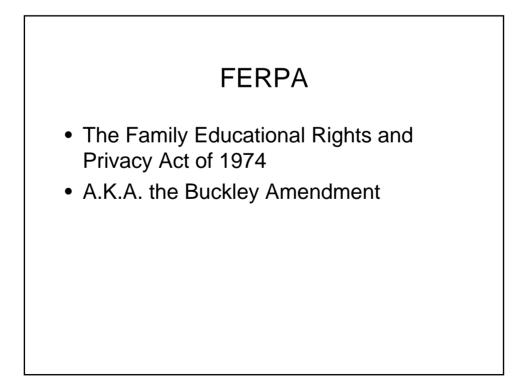
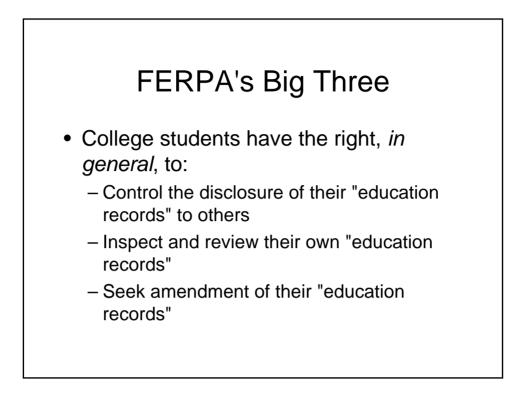
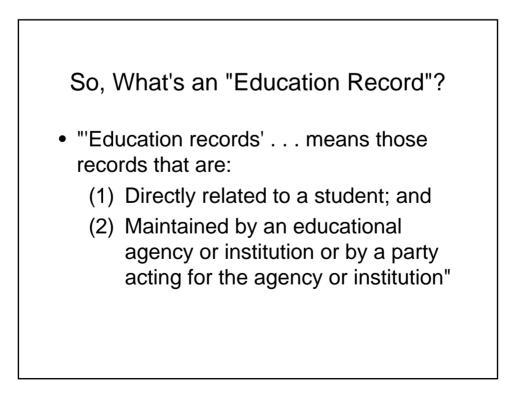
THE FUNDAMENTALS OF FUNDAMENTAL FERPA

Steven J. McDonald General Counsel Rhode Island School of Design







So, What's an "Education Record"?

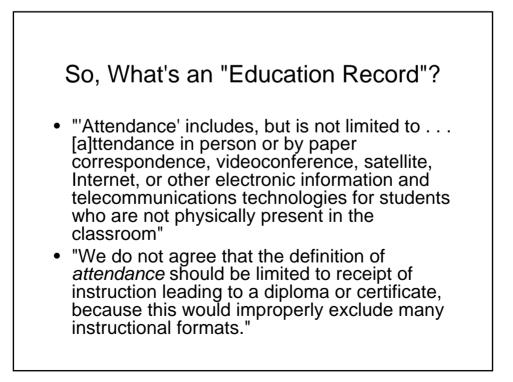
 "'Educational . . . institution' means any public or private . . . institution" that receives funds "under any program administered by the Secretary [of Education]"



- "'Record' means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche"
- N.B.: Does *not* include information that is not "recorded" – that is, personal knowledge

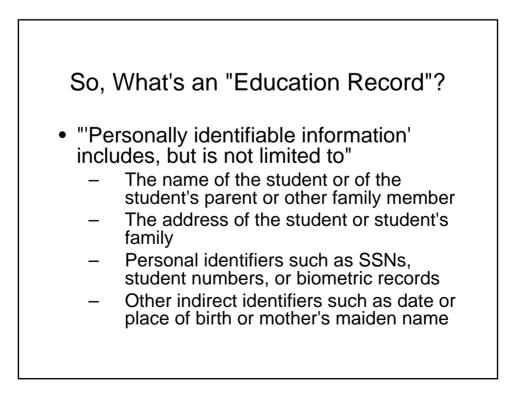
So, What's an "Education Record"?

