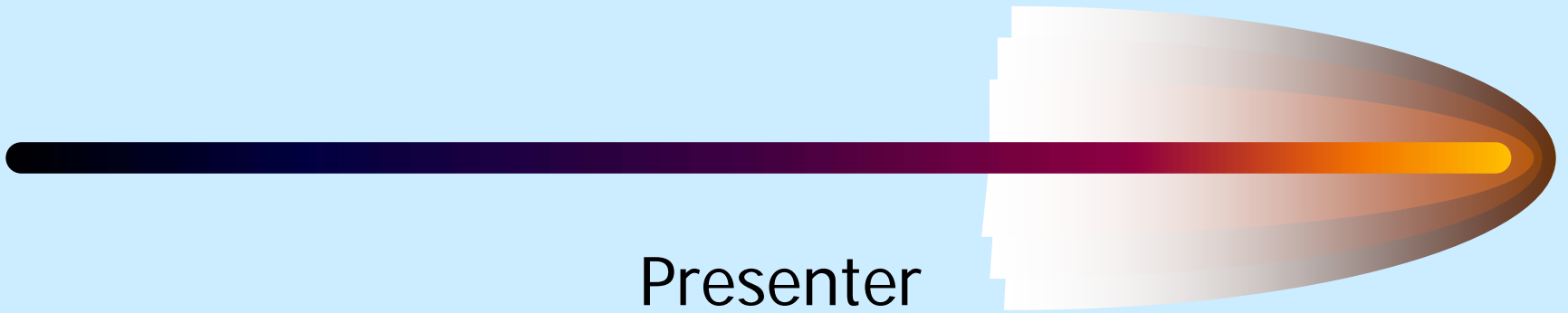


Management of Student Education Records



Presenter

Sandra E. Ruffin, Ed.D.

Director of Federal Program Monitoring
Division of Special Education and Student
Services

Virginia Department of Education

Regulations



- Family Educational Rights and Privacy Act
- Protection of Pupil Rights Amendment
- Individuals with Disabilities Education Act
- No Child Left Behind Act
- The Code of Virginia
- Records Retention and Disposition, General Schedule No. 21, Public School Records

Family Educational Rights and Privacy Act (FERPA)



- Also known as the Buckley Amendment
- Statute: 20 U.S.C. § 1232(g)
- Regulations: 34 CFR Part 99

Family Educational Rights and Privacy Act (FERPA)



Purpose

To protect the confidentiality of information in students' education records from unauthorized disclosure


Primary Rights of Parents under FERPA



- Right to inspect and review education records
- Right to seek to amend education records
- Right to have some control over the disclosure of information from education records

(These rights transfer to student when student turns 18 or attends a postsecondary institution.)


Subpart A – General



§ 99.1 To which educational agencies and institutions do these regulations apply?

- FERPA applies to schools that receive funds under any program administered by the Secretary of Education.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.
(exception, VA law)

§ 99.3 *What definitions apply to these regulations? (Partial)*



“Education records” are records which –

- (1) contain information which is directly related to a student; and
- (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

“Education records,” cont.



Exceptions to “education records” include –

- Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute, e.g., personal notes.
- Records created and maintained by a law enforcement unit for a law enforcement purpose.

“Education records,” cont.



- Records on a student receiving services under Part B of IDEA are “education records” subject to FERPA.
- Medical or health records are “education records” subject to FERPA, if they are maintained by an educational agency or institution.

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.

Definitions, cont.



“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.

Definitions, cont.



Under IDEA - "Parent" means

- A biological or adoptive parent of a child;
- A foster parent;
- A guardian generally authorized to act as the child's parent (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent.

Definitions, cont.

“Personally identifiable information” includes, but is not limited to:

- The student’s name.
- Name of the student’s parent or other family members.
- Address of the student or student’s family.
- A personal identifier, such as a social security number or student number.
- A list of personal characteristics or other information that would make the student’s identity easily traceable.

Definitions, cont.



“Directory information” is –

- Information not generally considered harmful or an invasion of privacy if disclosed.
- Includes, but is not limited to:
 - name, address, telephone listing, electronic mail address
 - date and place of birth, photographs
 - participation in officially recognized activities and sports
 - field of study
 - weight and height of athletes
 - enrollment status (full-, part-time, undergraduate, graduate)
 - degrees & awards received
 - dates of attendance
 - most recent previous school attended
 - grade level
- Directory information cannot include student identification numbers or social security numbers.

Definitions, cont.



“Record” means any information maintained in any way, including, but not limited to:

- Handwriting
- Video or audio tape
- Computer media
- Film
- Print
- Microfilm and microfiche

Definitions, cont.



“Student” means any individual:

- who is or has been in attendance at a school; and
- regarding whom the school maintains education records.


Rights of Parents



§ 99.4 What are the rights of parents, custodial or 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.

