



## FERPA, What Does It Mean for School Nurses?

**2016 Maine School Nurse Summer Institute**

July 27, 2016 Frank Miller, Deputy Director  
Family Policy Compliance Office  
U.S. Department of Education

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### The World Has Changed...

**When FERPA was passed in 1974:**

- Average house price was \$38k
- Average income was \$11k
- Federal spending was "only" \$269B
- You could buy a PC for the low, low price of \$20k

**And...**

- Disco was still cool
- Education records were papers in the principal's office.



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

- Statute: 20 U.S.C. § 1232g
- Regulations: 34 CFR Part 99
- Family Policy Compliance Office (FPCO) in U.S. Department of Education administers FERPA.

<https://www.youtube.com/watch?v=nhlDkS8hvMU&sns=em>



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 What is FERPA?

- Gives parents the right to access and seek to amend their children's education records
- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Requires written consent before sharing PII - unless an exception applies



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 To which educational agencies and institutions does FERPA apply?



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Postsecondary

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 What are education records?

"Education records" are records that are -

- directly related to a student; and
- maintained by an educational agency or institution or by a party acting for the agency or institution.



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 Education records do not include such records as –

- Sole possession records used as a personal memory aid
- Law enforcement unit records
- Peer-graded papers before they are collected and recorded by teacher



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 What is personally identifiable information (PII)?



Name



Mother's maiden name



address



Date of birth



Social Security Number



Parent's name

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 Personally Identifiable Information (PII), Cont.

- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.



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 What rights do parents and eligible students have?

- Right to inspect and review education records;
- Right to request amendment of education records;
- Right to consent to disclosures, with certain exceptions; and
- Right to file a complaint with U.S. Department of Education.

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 Definition of "Parent"

- "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.
- A parent is absent if he or she is not present in the day-to-day home environment of the child. Accordingly, a grandparent has rights under FERPA where the grandparent is present on a day-to-day fulltime basis with the child and the parent is absent from that home. Conversely, a grandparent who is not present on a day-to-day basis in the home of the child does not have rights under FERPA with respect to such child's education records.



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 Rights of Parents (Custodial and Noncustodial)

- FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, State statute or legally binding document that specifically revokes these rights (§ 99.4).



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 **Transfer of Rights Under FERPA**

- When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").



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 **Right to Inspect and Review Education Records**



- School must comply with a request to inspect and review education records within 45 days.
- Schools are generally required to give copies, or make other arrangements for access, only if failure to do so would effectively deny access – example would be when a parent or eligible student who does not live within commuting distance.
- If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records.
- School may not destroy records if request for access is pending.

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 **Right to Request Amendment of Education Records**

- Parent or eligible student should identify portion of record believed to contain inaccurate or misleading information or in violation of the privacy rights of the student.
- School must decide within reasonable period of time whether to amend as requested.
- If school decides not to amend, must inform parent or eligible student of right to a hearing.
- After a hearing, if decision is still not to amend, parent or eligible student has a right to insert a statement in the record.



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### Prior Written Consent Requirement

Except for specific exceptions, a parent or eligible student shall provide a signed and dated written consent before a school may disclose education records. The consent must:

- specify records that may be disclosed;
- state purpose of disclosure; and
- identify party or class of parties to whom disclosure may be made.



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### What are the exceptions to general consent?

- To school officials with legitimate educational interests (defined in annual notification);
- To schools in which a student seeks or intends to enroll;
- To State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system;
- To comply with a judicial order or subpoena (reasonable effort to notify parent or student at last known address);
- To accrediting organizations;

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### What are exceptions to general consent? (cont.)

- To parents of a dependent student;
- To authorized representatives of Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs;
- To organizations conducting studies for specific purposes on behalf of schools;
- In a health or safety emergency;
- To child welfare agency or tribal organization for those children in foster care; and
- Directory information.

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### School Official Exception

- Schools may disclose PII from education records without consent if the disclosure is to other school officials, including teachers, within the school whom the school has determined to have legitimate educational interest.
- Annual notification of FERPA rights must include criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

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### School Official Exception, Cont.

- Outsourcing services under school official exception
  - Schools may outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided certain conditions are met.
  - If these outside parties meet the conditions for outsourcing, they may have access to education records.

