (3) For paragraphs (e) and (f), the “easily traceable” standard was removed because the Department of Education felt it lacked specificity and clarity and was too low a standard.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74831 (9 December 2008)



# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Personally identifiable information cont'd

- ▶ **Rationale for modification of “personally identifiable information” definition cont'd:**
  - <sup>(4)</sup>Revised paragraph (f) includes in the definition of “personally identifiable information” information that a “reasonable person in the school community” could use to identify a specific student. **The “reasonable person in the school community” standard refers to what teachers, administrators, and other students would have knowledge of, not just the wider public at large**, i.e. records with a student’s initials, nicknames, or personal characteristics if a reasonable person in the school community could identify the student. By contrast, special codes that a school uses to identify a student and can only be linked to a student with use of a special key that links the code to the student’s name would not constitute personally identifiable information. NPRM, 73 FR 74831 (9 December 2008).

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Personally identifiable information cont'd

#### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ **Application of the “reasonable person in the school community” standard:** It might be well known among students, teachers, administrators, parents, volunteers, or others at the college that a particular student was caught bringing a gun to class last month but generally unknown in the town where the college is located. Here, the college is not permitted to disclose that a college student was suspended for bringing a gun to class last month, even though a reasonable person in the community where the college is located would not be able to identify the student, because a reasonable person in the college would be able to identify the student.
- ▶ A “reasonable person in the school community” does not include one with special knowledge of individual circumstances. NPRM, 73 FR 74832 (9 December 2008)

## FERPA --

34 CFR 99.3 – Changes to Definitions: Personally identifiable information

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ **Illustration of reasonable person in school community:** If teachers and other individuals in the school community generally would not be able to identify a specific student based on the student's initials, nickname, or personal characteristics contained in the record, then the information is not considered personally identifiable and may be released without consent. Experience has shown, however, that initials, nicknames, and personal characteristics are often sufficiently unique in a school community that a reasonable person can identify the student from this kind of information even without access to any personal knowledge, such as a key that specifically links the initials, nickname, or personal characteristics to the student.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74831 (9 December 2008)

## FERPA --

34 CFR 99.31(b)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ **Illustration of special knowledge of individual circumstances:** If it is generally known in the school community that a particular student is HIV-positive, or that there is an HIV-positive student in the school, then the school could not reveal that the only HIV-positive student in the school was suspended. However, if it is not generally known or obvious that there is an HIV-positive student in school, then the same information could be released, even though someone with special knowledge of the student's status as HIV-positive would be able to identify the student and learn that he or she had been suspended.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74832 (9 December 2008)

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Personally identifiable information cont'd

#### Rationale for modification of “personally identifiable information” definition cont'd:

- (5) When evaluating whether to release **redacted records**, the institution must evaluate whether the non-redacted remaining information is information known to a reasonable person in the school community. “The key consideration in determining whether the information is personally identifiable is whether a reasonable person in the school . . . community, without personal knowledge of the relevant circumstances, would be able to identify a student with reasonable certainty.” NPRM, 73 FR 15584 (24 March 2008).

## FERPA --

34 CFR 99.31(b)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ **Illustration of how a redacted record could still constitute personally identifiable information:** A school has suspended a student from school and given the student a failing grade for cheating on a test. The parent believes the discipline is too harsh and inconsistent with discipline given to other students and asks to see the redacted records of other students who have been disciplined for cheating on tests that year. Only one student has been disciplined for this infraction during the year, and the name of that student is widely known because her parents went to the media about the accusation. The school may not release the record in redacted form because the publicity has made the record personally identifiable.<sup>1</sup>

<sup>1</sup>NPRM, 73 FR 15583 (24 March 2008)

# FERPA --

## Changes to Definitions - 34 CFR 99.3 cont'd

### Personally identifiable information cont'd

- ▶ **Rationale for modification of “personally identifiable information” definition cont'd:**
  - <sup>(6)</sup> New paragraph (g) refers to targeted requests, where a requester seeks what might generally qualify as a properly redacted record, but the facts indicate that redaction is a useless formality because the subject's identity is already known.

