Family Education Rights and Privacy Act (FERPA): Complying with the 2008 Amendments

1. **What is the Family Education Rights and Privacy Act (FERPA) all about?**

FERPA is a federal law [34 Code of Federal Regulations (CFR) Part 99] designed to protect the privacy of a student’s educational records. In other words, it is a law that requires information contained in certain documents to be kept private. The law applies to all schools which receive funds under an applicable program from the U.S. Department of Education.

2. **When did the latest FERPA regulations go into effect?**

The latest FERPA regulations went into effect on January 8, 2009.

3. **What is considered to be an “educational record?”**

Board Policy FL (LEGAL) defines “educational records” as those records, files, documents, and other materials that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.

In addition to records specifically naming a student, a record that does not mention the student by name is still protected if the student’s identity would be “easily traceable.” For instance, a paper may be written in the student’s own handwriting or a reference is made to “the fourth grade girl in Mrs. Smith’s class who wears glasses.”

The term “educational records” – for public school purposes does not include:

- Records that are created or received by the District after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student.
- Records made by District personnel that are kept in the sole possession of the maker and are not accessible or revealed to anyone other than a temporary substitute for the maker of the record.
- Records maintained by a law enforcement unit of the District that were created by that law enforcement unit for the purposes of law enforcement.
- Grades on peer-graded papers **before they are collected and recorded by the teacher**.
4. **How are parents and eligible students informed of their rights under FERPA?**

Katy ISD must notify parents and eligible students of their rights under FERPA on an annual basis. The notice is provided to parents through the *Discipline Management Plan and Student Code of Conduct* that is on the District’s Website.

5. **What is included in the definition of directory information?**

Katy ISD is required by law to release directory information in response to a public information request. Directory-type information includes items such as student’s name, address, phone number, photograph, organization membership, date and place of birth, weight and height, major field of study, degrees, honors and awards, dates of attendance, and most recent school attended. The District must inform parents and students of the information that is designated as directory information and provide a reasonable amount of time to allow the parent or eligible student to request that the school not disclose that information about them. If a parent/guardian does not indicate that their child’s directory information is to be kept confidential, it remains public information – available to anyone upon request.

The 2008 amendments specify that Social Security numbers or other student identification numbers may not be disclosed as “directory information.” On the other hand, a student ID number can be disclosed if it cannot be used to gain access to educational records except when used with one or more other factors to authenticate the user’s identity.

In addition, for secondary students only, federal law requires districts receiving assistance under the Elementary and Secondary Education Act of 1965 (*20 USC Section 6301 et seq.*) to provide a military recruiter or institution of higher education, on request, with the name, address, and telephone number of a secondary student unless the parent has advised the district that the parent does not want the student’s information disclosed without the parent’s prior written consent. Parents are provided an explanation of this along with the directory information notice and the options available from which parents can choose. Parents may select a directory information code that differs from their choice regarding military recruiters and institutions of higher learning.

6. **Is a student’s directory information protected after the student graduates or leaves the district?**

The FERPA amendments provide former students with the continuing ability to control the release of directory information. Once a parent or eligible student opts out of directory information disclosures, the District must continue to honor that election after the student is no longer in attendance.
7. **When do rights transfer to a student who turns 18?**

In general, all parental rights under FERPA transfer to the student when the student turns 18. The new regulations make it clear that the District may disclose information to a student’s parents, without consent, after the student has turned 18 in the following situations:

- When the student is still a dependent for federal income tax purposes.
- When the disclosure is in connection with a health or safety emergency, and if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- When the student commits a disciplinary infraction with respect to the use or possession of alcohol or a controlled substance.

The new amendments allow the District to disclose information from a student’s educational records to any person whose knowledge of the information is essential to protect the health or safety of the student or other individuals. The District must, however, be able to articulate what it believes to be the significant threat to health and safety.

8. **What student information can be shared with outside service providers?**

Katy ISD may disclose personally identifiable information to “school officials” who have a “legitimate educational interest” in the information. The definition of “school officials” has been expanded under the new amendments to include “a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions.” This exception only applies if the outsourced service or function would normally be performed by a school employee. In addition, the outside service provider must be “under the direct control” of the District with respect to the “use and maintenance of educational records.”

Outside service providers must adhere to the same requirements governing the use and redisclosure of personally identifiable information from a student’s educational records as a district employee. If the District decides to share information with third parties with whom it contracts, it must provide notice to parents and eligible students in its annual FERPA notice of this fact.

9. **What steps does Katy ISD have to take to ensure the enforcement of the “legitimate educational interest” requirement?**

The 2008 amendments leaves no doubt that the federal government takes this requirement seriously. The regulations specify that the District “must use reasonable methods to ensure that school officials obtain access to only those education records in which they have
legitimate educational interests.” In situations where it is not possible to use physical or technological access controls to access educational records, Katy ISD is required to make certain that it establishes administrative regulations for controlling access to educational records that will be “effective” in maintaining compliance with the legitimate interest requirement.

Compliance with this requirement has proven to be one of the most challenging aspects of the 2008 amendments because of the integration of technology and Web 2.0 tools in classroom instruction and with the use of certain software programs. Under the new amendments, there has to be greater controls in restricting individual access to student’s educational records only to “school officials” with a “legitimate educational interest.”

10. **Under what circumstances can the District release student statements and videos?**

The District can allow parents to view a security video that is considered an educational record related to their child. In fact, under the FERPA amendments, it is not necessary to obtain consent from the parents of students for whom the video would not be considered an educational record. For example, if students are involved in a fight and the fight is captured on a security camera, the parents of both students involved have a right to view the tape. It is not necessary for school officials to obtain consent from the parents of students seen on the tape who were merely in the area. If the parents of the students involved in the incident request a copy of the video, however, the parents of both of the students would need to give consent for the release of the educational record to the other parent.

11. **What reference, if any, is made to the rights of parents to inspect student records?**

FERPA regulations specifically state that each parent has the right to inspect and review student records, unless the school has been given evidence that there is a court order, State statute, or legally binding document that specifically revokes these rights. A divorce decree or custody order will trump a parent’s right to access student records under FERPA, the TPIA, and the Texas Education Code.

12. **Are there any record keeping requirements regarding requests for access and disclosure?**

Yes. The District must maintain a record of each request for access to and each disclosure of personally identifiable information from the educational records of each student. Therefore, it is recommended that campuses create a log to be placed in the front of any file containing educational records on which individuals accessing the records must sign, stating the reason for their access.