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### Directory Information Exception



Information in a student's education records that would not generally be considered harmful or an invasion of privacy if disclosed

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### Directory Information Exception

- May include:
  - ✓ name, address, phone number, and e-mail address
  - ✓ photograph
  - ✓ date and place of birth
  - ✓ Most recent school attended; grade level and major field of study
  - ✓ dates of attendance (e.g., year or semester)
  - ✓ participation in officially recognized sports and activities; height and weight of athletes,
  - ✓ degrees, honors, and awards received, and
- Can never include social security number
- Can't disclose non-directory information with directory information

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### Directory Information Exception

- Public notice must be given to parents of students in attendance and eligible students in attendance
- Parents may choose to "opt-out" of the disclosure of directory information on their child.
- School may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, for specific purposes, or for both.

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### Health or Safety Emergencies Exception



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

- Disclosure is necessary to protect the health or safety of the student or others.
- There is an articulable and significant threat to the health or safety of a student or other individuals.
- Appropriate parties typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
- Must be related to an actual, impending, or imminent emergency.

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### Health or Safety Emergency Exception, cont.

- Must be articulable and significant threat.
- School must make determination on case-by-case basis.
- Department will not substitute its judgment if there is a rational basis for decision to disclose under health or safety emergency exception.
- Limited to period of time of the emergency.
- Must record pertinent information when it discloses PII.



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### Health or Safety Emergency Exception, cont.

- Typically public health officials and trained medical personnel are among the types of appropriate parties to whom information may be disclosed under FERPA's health or safety emergency provision.
- For personally identifiable information from education records to be disclosed to a public health department in a non-emergency situation, unless there is another exception to the consent requirement, FERPA requires that parents and eligible students provide written consent.

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### Health or Safety Emergency Exception - Scenario

*If the school determines that a health or safety emergency exists, may it disclose without consent personally identifiable information on students to the media?*

- No. FERPA only permits disclosures of personally identifiable information from students' education records under the health or safety emergency provision to "appropriate parties" (such as public health officials) whose knowledge of the information is necessary to protect the health or safety of students or other individuals in the school community.
- While the media may have a role in alerting the community of an outbreak, they are not "appropriate parties" under FERPA's health or safety emergency provision because they generally do not have a role in protecting individual students or other individuals at the school.

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 Disclosures to Child Welfare Agency (CWA) or Tribal Organizations



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 Uninterrupted Scholars Act

New exception to the general consent rule passed by Congress January 2013, P.L. 112-278.

- Disclosure permitted to: "agency caseworker or other representative" of a State or local child welfare agency (CWA) or tribal organization who has the right to access a student's case plan
- Disclosure permitted when: the CWA or tribal organization is "legally responsible ... for the care and protection of the student"

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 Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

- Establishes standards and imposes requirements to protect the privacy of individually identifiable health information.
- Records that are subject to FERPA are not subject to the HIPAA Privacy Rule (see page 82483, Federal Register, Vol. 65, No. 250, December 28, 2000)
- Other HIPAA rules may apply.



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### HIPAA and K-12 Schools

- In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because the school either:
  - (1) is not a HIPAA covered entity or **FPCO9**
  - (2) is a HIPAA covered entity but maintains health information only on students in records that are by definition “education records” under FERPA and, therefore, is not subject to the HIPAA Privacy Rule.

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### FERPA and Health Records

- At the elementary or secondary school level, students’ immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic are “education records” subject to FERPA, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district.

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### Non School Employed Health Care Provider

- If a person or entity acting on behalf of a school subject to FERPA, such as a school nurse that provides services to students under contract with or otherwise under the direct control of the school, maintains student health records, these records are education records under FERPA, just as they would be if the school maintained the records directly. This is the case regardless of whether the health care is provided to students on school grounds or off-site. As education records, the information is protected under FERPA and not HIPAA.

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## Slide 31

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**FPCO9** Spacing looks weird.  
Campbell, Ellen, 7/20/2016



### Health Care Provider Disclosure to School Nurse

- The HIPAA Privacy Rule allows covered health care providers to disclose protected health information about students to school nurses, physicians, or other health care providers for treatment purposes, without the authorization of the student or student's parent.
- For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.

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### Health Care Provider Disclosure to School Nurse - Scenario

*A student received treatment from the school nurse. The nurse determined that the student has a contagious disease. However, because the records are protected by HIPAA, they cannot be shared with other school officials and parents of students attending the school.*

- False. These records are NOT covered by HIPAA, but by FERPA. FERPA's health or safety emergency exception may permit necessary disclosures.