## FERPA –

### 34 CFR 99.3 – Changes to Definitions: Personally identifiable information

#### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ **Illustration of the targeted request:** If a requester asks for the disciplinary record of a named student, a college is not permitted to release a redacted copy of the disciplinary record because the requester knows the identity of the student on the disciplinary report.
- ▶ **Another illustration:** A mayoral candidate was accused of plagiarism while attending College A in 1978. If a reporter asks the college for redacted copies of all student records showing discipline for plagiarism in 1978, the college is not permitted to disclose the redacted information because the reporter has made a targeted request, i.e. has direct, personal knowledge of the subject of the case.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15583 (24 March 2008)



# **FERPA --**

**Changes to 34 CFR 99.5 –  
What are the rights of students?**

# FERPA --

## Changes to 34 CFR 99.5 –

### What are the rights of students?

- ▶ The Department of Education added subsection (a)(2) to provide that “Nothing in this section prevents an educational agency or institution from disclosing education records, or personally identifiable information from education records, to a parent without the prior written consent of an eligible student if the disclosure meets the conditions in § 99.31(a)(8) (dependent student), § 99.31(a)(10) (health or safety emergency), § 99.31(a)(15) (violation regarding use or possession of alcohol or a controlled substance), or any other provision in § 99.31(a).

# FERPA --

Changes to 34 CFR 99.5 cont'd–

What are the rights of students?

- ▶ **Rationale for modification:** To inform colleges of information they can disclose to a student's parent without the student's consent. Colleges are not *required* to disclose this information to parents without parental consent, but FERPA does not prohibit them from doing so.
  - Regarding the health and safety exception to the disclosure rules, the revisions only affect the permissibility of disclosure and do not qualify as an interpretation of who is a permissible party to disclose under the health and safety exception.

# **FERPA --**

## **Changes to 34 CFR 99.31-**

**Under what conditions is prior consent not required to disclose information?**

# FERPA --

## Changes to 34 CFR 99.31(a)(1) -

Under what conditions is prior consent not required to disclose information?

- ▶ Previously, a college could only disclose personally identifiable information to other school officials within the college with a legitimate educational interest. The Department of Education has expanded that category:
- ▶ A contractor, consultant, volunteer, or other party to whom a college has outsourced institutional services or functions may be considered a school official ONLY IF 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 college with respect to the use and maintenance of education records; and
  - (3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

# FERPA --

## Changes to 34 CFR 99.31(a)(1) -

Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The purpose of adding the paragraph allowing outside parties to constitute school officials was to resolve uncertainties about the conditions under which educational institutions could disclose personally identifiable information from a student's education record without consent to outside parties performing institutional services or functions that employees would normally perform. The expansion served to enact the Departments' long-standing guidance and interpretations.<sup>1</sup>

<sup>1</sup>NPRM, 73 FR 15579 (24 March 2008)

# FERPA --

## Changes to 34 CFR 99.31(a)(1) -

Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Illustration of requirement to use outside parties to perform functions the college would use its own employees to perform:** A college may disclose education records without consent under this provision to an outside party retained to provide enrollment verification services to student loan holders because the institution would otherwise have to use its own employees to conduct the required verifications. In contrast, a college may not use this provision to disclose education records, without consent, to a financial institution or insurance company that provides a good student discount on its services and needs students' ID numbers and grades to verify an individual's eligibility, even if the institution enters into a contract with these companies to provide the student discount.<sup>1</sup>

<sup>1</sup>NPRM, 73 FR 15580 (24 March 2008)

## FERPA --

**34 CFR 99.31(a)(1)- Under what conditions is prior consent not required to disclose information?**

### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ Many school districts outsource their legal services on an as-needed basis. Even though these school districts may have never hired an attorney as an employee, they may still disclose personally identifiable information from education records to outside legal counsel to whom they have outsourced their legal services. Once a school has determined that an outside party is a “school official” with a “legitimate educational interest” in viewing certain education records, that party may have access to the education records, without consent, in order to perform the required institutional services and functions for the school. These outside parties may include parents and other volunteers who assist schools in various capacities, such as serving on official committees, serving as teachers’ aides, and working in administrative offices, where they need access to students’ education records to perform their duties. Therefore, schools should always use good judgment in determining the extent to which volunteers, as well as other school officials, need to have access to education records and to ensure that school officials, including volunteers, do not improperly disclose information from students’ education records.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74814 (9 December 2008)



# FERPA --

## Changes to 34 CFR 99.31(a)(1) –

### Under what conditions is prior consent not required to disclose information?

- ▶ Additionally, the Department of Education provided that
  - (ii) An educational agency or institution must use reasonable methods to ensure that school officials obtain access to **only those education records in which they have legitimate educational interests**. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement in paragraph (a)(1)(i)(A) of this section.