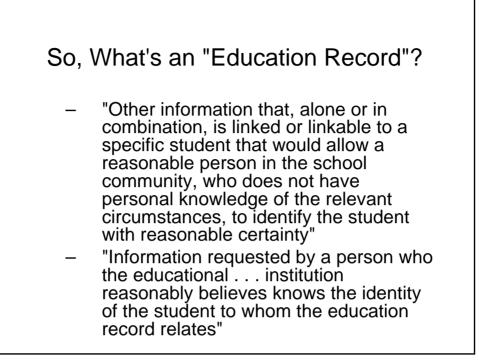
 "'Student' . . . means any individual who is or has been in attendance at an educational . . . institution"

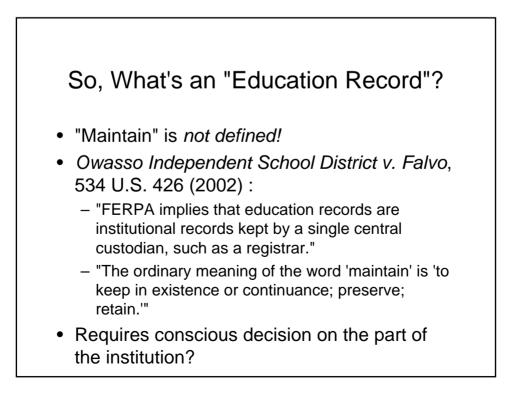


So, What's an "Education Record"?

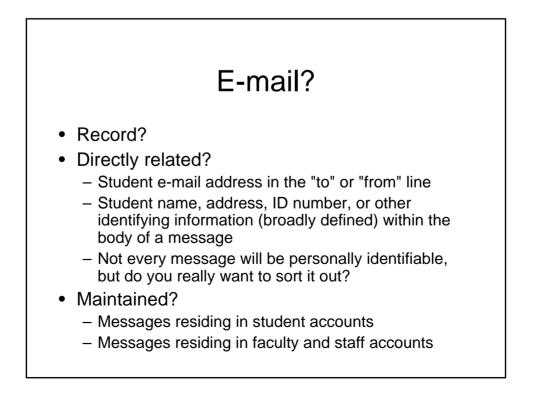
- In general, a record is "directly related" to a student if it contains "personally identifiable information" about that student
- But "[r]ecords that teachers and other school officials maintain on students that use only initials, nicknames, or personal descriptions to identify the student are education records under FERPA because they are directly related to the student"