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### Health Care Provider Disclosure to School Nurse - Scenario

*The school nurse wants to share information (on a student about his or her condition) with teachers and administrators. However, the HIPAA Privacy Rule prohibits this sharing of information.*

- False. At the elementary/secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered "education records" subject to FERPA - not the HIPAA Privacy Rule.
- A school nurse may share information on students with other school officials if these school officials have a legitimate educational interest in the records. Typically, if there is a health condition about which other teachers and school administrators need to be aware in order to provide a safe and healthy environment for the student, then the school could include such a criteria for what it considers to be a "legitimate educational interest."

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### Health Care Provider Disclosure to School Nurse - Scenario

*The school nurse receives a doctor's note from a student but has concerns with the authenticity of the document. The nurse believes that the HIPAA Privacy Rule has provisions that would allow her to contact the doctor without consent, to confirm the authenticity but what about FERPA?*

- As a school official, the nurse would need written consent from the parent or eligible student before doing so, unless a health or safety emergency exists. However, FERPA would permit a school official to strictly verify whether the doctor wrote an excuse or some other document, as long as other information from the student's education records is not disclosed.

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### Postsecondary Health Clinics

- FERPA applies to the records on students at campus health clinics at postsecondary institutions.
- These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Privacy Rule, even if the school is a HIPAA covered entity. See the exceptions at paragraphs (2)(i) and (2)(ii) to the definition of "protected health information" at 45 CFR § 160.103.

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### Treatment Records

- "Treatment records" under FERPA, as they are commonly called, are defined as:

Records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

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### Treatment Records - Scenario

*An eligible student in high school who is being treated by the school counselor has exhibited suicidal tendencies. Because the rights under FERPA have transferred to the student and because this information is contained in a counseling record, FERPA does not permit the counselor to call the student's parents and discuss her situation.*

- False. These records are generally "education records." A school may disclose PII from an eligible student's education records' to that student's parents under exceptions to consent, most notably the "dependent student" exception.
- Also, see the "Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records."

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### HIPAA and Postsecondary Institutions

- While the health records of students at postsecondary institutions may be subject to FERPA, if the institution is a HIPAA covered entity and provides health care to nonstudents, the individually identifiable health information of the clinic's nonstudent patients is subject to the HIPAA Privacy Rule.
- For example, postsecondary institutions that are subject to both HIPAA and FERPA and that operate clinics open to staff, or the public, or both (including family members of students) are required to comply with FERPA with respect to the health records of their student patients, and with the HIPAA Privacy Rule with respect to the health records of their non-student patients.

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### FERPA and School-Located Vaccination Programs

- **School Nurse Records –**
  - Vaccination records that are directly related to a student and maintained by a school nurse who is employed by the school are considered "education records."
  - Vaccination records that are directly related to a student and maintained by a school nurse that is under contract to the school are considered "education records."
  - Vaccination information from education records may not be shared with outside parties without parental consent, unless an exception applies.
- **Health Department Records –**
  - Vaccination records that a health department creates and maintains as a result of a vaccine campaign are not subject to FERPA and may or may not be subject to HIPAA.
  - Any copies of vaccination records maintained by the school become "education records" subject to FERPA at the school.

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### FERPA and School-Located Vaccination Programs –Consent

- Signed and dated consent is generally needed for a school to share vaccination records to public health authorities (e.g., for entry into an immunization registry) or to the child’s health care provider (e.g., for inclusion in the child’s health care record).
- Schools, in collaboration with their health departments and local health providers, must carefully consider how to obtain consent from parents for potential information sharing.
- Obtaining consent to share vaccination information on certain populations can be challenging, such as
  - Children in foster care
  - Children not in the physical custody of a parent or guardian
- Vaccination information may be shared, without consent, to other school officials whom the school has determined to have legitimate educational interests

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### FERPA and School-Located Vaccination Programs - Scenario

*If public health department officials provide vaccines at the school site to students, are any records generated by the vaccine campaign subject to FERPA or to the HIPAA Privacy Rule?*

- If health officials, such as individuals from the local health department, come on campus and oversee the vaccine administration, any records that the health officials create and maintain would not be subject to FERPA. However, any records or recorded information (or copies of records) provided by health officials to school officials that directly relate to a student and are maintained by the school would be “education records” subject to FERPA.