# FERPA --

## Changes to 34 CFR 99.31(a)(1) -

Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The Department of Education requires methods to ensure that only records for which the outside party has a legitimate educational interest are accessed is intended to address the protection of education records in light of increased use of computerized or electronic recordkeeping that potentially allows a user to have access to all the records, although the regulation applies to regulations maintained in any format.

## FERPA --

34 CFR 99.31(a)(1)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ Information access controls should consist of a combination of appropriate physical, technical, administrative, and operational controls which will allow access to be limited when required. (Some examples of possible information security controls can be found in “The National Institute of Standards and Technology (NIST) 800–53, Recommended Security Controls for Federal Information Systems” (December 2007). Educational institutions and agencies are not required to implement the NIST 800–53 guidance, but may find it useful when determining possible controls.) For example, software used to access electronic records may contain role based security features that allow teachers to view only information about students currently enrolled in their classes. Similarly, a school principal or registrar may maintain paper records in locked cabinets and distribute records to authorized officials on an as needed basis. (cont’d)

## FERPA --

**34 CFR 99.31(a)(1)- Under what conditions is prior consent not required to disclose information?**

### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ A college that does not use some kind of physical or technological controls to restrict access and leaves education records open to all school officials may rely instead on administrative controls, such as an institutional policy that prohibits teachers and other school officials from accessing records except when they have a legitimate educational interest. However, an agency or institution that forgoes physical or technological access controls must ensure that its administrative policy for controlling access is effective and that it remains in compliance with the legitimate educational interest requirement in § 99.31(a)(1). In that regard, if a parent or eligible student alleges that a school official obtained access to a student's education records without a legitimate educational interest, an agency or institution must show that the school official possessed a legitimate educational interest in obtaining the personally identifiable information from education records maintained by the agency or institution. An agency or institution may wish to restrict or track school officials who obtain access to education records to ensure that it is in compliance with § 99.31(a)(1)(i)(A).<sup>1</sup>

<sup>1</sup>NPRM, 73 FR 15580 (24 March 2008)

# FERPA --

## Changes to 34 CFR 99.31(a)(2) -

Under what conditions is prior consent not required to disclose information? cont'd

- ▶ Information may be disclosed without consent 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 so long as the disclosure is for purposes related to the student's enrollment or transfer.***
- ▶ The Department of Education added the bolded section to the regulation.

# FERPA --

## Changes to 34 CFR 99.31(a)(2) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The purpose of the revision to provide clarification as to whether consent is required to send a student's records to the new school after the student has already transferred or enrolled and to ease administrative burdens on educational institutions/agencies by allowing them to send information related to the student's enrollment or transfer without meeting the consent requirements of § 99.30 after the student has already been enrolled or transferred. This regulation also allows an educational agency/institution to update, correct, or explain information it has disclosed to another educational agency or institution as part of the original disclosure under § 99.31(a)(2) without complying with the written consent requirements in § 99.30. In light of the Virginia Tech shootings, this regulation is also intended to allow the student's former school, after a student has already transferred or enrolled, to disclose any records or information, including health records and information about disciplinary proceedings, that it could have disclosed when the student was seeking or intending to enroll in the new school. NPRM, 73 FR 15581 (24 March 2008).

## FERPA --

34 CFR 99.31(a)(2)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ After a student has already enrolled in a new school, the student's former school may disclose any records or information, including health records and information about disciplinary proceedings, that it could have disclosed when the student was seeking or intending to enroll in the new school. Under § 99.31(a)(2), a student's high school may send education records directly to a graduate school in which the student seeks admission, or is already enrolled.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74818 (9 December 2008)

# FERPA --

## Changes to 34 CFR 99.31(a)(6) -

### Under what conditions is prior consent not required to disclose information? cont'd

The Department of Education added a **written agreement** requirement to the studies exception to disclosure without prior consent. A college may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:

- (A) Develop, validate, or administer predictive tests;
- (B) Administer student aid programs; or
- (C) Improve instruction.

In addition to the previous requirements, a college may disclose information under the studies exception only if the college enters into a written agreement with the organization that delineates contract provisions specified in 34 CFR 99.31(a)(6)(ii)(C).



# FERPA --

## Changes to 34 CFR 99.31(a)(6) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The requirement of a written agreement under (a)(6)(ii)(C) is intended to ensure that information from education records is used only to meet the purposes of the study stated in the written agreement and that all applicable requirements are met. Some of the specific provisions of this paragraph were added because of privacy concerns by commenters.