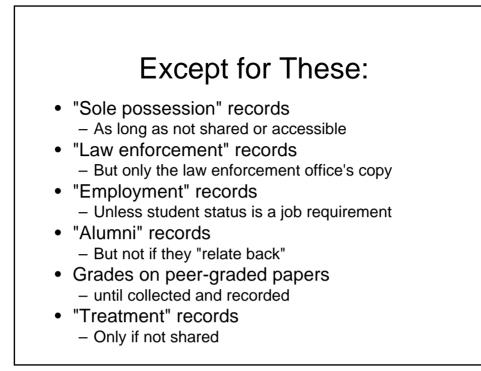


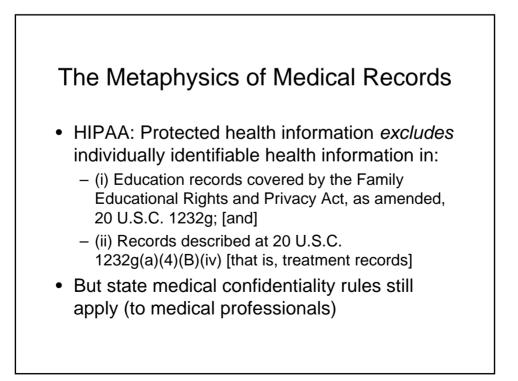






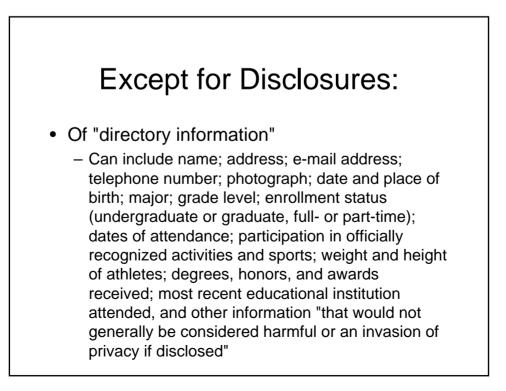




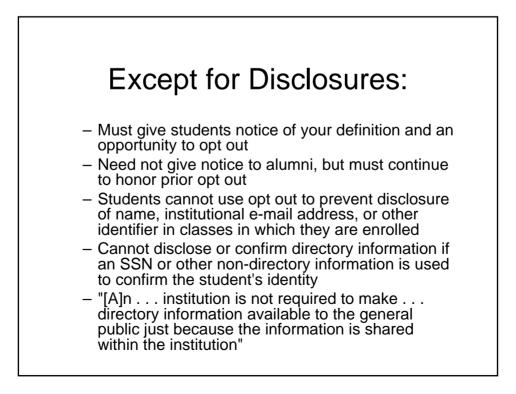


Disclosure

- Before disclosing education records or information from education records – an institution must obtain a signed and dated written consent from *all* relevant students, specifying:
 - The records that may be disclosed
 - The purpose for which they may be disclosed
 - The persons or classes to whom they may be disclosed

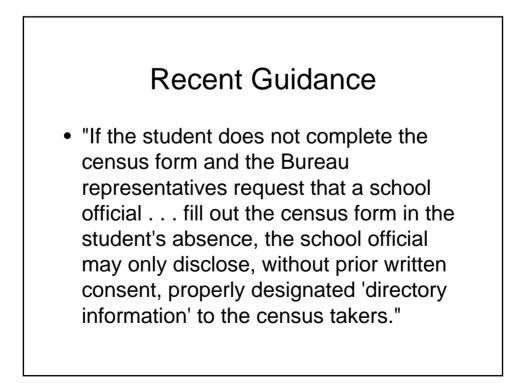


- Cannot include SSN
- Can include student ID number, user ID, or other unique personal identifier used by student to access or communicate in electronic systems, *but only if* the identifier cannot be used to gain access to education records without further authentication



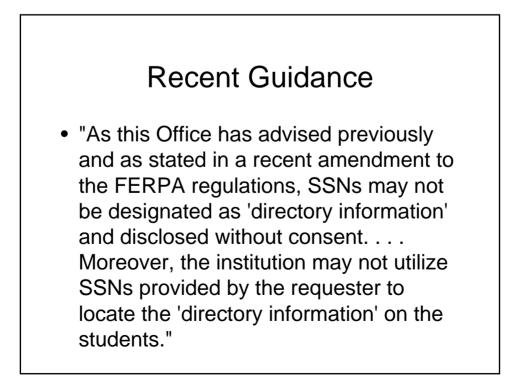
Recent Guidance

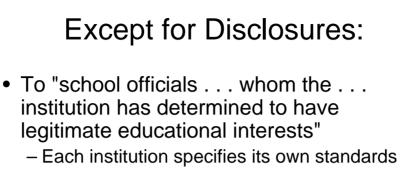
 "[P]ostsecondary institutions may disclose, without prior written consent, properly designated 'directory information' on those students who have not opted out of 'directory information' disclosures to representatives of the [Census] Bureau. That is, an RA or other school official may provide census takers with the names and campus addresses of students (who have not opted out), assuming that the institution has a 'directory information' policy and has designated names and addresses as 'directory information' items.



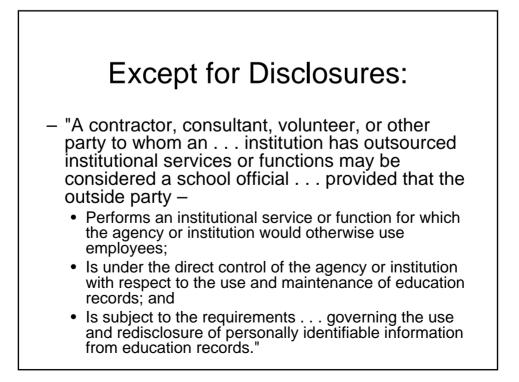
Recent Guidance

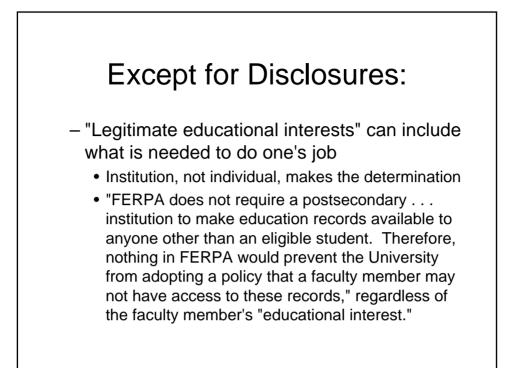
 "The census form also asks for information about the student's sex, ethnicity and race. However, school officials may not disclose this information, without prior written consent, to census takers because these items of information may not be designated as 'directory information.'"

