
Understanding FERPA:

Sharing Education Records to Improve Outcomes for Children in the Juvenile Justice System

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National context

- DOJ and ED's Guidance Package on Correctional Education in Juvenile Justice Facilities
- <http://www2.ed.gov/policy/gen/guid/correctional-education/index.html>



Outline of Presentation

1. Family Education Privacy Rights Act (FERPA) review
2. The Uninterrupted Scholars Act (USA) and students in the juvenile justice system
3. Other FERPA exceptions and students in the juvenile justice system
4. State law affects releases to the juvenile justice system
5. More information on information sharing

Limits of the Presentation

This presentation does **not** cover:

- Other important laws that may affect children involved in the juvenile justice system
 - HIPAA,
 - IDEA,
 - JJDPA,
 - CAPTA, &
 - ICWA
- Collateral consequences of sharing information between juvenile justice involved students from community schools.*See **34 CFR 99.20 for info on how to amend records**

1. Family Education Privacy Rights Act (FERPA) review

Protect privacy interests of
students' education records

By prohibiting schools from disclosing
personally identifiable information without
consent of parent or eligible student

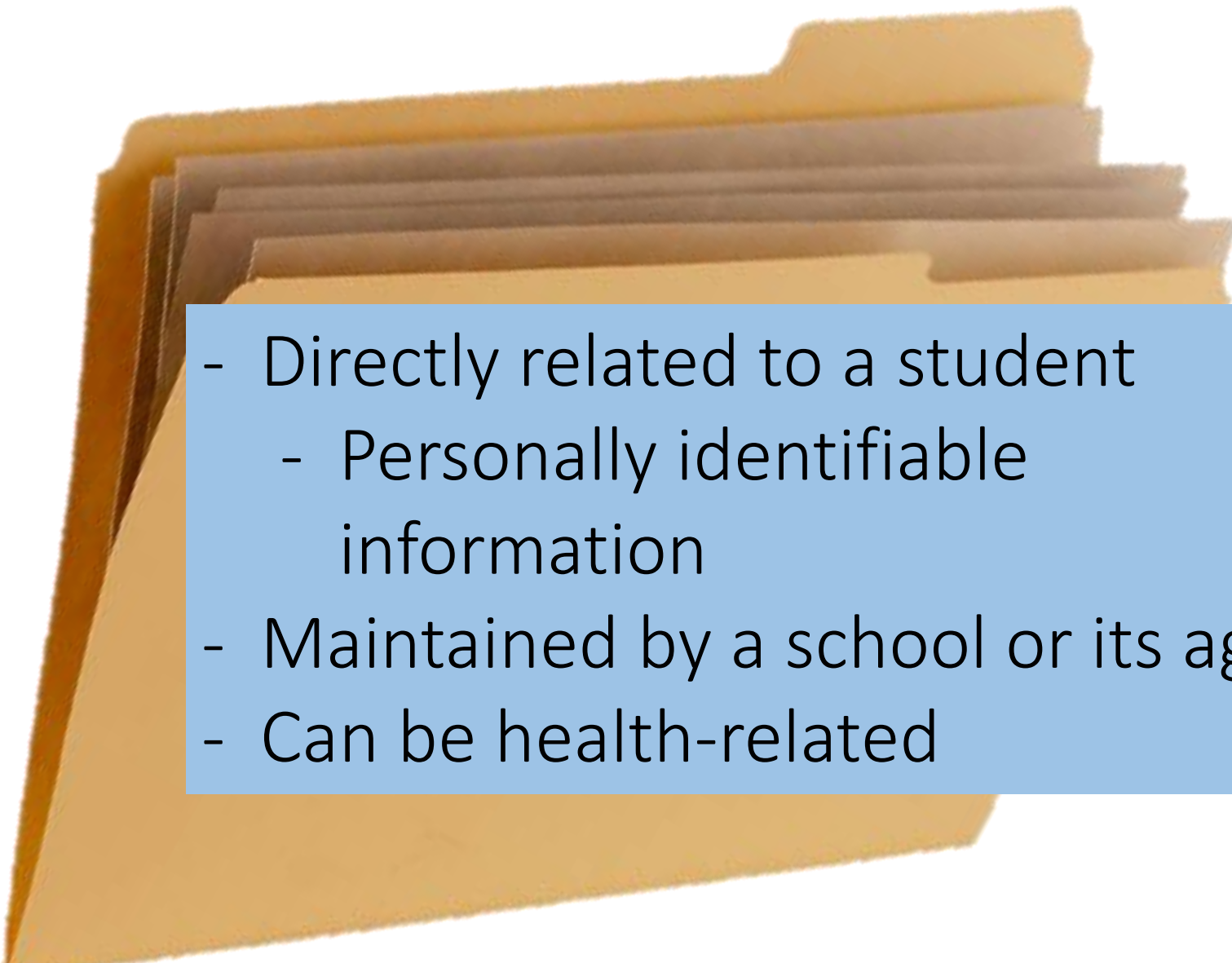
Applies to public and private schools **that**
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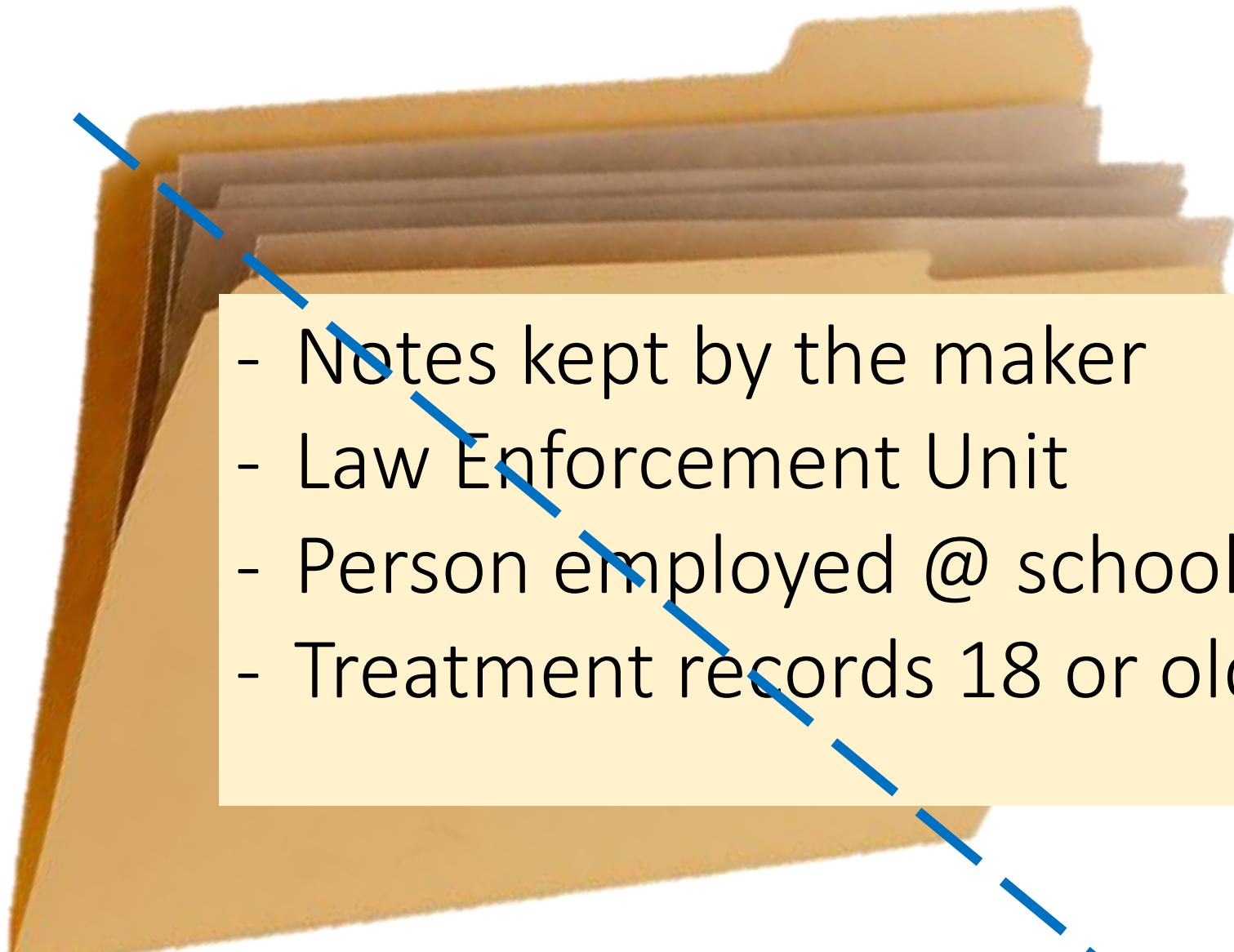
Any program administered by Secretary of ED:

- (1) Local Education Agencies that administer educational programs in juvenile justice facilities and
- (2) Facilities that receive ED funding for on-site schools.