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### FERPA and School-Located Vaccination Programs - Scenario

*If a school nurse (employed by the school) participates in the administration of vaccines along with other individuals from the health department, are the vaccination records covered by FERPA or the HIPAA Privacy Rule?*

- Any records that the school nurse maintains that are directly related to a student are considered “education records” subject to FERPA. Any records that the health department creates and maintains as a result of the vaccine campaign are not subject to FERPA and may or may not be subject to the HIPAA Privacy Rule.

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### FERPA and School-Located Vaccination Programs - Scenario

*If the school or school district leads the vaccination campaign independent of public health officials, with school nurses or contract nurses hired by the school or school district administering the vaccine, does FERPA permit the school to report the vaccination to the public health department?*

- FERPA would permit the school to disclose information on the vaccinations, in personally identifiable form, to the health department without parental consent, if an exception to the general consent rule in FERPA applies.

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### FERPA and School-Located Vaccination Programs - Scenario

*If a student is vaccinated by a personal physician and brings the vaccination record to the school, does that become part of the student's education records and, if so, can that record be shared with the health department to allow the student to be counted as "vaccinated"?*

- If the parent (or the physician) provides the information to the school, and it is maintained by the school, it is an "education record" under FERPA. As such, it can only be shared with the health department either with consent or under one of the exceptions to the general consent requirement in FERPA, such as under the health or safety emergency exception.

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### Ebola Concerns in K-12 Schools: CDC Guidance

- In the United States, Ebola is a very rare disease with no cases of Ebola transmission in the United States in schools or community settings.
- Most situations regarding Ebola exposure that educators would face would pertain to perceived rather than any actual risk. Educators need to recognize such situations and address them in a timely and appropriate manner without overreaction.
- It is key that educators proactively establish communication with their local public health department for timely exchange of information related to Ebola, and consult as needed.

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### Ebola Concerns in K-12 Schools: CDC Guidance cont.

- Educators should understand actions that may be taken by public health authorities in their jurisdiction for people exposed to Ebola. However, educators should not take on the role and responsibilities of local public health authorities.
- Whether a student or staff person with possible recent (within 21 days) exposure to Ebola should attend school should be decided by local public health authorities.
- Educators should prevent discrimination, and counter stigma, harassment, and bullying related to perception of Ebola risk.

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### Zika Virus Response Planning Guidance

- Zika virus is spread primarily through the bite of an infected *Aedes* species mosquito, through sexual contact, or from a pregnant woman to her fetus, and is not passed directly from person to person through casual contact.
- For most children and adults, Zika virus infection will not cause symptoms or will only cause mild symptoms.
- Zika virus infection during pregnancy is associated with adverse pregnancy outcomes and certain birth defects; therefore, special considerations for preventing exposure might be needed for pregnant women, women trying to conceive, and their male sexual partners.

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### Zika Virus Response Planning Guidance cont.

- School jurisdictions should proactively establish effective channels of communication with local government and public health authorities regarding response plans for local transmission of Zika virus disease.
- School administrators can help provide safe school environments through mosquito bite prevention efforts and sharing of accurate Zika virus information with staff members, students, and families.
- It is not recommended for schools to remove students or staff members who have or were exposed to Zika virus, or to cancel school-related activities because of Zika virus concerns.
- Nondiscrimination and privacy and confidentiality measures should be maintained for all students and staff members.

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 **Guidance Documents & Other Resource Materials**

- FERPA & H1N1 (re: disclosures to local and state health departments)  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf>
- Addressing Emergencies on Campus  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/emergency-guidance.pdf>
- Joint FERPA-HIPAA Guidance  
<http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- FERPA & Disclosures Related to Emergencies & Disasters  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>
- Balancing Student Privacy & School Safety  
<http://www2.ed.gov/policy/gen/guid/fpco/brochures/elsec.html>
- Addressing Ebola Virus Infection Concerns in K-12 Schools: Interim Guidance for District and School Administrators  
<http://www.cdc.gov/hf/ebola/children/k-12-school-guidance.html>
- Zika Virus Response Planning: Interim Guidance for District and School Administrators in the Continental United States and Hawaii  
<http://www.cdc.gov/zika/schools.html>

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 **Contact Information**

**Family Policy Compliance Office**  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520

Telephone: (202) 260-3887  
Websites: [www.ed.gov/fpco](http://www.ed.gov/fpco)



For informal requests for technical assistance, go to the "Contact Us" page on <http://familypolicy.ed.gov>.

To sign up for the FPCO GovDelivery Announcement ListServ, please visit our website page for school officials at <http://familypolicy.ed.gov/ferpa-school-officials>.

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