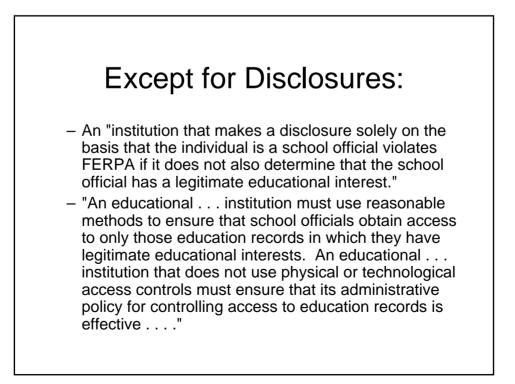


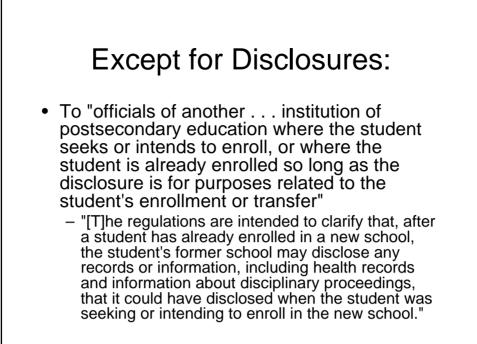


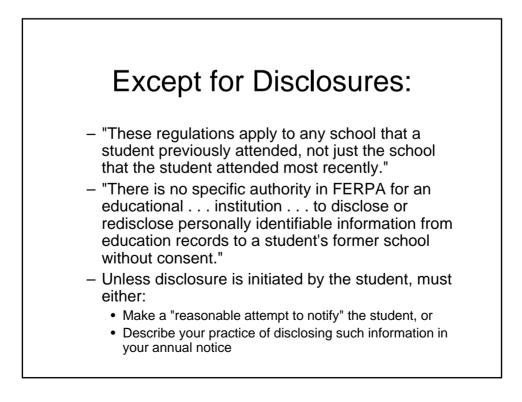
- "School officials" can include students serving on committees and outside contractors
- "Legitimate educational interests" can include what is needed to do one's job
- Institution, not individual, makes the determination