# FERPA --

## Changes to 34 CFR 99.31(a)(9) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ The Department of Education added a provision providing that notification of a parent or eligible student of a judicial order or subpoena requiring release of personally identifiable information from an education record is not required when the United States Attorney General (or designee not lower than an Assistant Attorney General) obtains an *ex parte* order concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

# FERPA --

## Changes to 34 CFR 99.31(a)(9) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The purpose of the change, mainly by adding (a)(9)(ii)(C), was to bring the regulation in conformity with 20 U.S.C. 1232(j), which was added as result of the USA Patriot Act, which allows the U.S. Attorney General(AG) or a designee not lower than an Assistant Attorney General to get an ex parte court order allowing the AG to collect educational records from an educational agency/institution, without the consent or knowledge of the parent or student, that are relevant to an investigation or prosecution of an offense listed in 18 U.S.C. 2332b(g)(5)(B) or an act of domestic or international terrorism specified in 18 U.S.C. 2331. This new regulation adds an exception to the disclosure requirements that allows an education agency/institution to comply with these particular ex parte orders. According to the Department of Education, an agency/institution should examine such an Order to make sure it is facially valid but the agency/institution is not authorized to examine the underlying certification of facts that the AG sent to the court when applying for the Order. NPRM, 73 FR 15582 (24 March 2008).

# FERPA --

## Changes to 34 CFR 99.31(a)(16) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ Added paragraph (a)(16) : The disclosure concerns sex offenders and other individuals required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable Federal guidelines.

# FERPA --

## Changes to 34 CFR 99.31(a)(16) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** The regulation is intended to allow educational agencies and institutions to make available to the school community, without consent, any information concerning registered offenders provided to an educational agency or institution under 42 U.S.C. 14071 (the Wetterling Act) and applicable Federal guidelines, not just information obtained through information provided under a state community notification program. The Department of Education interprets this to also allow disclosure of any additional information about the student that is relevant to the purpose for which the information was provided to the educational agency or institution that protects the public. Such as, disclosing the school or campus the student sex offender is enrolled. NPRM, 73 FR 74820 (9 December 2008).

# FERPA --

## Changes to 34 CFR 99.31(b) -

### Under what conditions is prior consent not required to disclose information? cont'd

▶ **Revised paragraph (b) to address de-identified information/data:**

(b)(1) De-identified records and information. An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information without the consent required by § 99.30 after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.

(2) An educational agency or institution, or a party that has received education records or information from education records under this part, may release de-identified student level data from education records for the purpose of education research by attaching a code to each record that may allow the recipient to match information received from the same source, provided that—

# FERPA --

## Changes to 34 CFR 99.31(b) -

### **Under what conditions is prior consent not required to disclose information? cont'd**

- (i) An educational agency or institution or other party that releases de-identified data under paragraph (b)(2) of this section does not disclose any information about how it generates and assigns a record code, or that would allow a recipient to identify a student based on a record code;
  - (ii) The record code is used for no purpose other than identifying a de-identified record for purposes of education research and cannot be used to ascertain personally identifiable information about a student; and
  - (iii) The record code is not based on a student's social security number or other personal information.
- (c) An educational agency or institution must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the agency or institution discloses personally identifiable information from education records.

# FERPA --

## Changes to 34 CFR 99.31(b)-

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** To provide legally binding objective standards for the release of de-identified information for the purposes of educational research. The regulation is meant to strike a balance between facilitating educational research/accountability and preserving the privacy protections in FERPA. There is no general research exception in FERPA, but the Department of Education recognizes valuable research can be performed with de-identified data where the disclosure of personally identifiable information would not be allowed under the standards of § 99.31(a)(6) or § 99.31(a)(3) . De-identified information from education records is not subject to destruction requirements because it is not "personally identifiable information."



## FERPA --

34 CFR 99.31(b)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ An institution may disclose education records without consent under this provision to an outside party retained to provide enrollment verification services to student loan holders because the institution would otherwise have to use its own employees to conduct the required verifications. In contrast, an institution may not use this provision to disclose education records, without consent, to a financial institution or insurance company that provides a good student discount on its services and needs students' ID numbers and grades to verify an individual's eligibility, even if the institution enters into a contract with these companies to provide the student discount.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15580 (24 March 2008)

# FERPA --

## Changes to 34 CFR 99.31(c) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ Added paragraph (c): An educational agency or institution must use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom the agency or institution discloses personally identifiable information from education records.