§ 99.7 *What must an educational agency or institution include in its annual notification?*



Schools must annually notify parents of students *in attendance* of their rights under FERPA, including:

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

Annual notification, cont.



The annual notification must also include the following:

- Procedure to inspect and review education records;
- A statement that education records may be disclosed to school officials without prior written consent, including:
 - Specification of criteria for determining who are school officials and
 - What constitutes a legitimate educational interest.

Annual notification, cont.



FERPA does not specify the means of notification, other than by any means reasonably likely to inform the students. Examples include:

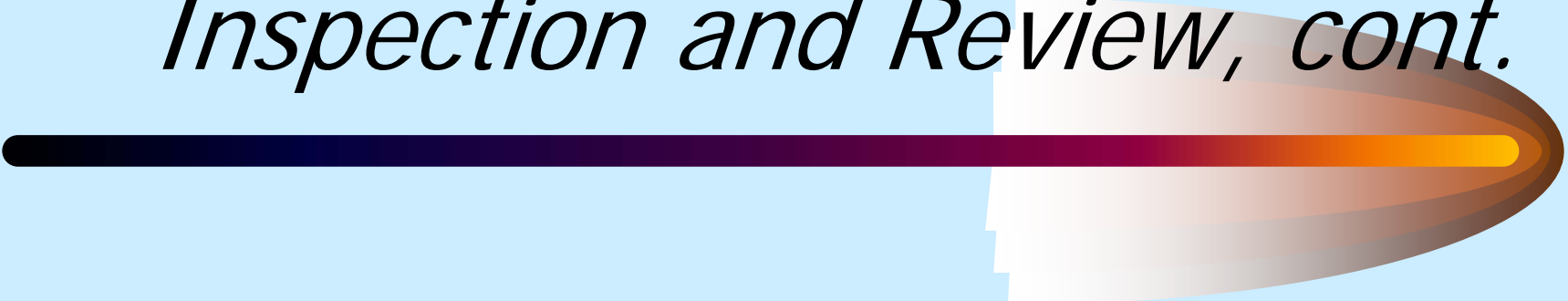
- Student handbook
- School newspaper or catalog
- Local newspaper
- Inclusion in student's registration packet

Subpart B – Inspection and Review of Education Records

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access – example would be a student or former student who does not live within commuting distance.
- School may *not* destroy records if request for access is pending.

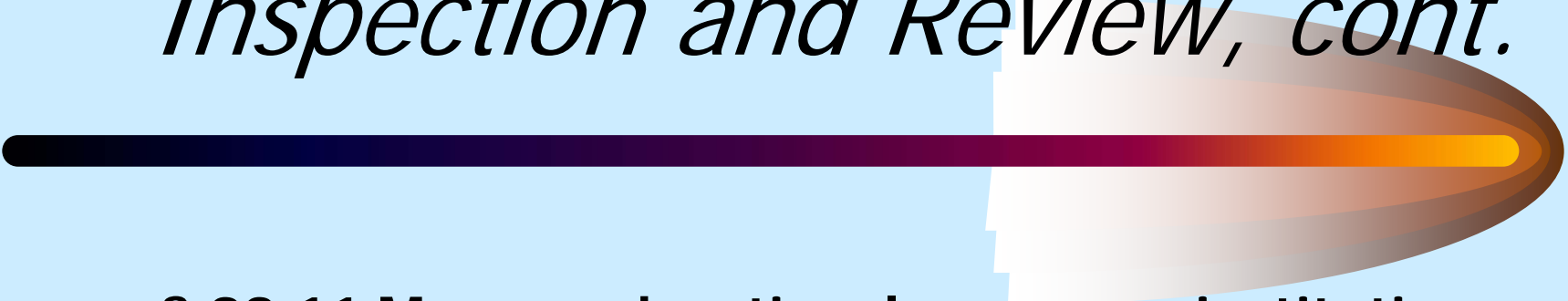
Inspection and Review, cont.



SEAs are required to afford parents and eligible students access to education records they maintain on students.

