

# FERPA

## Family Educational Rights and Privacy Act

### What is FERPA?

- The most comprehensive federal statute governing the privacy of student records is the Family Educational Rights and Privacy Act, (FERPA), popularly known as the Buckley Amendment, which was enacted in 1974.

- The purpose of FERPA is to protect the confidentiality of student records, to guarantee access to those records by parents and adult students, and to provide a means for parents and adults to challenge the accuracy of the information included in student records.

### What Documents are not Considered Student Records Subject to FERPA?

- Not all of the information collected and maintained by schools and school employees about students is subject to access and disclosure requirements of FERPA.

- FERPA exempts five categories of information from the definition of “education records.” Here are two examples that pertain to counselors

1. Records made by teachers, supervisors, counselors, administrators, and other school personnel that are kept in sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

2. Information obtained about individuals after they are no longer students.

#### \*Sole Possession Records

- The exemption of so-called “sole possession records” from the definition of education records is intended to protect from disclosure information that is recorded by a school employee as a basic memory aid.

- Many school professionals mistakenly believe that this exemption applies to any handwritten or other notes they may make in performing their responsibilities. This is not the case.

- There are very specific and narrow criteria information that must be met in order to be considered a “sole possession record” exempt under the law.

- To qualify for the exemption, the information must meet three requirements:

1. The information must be a private note that is created solely by the individual possessing it.

2. The information must be a personal memory aid.
3. The information must not be shared or accessible to any other person except the individual's temporary substitute.

- Private notes made by a counselor that records *comments* made by parents, students, or other school employees during a conversation, for example, would not qualify for the exemption and would be considered "education records" subject to access and disclosure requirements of FERPA, even if these notes remained in the sole possession of the counselor.

- The interpretation suggests that, in general, private notes made by a school counselor will only qualify for the "sole possession" exemption if they record personal observations about the behavior of a student or conclusions the counselor has drawn on the basis of interactions with a student or others.

- Notes containing information about the substance of the interactions, particularly the content of the conversation, would not be exempt.

- Counselors must maintain exclusive, personal control over these notes.

- The physical location of the notes is significant. The ruling suggest that counselors who wish to protect their notes from disclosure should store them in a way that precludes others from having physical access to them, including other counselors (Notes filed in a central counseling file, would not be exempt).

- Counselors may also not discuss with others the information contained in the notes if they wish the notes to remain exempt from disclosure. For example, observation of a student by a counselor, which is shared with another school employee, is not considered exempt.

- The "sole possession record" exemption is extremely narrow.