



# FERPA 2.0

Sara Clark, *director of legal services*



# Legal Framework

- Family Educational Rights and Privacy Act (FERPA)
  - Prevents unauthorized disclosure of personally identifiable information (PII) from students' education records
  - PII
    - Identifies student with reasonable certainty
    - Includes both direct identifiers and indirect identifiers
  - “Education records”
    - Directly relate to a student
    - Maintained by an educational agency or institution or by a party acting for the agency or institution



# VIDEO SURVEILLANCE





# Video Surveillance

- FERPA prevents unauthorized disclosure of PII from students' education records
  - Is this PII?
  - Is this an education record?
  - Does it meet a FERPA exception?



# Video Surveillance

- Education record “directly related” to 0 students
  - Ex) General surveillance
  - Doesn’t meet definition of “education record”
  - Parents don’t have right to restrict access under FERPA



# Video Surveillance

- Education record “directly related” to 1 student
  - Ex) vandalism, IEP compliance
  - Meets definition of “education record”
  - Disclosure appropriate only with parental consent or a FERPA exception is met



# Video Surveillance

- Education record “directly related” to 2+ students
  - Ex) fight, incident
  - FPCO’s Official Guidance
    - Meets definition of education record for each student appearing in the video
    - Disclosure appropriate only if parents of ALL students whose images appear consent or a FERPA exception is met





# Video Surveillance

- Education record “directly related” to 2+ students
  - FPCO’s Unofficial Guidance
    - Education records only for those students who are “directly related” to the focus or subject of the video
    - Not an education record for those students appearing in the background of the video
    - Disclosure appropriate only if parents of the 2+ students who are “directly related” consent or a FERPA exception is met



# Video Surveillance

- FERPA Exceptions:
  - Law enforcement records
    - Created for a law enforcement purpose (i.e. maintaining the security and safety of school)
    - Remain in possession of law enforcement unit
  - School officials
  - Subpoena
  - Health/safety emergency



# Best Practices

- Consider designating a specific department or individual to serve as district's law enforcement unit
- Designate this individual as a school official with a legitimate educational interest
- Wait for FPCO official guidance



# EMAIL



# Email

Send ▼

Cancel

Save Draft

ABC

Options ▼

To:

Principal

Cc:

Teacher

Subject:

Sara Clark's Mom

Attach ▼

*Tip: drag and drop files from your desktop to add attachments to this message.*

Professional ▼

10pt ▼

Paragraph ▼

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Sara's mom called this afternoon and was totally off the wall. Claims we have been leaving her little darling unsupervised. Tried to calm her down and assure her that you would call her tomorrow. Wish I could have told her either to supervise herself, or to get a life and stop bothering us.



# Email

- FERPA prevents unauthorized disclosure of PII from students' education records
  - Is this PII?
  - Is this an education record?
  - Does it meet a FERPA exception?



# Email

- “Maintained by” the district:
  - “The word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled.”
    - *Owasso Indep. School Dist. v. Falvo*, 534 U.S. 426 (2002).



# Email

- “Maintained by” the district:
  - “California DOE’s position that [only those] emails that are printed and placed in a student’s file are ‘maintained’ is accordant with the case law interpreting the meaning of FERPA and the IDEA.”

*-S.A. v. Tulare County Office of Education (E.D. Cal. 2009)*

- Emails are not “education records” unless they are printed and placed in student’s cumulative file, or otherwise electronically filed in a way that permanently associates them with a student.

*– Fulton County School District due process hearing (Sept. 2, 2004)*





# Email

- “Maintained by” the district:
  - Ohio Supreme Court found that a school’s emails were protected by FERPA.
  - OSU retained and maintained all emails sent by any of its staff in two secure files.
    - *State ex rel. ESPN, Inc. v. Ohio State University*, 970 N.E.2d 939 (Ohio 2012)
- If not protected by FERPA, are they subject to disclosure under public records request?



# Best Practices

- Remember the purpose behind FERPA
- Pay attention to how the district is maintaining emails
- Be cautious about what you're putting in emails



# DISTRICT SOCIAL MEDIA POSTS



**Anchorage School District**

September 23

### Outdoor art (6 photos)

Adele George's exploratory art classes at Mirror Lake Middle School took learning outdoors to create works-of-art using natural objects. Check out some of their creations!



Like · Comment · Share

➦ 1 Share



**Anchorage School District**

October 8

Inlet View Elementary School student Michael Halpern teamed up with Chef Drew from Kincaid Grill to teach students how to cook healthy meals. Michael was Alaska's Healthy Lunchtime Challenge winner and visited D.C. this summer where he met the President and the First Lady!