# FERPA --

## Changes to 34 CFR 99.31(c)-

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ **Rationale for modification:** To ensure that educational agencies and institutions disclose personally identifiable information from education records only to intended and authorized recipients. Disclosing the information to the wrong party or allowing unauthorized parties to gain access due to the agency/institution using widely available information when providing access to electronic records or student information by telephone are two of the problems this paragraph is meant to address. Educational institutions/agencies are allowed to use reasonable methods. Methods are considered reasonable if they reduce the risk of unauthorized disclosure to a level that is commensurate with the likely threat and potential harm and depend on variety of factors, including the organization's size and resources. Reasonableness depends ultimately on what the usual and customary good business practices of educational agencies and institutions, which requires ongoing review and modification of procedures, where appropriate, as standards and technologies change.

# FERPA --

## Changes to 34 CFR 99.31(d) -

### Under what conditions is prior consent not required to disclose information? cont'd

- ▶ Added paragraph (d): Paragraphs (a) and (b) of this section do not require an educational agency or institution or any other party to disclose education records or information from education records to any party, except for parties under paragraph (a)(12) of this section (parent or eligible student).
- ▶ **Rationale for modification:** The Department wanted to clarify that with the exception of disclosures to parents and eligible students, the disclosures under subsection 99.31(a) were not mandatory.

# **FERPA --**

**Changes to 34 CFR 99.32 -**

**What recordkeeping requirements exist concerning requests and disclosures?**

# FERPA --

Changes to 34 CFR 99.32(a)(1) -

**What recordkeeping requirements exist concerning requests and disclosures?**

- ▶ Revised paragraph (a)(1) : An educational agency or institution must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, as well as the names of State and local educational authorities and Federal officials and agencies listed in § 99.31(a)(3) that may make further disclosures of personally identifiable information from the student's education records without consent under § 99.33(b).

# FERPA --

Changes to 34 CFR 99.32(a)(1) -

What recordkeeping requirements exist concerning requests and disclosures? cont'd

- ▶ **Rationale for modification:** To help ensure that parents and students know that the record of disclosures maintained by an educational agency or institution as required under § 99.32(a) may not contain all further disclosures made on behalf of the agency or institution by a State or Federal authority or official and alert parents and students to the need to ask for access to this additional information.

# FERPA --

## Changes to 34 CFR 99.32(a)(4) -

What recordkeeping requirements exist concerning requests and disclosures? cont'd

- ▶ Added paragraph (a)(4) : An educational agency or institution must obtain a copy of the record of further disclosures maintained under paragraph (b)(2) of this section and make it available in response to a parent's or eligible student's request to review the record required under paragraph (a)(1) of this section.
  - **Rationale for modification:** Same as (a)(1).



# FERPA --

Changes to 34 CFR 99.32 (a)(5)-

What recordkeeping requirements exist concerning requests and disclosures? cont'd

- ▶ **Added paragraph (a)(5)** : An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in § 99.31(a)(10) and § 99.36:
  - (i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
  - (ii) The parties to whom the agency or institution disclosed the information.

# FERPA --

Changes to 34 CFR 99.32(a)(5) -

What recordkeeping requirements exist concerning requests and disclosures? cont'd

- ▶ **Rationale for modification:** To make an educational agency/institution record certain information to demonstrate to parents, students, and the Department of Education the circumstances that led the agency/institution to determine that a health or safety emergency existed and how they justified the disclosure.

## FERPA --

34 CFR 99.32(b)(2) - What recordkeeping requirements exist concerning requests and disclosures?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ Each student's record of disclosures is an education record that must be made available to a parent or eligible student under § 99.32(c).<sup>1</sup>
- ▶ The regulations in new § 99.32(b)(2)(ii) allow a State or local educational authority or Federal official or agency to identify the redisclosure by the student's class, school, district, or other appropriate grouping rather than by the name of each student whose record was redisclosed. For example, an SEA may record that it disclosed to the State higher education authority the scores of each student in grades nine through 12 on the State mathematics assessment for a particular year.<sup>2</sup>

<sup>1</sup> NPRM, 73 FR 15586 (24 March 2008)

<sup>2</sup> NPRM, 73 FR 74824 (9 December 2008)

# **FERPA --**

**Changes to 34 CFR 99.33 -**

**What limitations apply to the redisclosure of  
information?**

# FERPA --

## Changes to 34 CFR 99.33(b) -

### What limitations apply to the redisclosure of information?

- ▶ Revised paragraph (b): (1) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if--
  - ▶ (i) The disclosures meet the requirements of § 99.31; and
  - ▶ (ii)(A) The educational agency or institution has complied with the requirements of § 99.32(b); or
  - ▶ (B) A State or local educational authority or Federal official or agency listed in § 99.31(a)(3) has complied with the requirements of § 99.32(b)(2).
- ▶ (2) A party that receives a court order or lawfully issued subpoena and rediscloses personally identifiable information from education records on behalf of an educational agency or institution in response to that order or subpoena under § 99.31(a)(9) must provide the notification required under § 99.31(a)(9)(ii).