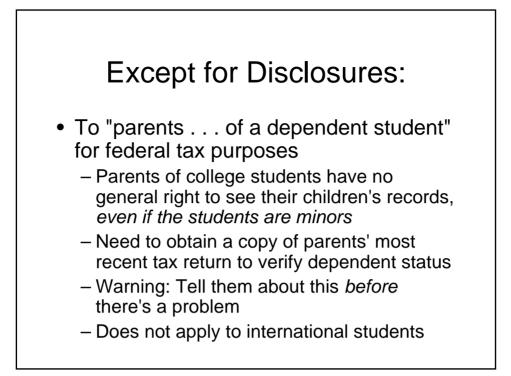


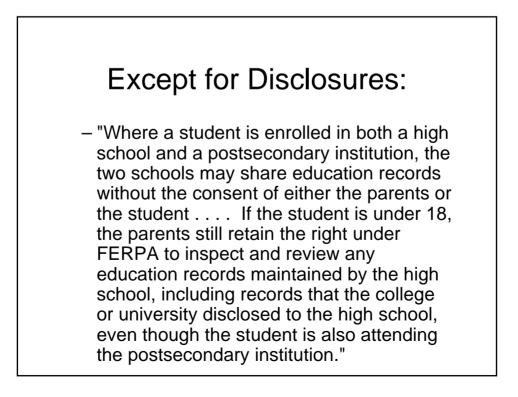


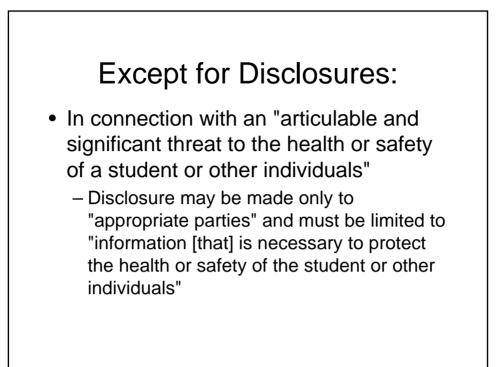








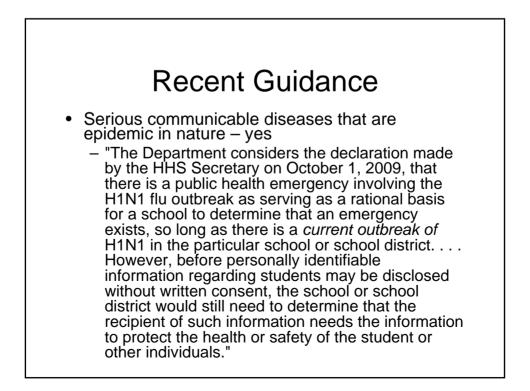


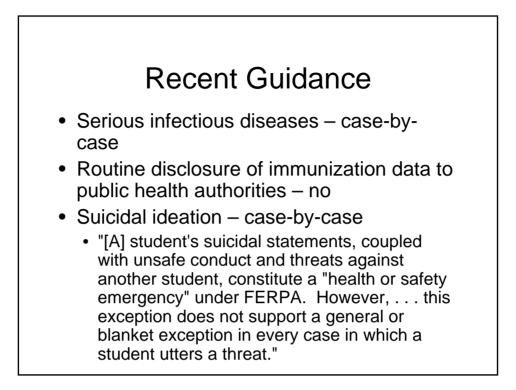


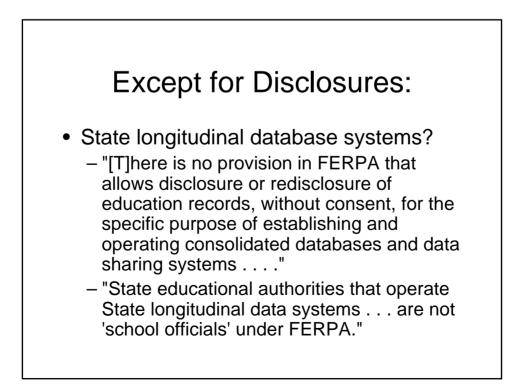


 Potential "appropriate parties" include not only people who can provide protection (such as law enforcement), but also threat assessment team members, people who may have information that may assist in providing or evaluating the need for protection (such as peers, mental health professionals, and prior schools attended), potential victims, and parents of the student or of potential victims

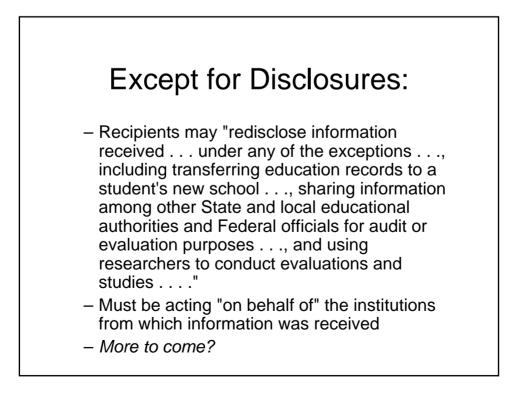
- "[T]he Department will not substitute its judgment for that of the . . . institution if, based on the information available at the time . . . there is a rational basis for the . . . institution's determination that a health or safety emergency exists and that the disclosure was made to appropriate parties."

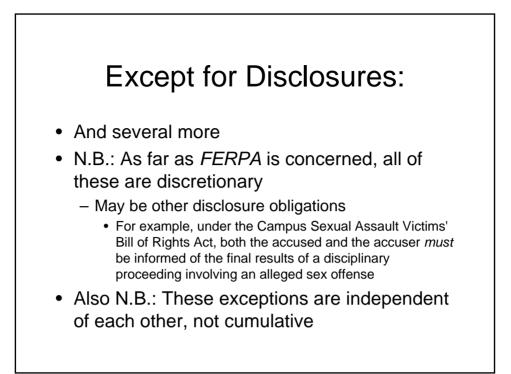


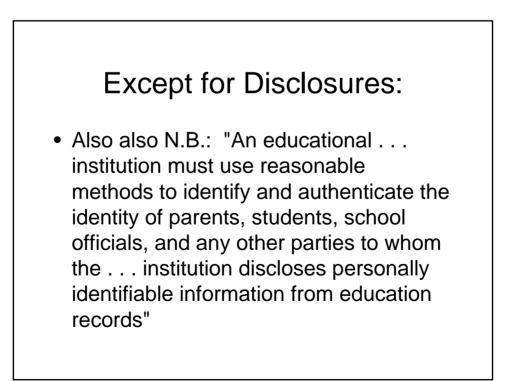




- To "[a]uthorized representatives of [State or local educational authorities] . . . in connection with an audit or evaluation of Federal or State supported education programs"
 - FERPA "does not . . . provide the underlying authority . . . to conduct the various activities" specified





