

Exhibit 7—Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

Or you may contact us at the following address:
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

U.S. Department of Education
Policy Guidance
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Exhibit 8—The Health Insurance Portability and Accountability Act (The HIPAA Privacy Rule)

The *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services (HHS) issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Privacy Rule standards address the use and disclosure of individuals' health information—called “protected health information” by organizations subject to the Privacy Rule — called “covered entities,” as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

Protected Health Information. The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "*protected health information (PHI)*."

“*Individually identifiable health information*” is information, including demographic data, that relates to

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,

and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

De-Identified Health Information. There are no restrictions on the use or disclosure of de-identified health information. De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required,

and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.

Covered Entities. The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the “covered entities”). For help in determining whether you are covered, use the decision tool at:

<http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>.

To view the entire Rule, and for other additional helpful information about how it applies, see the OCR Web site: <http://www.hhs.gov/ocr/hipaa>. In the event of a conflict between this summary and the Rule, the Rule governs.

Excerpted from “OCR Privacy Brief: Summary of the HIPAA Privacy Rule”

Office for Civil Rights

U.S. Department of Health and Human Services

<http://www.hhs.gov/ocr/privacysummary.rtf>

Appendix A—Assessments and Federal Laws

Assessments and Federal Laws
<p>Mandated Assessments—Required for all applicants or participants.</p> <p>Permitted Assessments—May be provided for some applicants or participants if appropriate or under certain circumstances.</p> <p>Assessments identified in this table under the following laws are subject to the common performance measures: P.L. 93-112 Rehabilitation Act and P.L. 105-220 Amendments, P. L. 104-193 Personal Responsibility and Work Opportunities Reconciliation Act, P. L. 105-220 Workforce Investment Act, and P.L. 105-332 Carl D. Perkins Vocational and Technical Education Act. See Chapter 3 for more information on the common performance measures.</p>
Social Security Act of 1935 and Amendments
<p>P.L.104-193 Personal Responsibility and Work Opportunities Reconciliation Act of 1996—Mandated Assessments: The State agency responsible for administering the [Temporary Assistance for Needy Families] program funded under this part shall make an initial assessment of the skills, prior work experience, and employability of each recipient of assistance under the program who— (A) has attained 18 years of age; or (B) has not completed high school or obtained a certificate of high school equivalency, and is not attending secondary school.</p> <p>Permitted Assessments: None designated.</p>
<p>P.L. 106-170 Ticket to Work—Mandated Assessments: None.</p> <p>Permitted Assessments: Services provided under the Program may include case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by the Commissioner under the Program.</p>
P.L. 101-336 Americans with Disabilities Act of 1990 No Mandated or Permitted Assessments in Act
<p>P.L. 108-446 Individuals with Disabilities Education Improvement Act of 2004</p> <p>Mandated Assessments: Evaluations and reevaluations consisting of procedures to determine whether a child has a disability and to determine the educational needs of such child. The local education agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. Each local assessment agency shall ensure that the child is assessed in all areas of suspected disability. Transition services will be based upon age appropriate transition assessments related to training, education, and employment.</p> <p>Permitted Assessments: Functional behavioral assessments may be provided under certain circumstances. Where appropriate, transition services will be based upon age-appropriate transition assessments related to independent living skills. If needed, assistive technology services will include the evaluation of the needs of a child with a disability including a functional evaluation of the child in the child’s customary environment. IDEA funds may also be used to support the development and provision of accommodations and valid and reliable alternate assessments for assessing the performance of children with disabilities on statewide academic achievement assessments.</p>
<p>P.L. 107-110 No Child Left Behind Act of 2001</p>

Assessments and Federal Laws

Mandated Assessments:

Academic assessments: Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007-2008 school year.

Language assessment: Each State plan shall identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student academic assessments are not available and are needed. Academic assessments of English language proficiency. Each State plan shall demonstrate that local educational agencies in the State will, beginning not later than school year 2002-2003, provide for an annual assessment of English proficiency (measuring students' oral language, reading, and writing skills in English) of all students with limited English proficiency in the schools served by the State educational agency.

NAEP: The State will, beginning in school year 2002-2003, participate in biennial State academic assessments of 4th and 8th grade reading and mathematics under the National Assessment of Educational Progress.

Reading First Assessments: Screening, diagnostic, and classroom-based instructional reading assessments.

Permitted Assessments: None designated.

P.L. 105-220 Workforce Investment Act of 1998

Note: The Workforce Investment Act includes three titles that have explicit or implied assessment requirements: Title I Workforce Investment Systems, Title II Adult Education and Literacy, and Title IV Rehabilitation Act Amendments of 1998. The latter title is included in this table with P.L. 93-112 Rehabilitation Act of 1973 below.

Mandated Assessments: Youth Programs: For eligible youth, programs [shall] provide an objective assessment of the academic levels, skill levels and service needs of each participant, which assessment shall include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), supportive services needs, and developmental needs of such participant, except that a new assessment of a participant is not required if the provider carrying out such a program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.

Core Services: Core services shall be available to eligible individuals who are adults [including older youth who are co-enrolled as adults] or dislocated workers and shall include initial assessment of skill levels, aptitudes, abilities and supportive services needs.

Job Corps: Counseling and testing for each enrollee shall be arranged at regular intervals to measure progress in the education and vocational training programs carried out through the Job Corps. Counseling and testing shall be arranged for enrollees prior to their scheduled graduations to determine their capabilities.