# FERPA --

Changes to 34 CFR 99.33(b) -

**What limitations apply to the redisclosure of information?  
cont'd**

- ▶ **Rationale for modification:** To clarify which party is responsible for notifying parents and eligible students before an SEA or other third party outside of the educational agency/institution complies with a judicial order or subpoena to redisclose personally identifiable information from education records.

## FERPA --

34 CFR 99.33(b) - What limitations apply to the redisclosure of information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ The new regulations in § 99.33(b)(2) require a party that has received personally identifiable information from education records from an educational agency or institution, including an SEA or other official listed in § 99.31(a)(3)(i), to provide the notice to parents and eligible students, if any, required under § 99.31(a)(9) before it rediscloses personally identifiable information from the records on behalf of an educational agency or institution in compliance with a judicial order or lawfully issued subpoena, as authorized under § 99.33(b).<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15588 (24 March 2008)

# FERPA --

Changes to 34 CFR 99.33(c) -

**What limitations apply to the redisclosure of information?**

**cont'd**

- ▶ Revised paragraph (c) : Paragraph (a) of this section does not apply to disclosures under §§ 99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary institutions are required to disclose under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f) (Clery Act), to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.



# FERPA --

Changes to 34 CFR 99.33(c) -

What limitations apply to the redisclosure of information?

cont'd

- ▶ **Rationale for modification:** The main purpose of the revision is to ensure that the change made to § 99.33(c) is enforceable so that if the Department of Education determines that a third party, such as an State Educational Agency, did not provide the notification required under § 99.31(a)(9)(ii), the educational agency or institution may not allow that third party access to education records for at least five years. The addition of “outside the educational agency” after “third party” is a technical correction under the Clery Act.

# FERPA --

Changes to 34 CFR 99.33(d) -

What limitations apply to the redisclosure of information?

cont'd

- ▶ **Change:** Revised paragraph (d): An educational agency or institution must inform a party to whom disclosure is made of the requirements of paragraph (a) of this section except for disclosures made under §§ 99.31(a)(8), (9), (11), (12), (14), (15), and (16), and to information that postsecondary institutions are required to disclose under the Clery Act to the accuser and accused regarding the outcome of any campus disciplinary proceeding brought alleging a sexual offense.
  - **Rationale for modification:** No reason given, presumably to bring the provision in conformity with other regulations.

## FERPA --

34 CFR 99.33(d) - What limitations apply to the redisclosure of information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ The new regulations clarify that postsecondary institutions may not require the accuser to execute a non-disclosure agreement or otherwise interfere with the redisclosure or other use of information disclosed as required under the Clery Act.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15588 (24 March 2008)

# FERPA --

Changes to 34 CFR 99.33(e) -

**What limitations apply to the redisclosure of information?**

cont'd

- ▶ **Change:** Revised paragraph (e): If this Office determines that a third party outside the educational agency or institution improperly rediscloses personally identifiable information from education records in violation of this section, or fails to provide the notification required under paragraph (b)(2) of this section, the educational agency or institution may not allow that third party access to personally identifiable information from education records for at least five years.
  - **Rationale for modification:** The main purpose of the revision is to ensure that the change made to § 99.33(c) is enforceable so that if the Department determines that a third party, such as an State Educational Agency, did not provide the notification required under § 99.31(a)(9)(ii), the educational agency or institution may not allow that third party access to education records for at least five years. The addition of “outside the educational agency” after “third party” is a technical correction.

# **FERPA --**

**Changes to 34 CFR 99.34 -**

**What conditions apply to disclosure of information to other educational agencies and institutions?**

# FERPA --

## Changes to 34 CFR 99.34(a)(1)(ii) -

### What conditions apply to disclosure of information to other educational agencies and institutions?

- ▶ **Change:** Revised paragraph (a)(1)(ii) by correcting the reference to § 99.66 to § 99.67, and adding or “is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer”.
  - **Rationale for modification:** The change from § 99.6 to § 99.7 is technical. No clear reason was given for the additional language, but presumably the reason was to bring the regulation in conformity with § 99.31(a)(2).