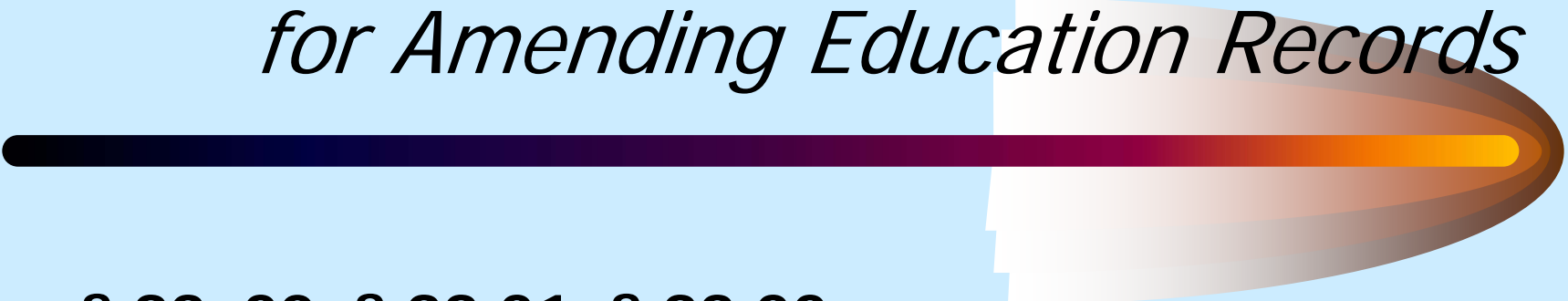
- Applies to records even if a copy of the records is available at the LEA.
- SEA may forward records to LEA to afford parents access to records they are seeking.

Inspection and Review, cont.



- **§ 99.11 May an educational agency or institution charge a fee for copies of education records?**
 - Yes – unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review education records.
- **§ 99.12 What limitations exist on the right to inspect and review education records?**
 - If the records contain information on more than one student, the requesting parent may inspect, review, or be informed of only the specific information about his or her child's records.

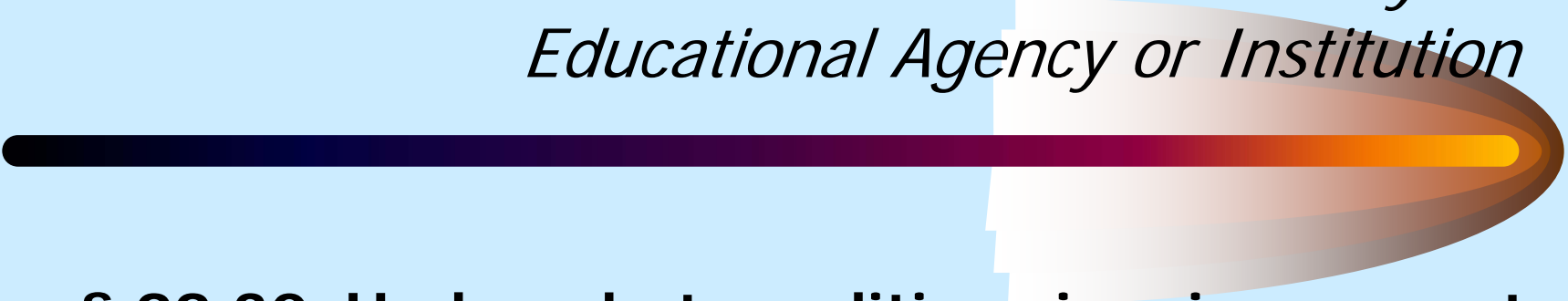
Subpart C – What are the Procedures for Amending Education Records



§ 99.20, § 99.21, § 99.22

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

Subpart D – Disclosure of Personally Identifiable Information From Education Records by an Educational Agency or Institution



§ 99.30 Under what conditions is prior consent required to disclose information?

- Except for specific exceptions, a parent 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.

Disclosure provisions, cont.



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

- The exceptions which relate to LEAs are:
 - To school officials with legitimate educational interests (defined in annual notification)
 - To schools in which a student seeks or intends to enroll
 - To Federal, State, and local *educational* authorities conducting an audit, evaluation, or enforcement of education programs
 - In connection with financial aid, such as a college loan

Disclosure provisions, cont.

Exceptions, cont.

- To organizations conducting studies on behalf of *schools*
- To parents of a dependent student
- To comply with a judicial order or subpoena (reasonable effort to notify)
- In a health or safety emergency
- Directory information
- To State and local officials in connection with serving the student under the juvenile justice system.

Disclosure provisions, cont.



§ 99.31(a)(5) Disclosure to Juvenile Justice System

Schools may disclose without consent to local or State officials who are part of a juvenile justice system if:

- There is a State statute that provides for the disclosures and the disclosures concern the juvenile justice system's ability to serve, prior to adjudication, the student whose records are being disclosed, and
- Prior to the disclosure, the local or State officials noted in the law have certified, in writing, that the personally identifiable information contained in the records will not be disclosed to a third party.

Recordkeeping



§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

A school must maintain a record of each request for access to and each disclosure from an education record. This record of access must:

- Be maintained as long as record is maintained;
- Include the parties who have requested or received information from education records; and
- Include the legitimate interest parties had in receiving information.

Recordkeeping, cont.



The recordkeeping requirement does not apply if the request was from, or the disclosure was made to:

- The parent or eligible student,
- A properly designated school official for a legitimate educational purpose,
- A party with written consent from the parent or eligible student,
- A party seeking directory information,
- A party with a law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed.

Redisclosure



§ 99.33 What limitations apply to the redisclosure of information?