**Anchorage School District** shared a link.

June 9

Check out this KTUU interview with Huffman Elementary School's Cassie Welch about her mission to raise money for diabetes. Keep up the great work, Cassie!



### Cassie Welch Pedals for Cure to Diabetes

[www.ktuu.com](http://www.ktuu.com)

Determined to defeat diabetes, 10-year-old Cassie Welch is on a mission to stop the disease one bike ride at a...

Like · Comment · Share

👍 26 💬 2



# District Social Media Posts

- FERPA prevents unauthorized disclosure of PII from students' education records
  - Is this PII?
  - Is this an education record?
  - Does it meet a FERPA exception?



# District Social Media Posts

- District should refrain from posting unless and until district has done one or both of the following:
  - Obtained prior written parental consent to disclose the information and/or
  - Properly designated the information as “directory information”



# District Social Media Posts

- Parental consent
  - Must be signed and dated
  - Specify records that may be disclosed
  - State purpose of disclosure
  - Identify the party or class of parties to whom the disclosure may be made



# District Social Media Posts

- Directory Information
  - Information contained in education records that would not generally be considered harmful or an invasion of privacy is disclosed
  - Must give parents notice of:
    - Types of PII that district has designated as “directory information”
    - Parent’s right to refuse to let the district designate any or all of those types of information about the student as directory information
    - Period of time within which a parent has to notify the district in writing that they do not want any or all of those types of information about the student designated as directory information





# District Social Media Posts

- Directory information
  - Examples:
    - Name
    - Address
    - Telephone number
    - Date/place of birth
    - Major field of study
    - Participation in officially recognized activities and sports
    - Weight/height of members of athletic teams
    - Dates of attendance
    - Degrees, honors and awards received
    - Email address
    - Most recent educational agency attended by the student
    - \*Photographs



# Best Practices

- Send out your annual FERPA notice and clearly designate the types of PII that the district has designated as directory information
- Obtain affirmative consent from parents before posting student pictures on social media



# ONLINE EDUCATIONAL SERVICES



# Online Educational Services

Select a course: Life Science ▼

|                             | Course Progress                              | Progress    | Time Spent  | Time Estimated | Assessment Scores | Points Earned |
|-----------------------------|--|-------------|-------------|----------------|-------------------|---------------|
| Overall Progress            | ▶ Life Science                               | Not Started | 12 Mins     | 1 Hr 40 Mins   | 80 %              | 90            |
|                             | ▼ Chemistry                                  | 5 %         | 1 Hr 4 Mins | 2 Hrs 12 Mins  | 80 %              | 120           |
|                             | ▶ Acids and Bases                            | 16 %        | 4 Mins      | 53 Mins        | N/A               | 15            |
| Course Progress             | ▼ Chemical Reactions                         | Completed   | 52 Mins     | 1 Hr 5 Mins    | 80 %              | 75            |
|                             | 🕒 Conservation of Mass in Chemical Reacti... | Completed   | 15 Mins     | 20 Mins        | -                 | 75            |
| Prep/review Course Progress | 🕒 Writing and Balancing Chemical Equations   | Completed   | 37 Mins     | 45 Mins        | 80 %              | 75            |
|                             | ▼ Chemistry and Society                      | 33 %        | 8 Mins      | 14 Mins        | N/A               | 30            |
|                             | ▶ From Alchemy to Chemistry                  | Completed   | 4 Mins      | 2 Mins         | N/A               | 15            |
|                             | ▶ What is Science?                           | Completed   | 4 Mins      | 3 Mins         | N/A               | 15            |



# Online Educational Services

- Is district's disclosure of student information a violation of FERPA?
- FERPA prevents unauthorized disclosure of PII from students' education records
  - Is this PII?
  - Is this an education record?
  - Does it meet a FERPA exception?



# Online Educational Services

- Directory information
  - Information contained in education records that would not generally be considered harmful or an invasion of privacy if disclosed
  - Public notice and opt out requirements
- School official
  - Performs an institutional service or function for which the district would otherwise use employees
  - Has a legitimate educational interest in education records
  - Is under direct control of the district with regard to use and maintenance of the records
  - Uses education records only for authorized purposes and may not re-disclose PII to other parties



# Online Educational Services

- What about the student information generated by and stored in the program on the cloud?
  - Is this PII?
  - Is this an education record?
  - Does it meet a FERPA exception?



# Best Practices

- Be aware of which online educational services are currently being used in your district.
- Have policies and procedures to evaluate and approve proposed online educational services.
- When possible, use a written contract or legal agreement.
- Be transparent with parents and students





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