## **FERPA --**

### **34 CFR 99.34(a)(1)(ii) –**

**What conditions apply to disclosure of information to other educational agencies and institutions?**

## **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ This regulation permits postsecondary institutions to disclose information to parents of the high school students who are dependents for Federal income tax purposes, it also permits high schools and postsecondary institutions who have dually-enrolled students to share information. Where a student is enrolled in both a high school and a postsecondary institution, the two schools may share education records without the consent of either the parents or the student under § 99.34(b). If the student is under 18, the parents still retain the right under FERPA to inspect and review any education records maintained by the high school, including records that the college or university disclosed to the high school, even though the student is also attending the postsecondary institution.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74813 (9 December 2008)

# **FERPA --**

**Changes to 34 CFR 99.35-**

**What conditions apply to disclosure of information  
for Federal or State program purposes?**



# FERPA --

## Changes to 34 CFR 99.35(b)(1) –

### What conditions apply to disclosure of information for Federal or State program purposes?

- ▶ Revised paragraph (b)(1): Information that is collected under paragraph (a) of this section must:
  - (1) Be protected in a manner that does not permit personal identification of individuals by anyone other than the officials or agencies headed by officials referred to in paragraph (a) of this section, except that those officials and agencies may make further disclosures of personally identifiable information from education records on behalf of the educational agency or institution in § 99.35.

# FERPA --

## Changes to 34 CFR 99.35(b)(1) –

### What conditions apply to disclosure of information for Federal or State program purposes? cont'd

- ▶ **Rationale for modification:** To allow State Educational Agencies and other officials and authorities listed in § 99.31(a)(3)(i) to take advantage of the regulatory exception in § 99.33(b) and redisclose personally identifiable information from education records directly to a qualified recipient under an exception in § 99.31 instead of requiring that party to go to each school district or institution that submitted the records for audit, evaluation, compliance, or enforcement purposes. The regulations are also intended to clarify that an official or authority that maintains personally identifiable information from education records subject to § 99.35 may redisclose that information to another authority listed in § 99.31(a)(3)(i) for another qualifying audit, evaluation, compliance, or enforcement activity, notwithstanding the limitations in § 99.35.

# **FERPA --**

**Changes to 34 CFR 99.36 -**

**What conditions apply to disclosure of information in health and safety emergencies?**

# FERPA --

## Changes to 34 CFR 99.36(a) -

### What conditions apply to disclosure of information in health and safety emergencies

- ▶ Revised paragraph (a): 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.
  - **Rationale for modification:** To clarify that an educational agency/institution may disclose personally identifiable information from education records without consent in a health or safety emergency to an eligible student's parents. This exception applies whether or not the student is a dependent of a parent for tax purposes.<sup>1</sup> NPRM, 73 FR 15578(24 March 2008)

## **FERPA --**

**34 CFR 99.36(a) - What conditions apply to disclosure of information in health and safety emergencies**

### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ An educational institution that reasonably believes that a student poses a threat of bodily harm to any person may disclose information from education records to current or prior peers of the student or mental health professionals who can provide the institution with appropriate information to assist in protecting against the threat. Moreover, the institution may disclose records to persons such as law enforcement officials that it determines may be helpful in providing appropriate protection from the threat. An educational agency or institution may also generally disclose information under § 99.36 to a potential victim and the parents of a potential victim as “other individuals” whose health or safety may need to be protected.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74839 (9 December 2008)

# FERPA --

## Changes to 34 CFR 99.36(c) -

### What conditions apply to disclosure of information in health and safety emergencies? cont'd

- ▶ **Revised paragraph (c):** The Department broadened institutions' ability to make determinations about health and safety.
- ▶ In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it 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. **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.**

# FERPA --

## Changes to 34 CFR 99.36(c) -

### What conditions apply to disclosure of information in health and safety emergencies

- ▶ **Rationale for modification:** In light of the Virginia Tech shootings and subsequent confusion about information sharing, privacy, and legal liability, the purpose of the revision was to balance the interests of safety, privacy, and treatment by having specific legal standards on health and safety disclosures in order to protect privacy but to couple those standards with greater flexibility and deference to administrators so they can bring appropriate resources to bear on a circumstance that threatens the health or safety of individuals.