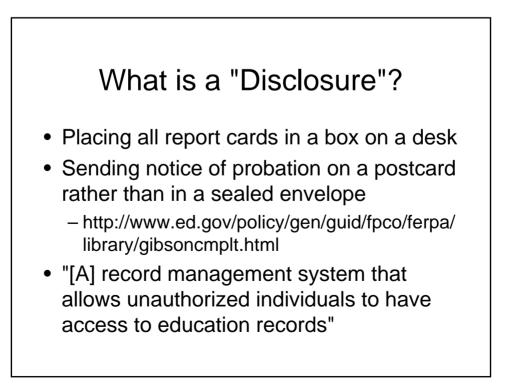


"Due to the differences in size, complexity, and access to technology, we believe that . . . institutions should have the flexibility to decide the methods for identification and authentication of identity best suited to their own circumstances. . . . 'Effectiveness' is certainly one measure, but not necessarily a dispositive measure, of whether the methods used by an . . . institution are 'reasonable'. . . . [A]n . . . institution is not required to eliminate all risk of unauthorized disclosure of education records but to reduce that risk to a level commensurate with the likely threat and potential harm."

What is a "Disclosure"? • "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"

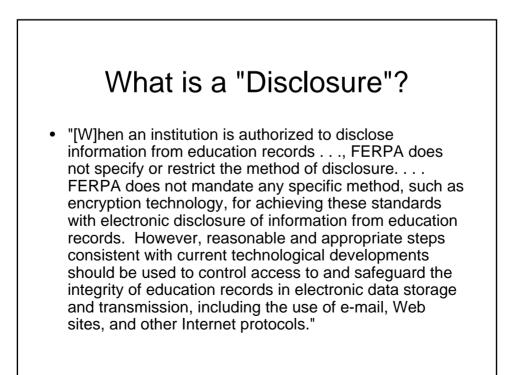
What is a "Disclosure"?

 FERPA "clearly does not allow an educational ... institution to leave education records unprotected or subject to access by unauthorized individuals, whether in paper, film, electronic, or any other format. We interpret this prohibition to mean that an educational ... institution must use physical, technological, administrative and other methods, including training, to protect education records in ways that are reasonable and appropriate to the circumstances in which the information or records are maintained."



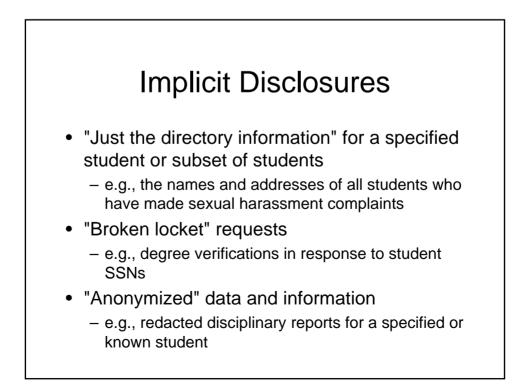
What is a "Disclosure"?

"[A]n . . . institution may use any method, combination of methods, or technologies it determines to be reasonable, taking into consideration the size, complexity, and resources available to the institution; the context of the information; the type of information to be protected (such as social security numbers or directory information); and methods used by other institutions in similar circumstances."



What is a "Disclosure"?

- "[A]n . . . institution may print an ID number on a student's ID card whether or not the number is treated as directory information because under FERPA simply printing the ID number on a card, without more, is not a disclosure and, therefore, is not prohibited."
- "If the student ID number is not designated as directory information, then the . . . institution may not disclose the card, or require the student to disclose the card, except in accordance with one of the exceptions to the consent requirement, such as to school officials with legitimate educational interests."



Inspect and Review

- Must allow students to "inspect and review" their own education records within 45 days of request
- Need not provide copies unless "circumstances effectively prevent the . . . student from exercising the right to inspect and review"
- Does not include financial aid records of parents or confidential letters of recommendation to which the student has waived access