Education Records and Personally Identifiable Information

- 
- Directly related to a student
 - Personally identifiable information
 - Maintained by a school or its agent
 - Can be health-related

Not Education Records

- 
- Notes kept by the maker
 - Law Enforcement Unit
 - Person employed @ school
 - Treatment records 18 or older

Access & Control: Parents and Eligible Students

General Rule - Student UNDER 18



Eligible Student = ≥ 18 or in post-secondary



Written Authorizations

- ✓ Specify the **records** to be disclosed
- ✓ State the **purpose** of the disclosure
- ✓ Identify the **party** or class of parties to whom disclosure is to be made
- ✓ **Signed** and **dated** by the parent

Re-disclosure

A school may disclose personally identifiable information only on the condition that the party to whom the information is disclosed **will not redisclose the information without the prior consent of the parent or eligible student.**

2. Uninterrupted Scholars Act (USA) and students in the juvenile justice system

Can release education records without parental consent if:

Financial Aid

Judicial Order or Subpoena

Audits

Studies

Uninterrupted Scholars Act

Transfers/enrollment

School Officials with legitimate educational interest

Health and Safety Emergency

Directory Information

Pre-adjudication Juvenile Justice

Accrediting Organization

Allows schools to release a child's education record to:

[A]n agency caseworker or other representative of **a State or local child welfare agency, or tribal organization**, who has the right to access a student's **case plan** ...when such agency or organization is **legally responsible...for the care and protection** of the student,

[provided that redisclosure is protected]

20 U.S.C § 1232g(b)(1)(L).

Why was this needed? Why should I care?

- Responsible, efficient access to client information can help courts to ensure educational stability and supports.
- **APPLIES TO STUDENTS IN THE JUVENILE JUSTICE SYSTEM** when the child welfare agency is **legally responsible** for them

Child welfare agency may be **legally responsible** if...

a child has been placed in foster care through the delinquency system

- Often occurs when a child is:
 - In a Title IV-E eligible foster care placement and meets other Title IV-E requirements
 - In another living situation where your state's laws and regulations define the child welfare agency as having legal responsibility.

Caseworker re-disclosures under USA

[Education records may only be disclosed under USA if they meet this redisclosure requirement:]

the education records, or the personally identifiable information contained in such records, of the student **will not be disclosed** by such agency or organization, **except to an individual or entity engaged in addressing the student's education needs** and authorized by such agency or organization to receive such disclosure and **such disclosure is consistent with the State or tribal laws** applicable to protecting the confidentiality of a student's education records.

20 U.S.C § 1232g(b)(1)(L).

Quick note on older youth in foster care

- If your state has extends the age of eligibility for foster care to children over 18, your 18 and older youth can still have their records released under the USA

3. Other FERPA exceptions and students in the juvenile justice system

- Enrollment in school,
- Directory information,
- Juvenile justice system prior to a child's adjudication.
- To certain officials when the information is needed to protect **health or safety**, or
- The school is served with a **court order or subpoena**.

Enrollment or Transfer

- notified of the transfer policy,
- receive a copy of the record if desired, and
- have an opportunity for a hearing to challenge the content of the record.

EX: when a student enrolls in school at a juvenile justice facility

Directory Information

- Personally identifiable information, but not considered harmful or an invasion of privacy
- Parents must be informed annually on (1) who the term includes and (2) how to opt out of child's inclusion
 - Student Name, Address, Tel., Email, Photo, DOB, Major, Dates of attendance
 - Dates of attendance \neq a child's attendance records

Juvenile Justice System Prior to Adjudication

(Juvenile Justice Exception)

- child has **not yet been adjudicated** delinquent under state law;
- state law specifically authorizes the disclosure;
- disclosure is to a state or local juvenile justice system agency;
- Relates to services for a youth **prior to adjudication**
- Certification **in writing** of no redisclosure

Appropriate Officials to Protect Health and Safety

- Appropriate Officials
- Emergencies
 - **Emergency** regarding health or safety
 - **Necessary** to protect