## **FERPA --**

### **34 CFR 99.36(c) - What conditions apply to disclosure of information in health and safety emergencies**

## **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ “Protect” generally means to keep from harm, attack, or injury. As such, the statutory text underscores that the educational agency or institution must be able to release information from education records in sufficient time for the institution to act to keep persons from harm or injury. Moreover, to be “in connection with an emergency” means to be related to the threat of an actual, impending, or imminent emergency, such as a terrorist attack, a natural disaster, a campus shooting, or the outbreak of an epidemic such as e-coli.<sup>1</sup> An emergency could also be a situation in which a student gives sufficient, cumulative warning signs that lead an educational agency or institution to believe the student may harm himself or others at any moment. It does not mean the threat of a possible or eventual emergency for which the likelihood of occurrence is unknown.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74838 (9 December 2008)



## FERPA --

34 CFR 99.31(a)(1)- Under what conditions is prior consent not required to disclose information?

### EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED

- ▶ A representative from the city police who serves on a school's threat assessment team generally could not redisclose to the city police personally identifiable information from a student's education records to which he or she was privy as part of the team. As noted above, however, the institution may disclose personally identifiable information from education records when and if the threat assessment team determines that a health or safety emergency exists under §§ 99.31(a)(10) and 99.36.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74839 (9 December 2008)

# **FERPA --**

**Changes to 34 CFR 99.37 -**

**What conditions apply to disclosing directory  
information?**

# FERPA --

## Changes to 34 CFR 99.37(b) -

### What conditions apply to disclosing directory information?

- ▶ Revised paragraph (b): An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or institution must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request..
  - **Rationale for modification:** To clarify that directory information may not be disclosed once an individual is no longer a student if the individual made a valid request to opt out while a student in attendance and has not rescinded that request, but an educational agency or institution does not have to notify former students about its policy on directory information disclosures and their right to opt out.

# FERPA --

Changes to 34 CFR 99.37(c) -

What conditions apply to disclosing directory information?

cont'd

- ▶ **Added paragraph (c):** A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.
  - **Rationale for modification:** To clarify that a student who uses an opt-out provision to prevent his or her directory information from being disclosed cannot use the opt-out provision to remain anonymous in class, whether the student takes the class in person or online. However, some directory information is still off-limits in class if the student opts-out.

## **FERPA --**

### **34 CFR 99.37(c) - What conditions apply to disclosing directory information?**

#### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ Regardless of a student's block /opt-out status on directory information disclosures, a teacher may call students by first and last name in class and require students to place their names on a sign-in sheet circulated in class, whether the class is conducted in person or on-line. Because students generally do not have face-to-face communications in on-line classes (or in an on-line component of traditional classes), schools may also disclose or require students to disclose a unique electronic identifier or e-mail address used for students to communicate with one another for on-line class work. Note that this provision is strictly limited to information needed to identify and enable students to communicate in class, i.e., the student's name, unique electronic identifier, and institutional e-mail address. It provides no authority to disclose any directory information outside of the student's class.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 15590(24 March 2008)

# FERPA --

## Changes to 34 CFR 99.37(d) -

### What conditions apply to disclosing directory information?

cont'd

- ▶ **Added paragraph (d):** An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in § 99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.
  - **Rationale for modification:** To clarify that the practice of some institutions and affiliated vendors of allowing employers and others who seek directory information about a student to submit the student's Social Security Number as a means of identifying the individual violates FERPA unless the student has provided prior written consent for the institution to disclose the student's Social Security Number, even if the institution or vendor only explicitly releases or confirms directory information about the student.

## **FERPA --**

### **34 CFR 99.37(d) - What conditions apply to disclosing directory information?**

### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

A school is not required to deny a request for directory information about a student, such as confirmation whether a student is enrolled or has received a degree, if the requester supplies the student's SSN (or other non-directory information) along with the request. However, in releasing or confirming directory information about a student, the school may not use the student's SSN (or other non-directory information) supplied by the requester to identify the student or locate the student's records unless a parent or eligible student has provided written consent. This is because confirmation of information in education records is considered a disclosure under FERPA.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74809 (9 December 2008)

## **FERPA --**

### **34 CFR 99.37 - - What conditions apply to disclosing directory information?**

#### **EXAMPLES/APPLICATION OF HOW CHANGES SHOULD BE APPLIED**

- ▶ A school may choose to deny a request for directory information, whether or not it contains a student's SSN, because only a parent or eligible student has a right to obtain education records under FERPA. Denial of a request for directory information that contains a student's SSN is not an implicit confirmation or disclosure of the SSN.<sup>1</sup>

<sup>1</sup> NPRM, 73 FR 74809 (9 December 2008)