- When disclosing information from education records to one of the parties listed under § 99.31, a school should inform the receiving party that the information may not be further disclosed, except when:
 - The disclosure is to the parent or eligible student
 - The receiving party discloses information on behalf of the school under § 99.31

Redisclosure, cont.



- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and student
- The disclosure is to the parents of a dependent student
- The information disclosed is directory information

Redisclosure, cont.



When disclosing information to a third party under §99.31, a school should inform the receiving party that the information may not be further disclosed. Include a disclaimer, such as:

“This document contains personal information from a student’s education records. It is protected by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and may not be re-released without consent of the parent or eligible student.”

Audit or Evaluation



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

- Federal, State, and local officials listed under §99.31(a)(3) may have access to records only
 - in connection with an audit or evaluation of Federal or State supported education programs, or
 - For the enforcement of or compliance with Federal legal requirements which relate to those programs.
- The information must be
 - Protected from disclosure to anyone else
 - Destroyed when no longer needed for the purposes listed above

Health and Safety Emergencies



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

- Disclosure to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.
- Schools may disclose information about certain disciplinary actions taken against students to officials of other schools.

Directory Information



§ 99.37 What conditions apply to disclosing directory information?

A school may disclose directory information if it has given public notice to parents of students in attendance of:

- What items the school has designated as directory information.
- A parent's right to refuse to let the school designate any or all of the information as directory information.
- The time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information.

Directory Information, cont.



- FERPA does not define “public notice” – left to the individual school to decide.
- Means of notice could include:
 - Student handbooks or catalog
 - School or local newspaper
 - Student’s registration packet
- School may choose to include notice regarding directory information with the annual notification required by § 99.7.
- Notice to former students is not necessary.

Subpart E – What are the Enforcement Provisions?

§§ 99.60-99.67

- The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Parents and eligible students may file complaints with the U.S. Department of Education.
- Timely complaint = 180 days

No Child Left Behind Act



- Two provisions of NCLB relate to disclosures of education records
 - Disciplinary records
 - Military recruiters

Disciplinary Records



States that receive funds under the ESEA are required to provide an assurance to the Secretary that the State:

- “has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.”

Military Recruiters



ESEA, as amended by NCLB, and 2002 Defense Reauthorization Act require LEAs to:

- give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers;
- provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information; and

Military Recruiters, cont.



Notify parents that it routinely discloses information to military recruiters and how parents may opt out of this

- this notification may be included with the “directory information” notice under FERPA
- if a school does not provide sufficient notice relating to “directory information” it must do a special notice to parents about the disclosure to military recruiters.

Protection of Pupil Rights Amendment



Notification – LEAs must notify parents at least annually at the beginning of the school year of their rights under PPRA, including:

- The right to *consent* to the administration of surveys *funded* in whole or in part *by ED* that contain questions from one or more of 8 protected areas.
- The right to *opt out* of the administration of any survey, regardless of the survey's funding, that contains questions from one or more of 8 protected areas.

PPRA, cont.

Eight Protected Areas include:

- 1) political affiliations or beliefs of the student or the student's parent;
- 2) mental and psychological problems of the student or the student's family;
- 3) sex behavior or attitudes;
- 4) illegal, anti-social, self-incriminating, or demeaning behavior;

PPRA, cont



Eight Protected Areas, cont.

- 5) critical appraisals of other individuals with whom respondents have close family relationships;
- 6) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- 7) religious practices, affiliations, or beliefs of the student or student's parent; or
- 8) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA, cont

The notification must also advise parents of:

- The right to opt their children out of activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
- Any non-emergency, invasive physical examination or screening that is: 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students.
- Specific or approximate dates scheduled for these types of activities.
- The right to inspect surveys and instructional materials.

Records Retention and Disposition



The Library of Virginia is the state agency that governs the retention and destruction of all public records, including records in the public schools.

Records Retention and Disposition Schedule No. 21
<http://www.lva.lib.va.us/>

Destruction of Information



- IDEA – Public agency must inform parents when personally identifiable information is no longer needed to provide educational services to the child.
- Information must be destroyed at the request of the parents (with exceptions).

Technical Assistance



Sandra E. Ruffin, Ed.D.
Virginia Department of Education
Telephone: (804) 225-2768
Fax: (804) 371-8796

E-Mail: Sandra.Ruffin@doe.virginia.gov

Copies of MSSR Guidelines
<http://www.penk12.va.us/VDOE/studentsrvcs>

Technical Assistance



Ms. Terri Reitz

Records and Information Management Analyst

The Library of Virginia

Telephone: (804) 692-3608

Schedule 21- Records Retention and Disposition

<http://www.lva.lib.va.us/>

Technical Assistance



Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Telephone: (202) 260-3887
FAX: (202) 260-9001
E-mail: FERPA@ed.gov

<http://www.ed.gov/offices/OII/fpco>