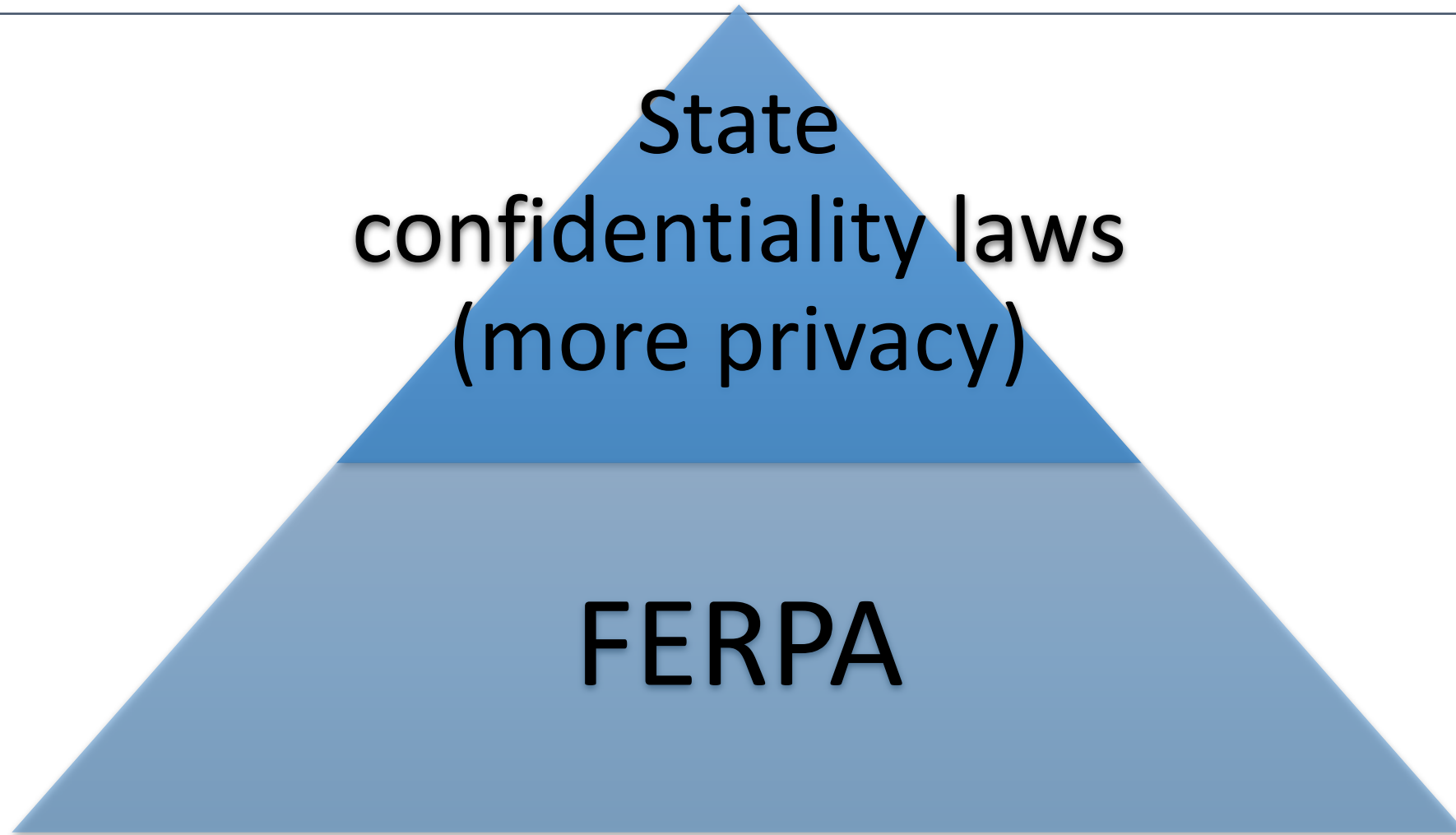
Courts: Subpoenas and Court Orders

School must make a “reasonable effort” to notify the parent of the order or subpoena before releasing the records.*

*unless parents parties in child welfare proceedings, then no notice required.

Orders: (1) specific, (2) individualized, (3) reflect notice to parents

4. State law affects releases to juvenile justice system



Sharing Education Records for Performance Evaluation and Policy Development

- Research Exception

- Organizations conducting studies for or on behalf of the school to improve instruction and confidentiality ensured

- USA & research

- Permissible if case worker or other representative de-identifies before giving to researcher

5. Where can I learn more about information-sharing for juvenile justice-involved youth?

- Family Policy Compliance Office website
<http://familypolicy.ed.gov/?src=ferpa>
- “Understanding FERPA: Sharing Education Records to Improve Outcomes for Children in the Juvenile Justice System” (will be available on jlc website).
- MacArthur Models for Change Information Sharing Toolkit, second edition, available at infoSHAREtoolkit.org
- Robert F. Kennedy Children’s Action Corps online curriculum *Information Sharing for Attorneys in Youth-Serving Systems*, (will be available in August)
- Legal Center Publications, e.g. [How the Uninterrupted Scholars Act Helps Caseworkers Access Education Records](#)

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