Permitted Assessments: Intensive Services: For eligible adults [including older youth who are co-enrolled as adults] and dislocated workers who have been determined by a One-Stop operator

Assessments and Federal Laws

to be in need of such intensive services, services may include comprehensive and specialized assessments of the skill levels and service needs which may include diagnostic testing and use of other assessment tools, and in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

P.L. 105-332 The Carl D. Perkins Vocational and Technical Education Act

No Mandated or Permitted Assessments in Act.

Rehabilitation Acts

P.L. 93-112 Rehabilitation Act of 1973—Mandated Assessments: an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel.

Permitted assessments: an assessment by personnel skilled in rehabilitation technology.

P.L. 105-220 Title IV The Rehabilitation Act Amendments of 1998—Mandated Assessments: Assessment for Determining Eligibility and Vocational Rehabilitation Needs means, as appropriate in each case:

- A) a review of existing data to determine whether an individual is eligible for vocational rehabilitation services, and to assign priority for an order of selection ... in the States that use an order of selection ..., and to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;
- B) to the extent additional data is necessary to make a determination of the employment outcomes, and the objectives, nature, and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual; uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection ... for the individual, such information as can be provided by the individual and, where appropriate, by the family of the individual; may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work behaviors, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;
- C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and
- D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including

Assessments and Federal Laws
experiences in which the individual is provided appropriate supports and training. Permitted Assessments: None designated.

Appendix B—Glossary of Terms Related to Assessment

Academic Performance or Achievement Tests: assessments used by schools, school districts, and states that focus on educational performance or achievement in specific subject areas such as reading, spelling, or mathematics.

Accommodations: changes made in a classroom, work site, or assessment procedure that help people with disabilities learn, work, or receive services. Accommodations are designed not to lower expectations for performance in school or work but to alleviate the effects of a disability.

Aptitude: the potential to learn.

Aptitude Test: a test that measures the vocational potential or capacities of an individual to succeed in future career endeavors.

Assessment: the process of collecting data for the purpose of making decisions. Four domains of assessment include the educational, the vocational, the psychological, and the medical.

Assistive Technology (AT) Assessments: activities used to determine an individual's need for technology and ability to use technology. These are accompanied with recommendations for training and specific adaptive equipment.

Attention Deficit Disorder (ADD): a family of related chronic neurobiological disorders that interferes with an individual's capacity to inhibit behavior (impulsivity) and to attend to tasks (inattention) in developmentally appropriate ways.

Attention Deficit/Hyperactivity Disorder (AD/HD): a family of related chronic neurobiological disorders that interferes with an individual's capacity to regulate activity level (hyperactivity), to inhibit behavior (impulsivity), and to attend to tasks (inattention) in developmentally appropriate ways.

Behavioral, Social, and Emotional Assessments: activities used by schools and workforce preparation programs to identify, diagnose, and suggest treatment of mental health and chemical health problems.

Cognitive Abilities Tests: assessments used by schools and workforce preparation programs to measure intellectual skills and to diagnose neuropsychological problems and learning disabilities.

Criterion-referenced Tests: instruments used to measure whether an individual has learned specific information or can perform certain activities.

Fair Test: a test that is free from bias and conforms to recognized test administration standards and ethics.

Hidden Disabilities: disabilities that are not apparent upon casual observation. Hidden disabilities include, but are not limited to, Specific Learning Disabilities (SLD), Attention Deficit/Hyperactivity Disorder (AD/HD), Attention Deficit Disorder (ADD), mental health or emotional problems (such as depression, anxiety disorders, or conduct disorders), Epilepsy, and Traumatic Brain Injuries (TBI).

IQ Testing or Intelligence Testing: the measurement of an individual's general cognitive ability to function within various community settings.

Independent Living Skills Assessments: assessments that are often conducted by teachers, counselors, or others to determine how well an individual can engage in activities of daily living.

Interviews: structured or unstructured conversations intended to gather information from an individual through a verbal question-and-answer format

Memorandum of Understanding (MOU): a written document detailing the work and fiscal responsibilities of participating parties. Such documents may also be referred to as Service, Resource Sharing, or Governance Agreements. These agreements include details regarding who is providing what services, how much they will cost, who is paying for them, where they will be delivered, and additional information as needed.

Neuropsychological Testing: medical assessment used to examine brain function and identify cognitive disorders. The purpose of these tests is to diagnose localized organic dysfunction and to help determine rehabilitative treatment that may be needed by individuals with brain injuries and related cognitive disabilities.

Norm-referenced Tests: tests in which a person's score is compared to others in a specific reference group.

Observation: the process of watching or listening to an individual's behavior and performance and recording relevant information.

Occupation Specific Certification Tests: assessments given by licensure boards, businesses, apprenticeship programs, and workforce preparation programs (such as community colleges, technical colleges, or workforce development training programs). They measure individual achievement and the ability to perform very specific work or jobs, are often compared to industry standards, and can be used to document the effectiveness of training programs themselves.

Order of Selection: in State Vocational Rehabilitation agencies, rules that help determine eligibility when funding is limited. Federal law requires eligibility for individuals with the most severe disabilities and puts others on waiting lists or denies them services altogether.

Performance Reviews: assessment activities that look at a whole spectrum of what an individual has learned and is more subjective, holistic, and qualitative in nature than testing.

Person-centered Planning: planning processes that focus on an individual's needs and desires and promote self-determination. In transition, person-centered planning focuses on the interests, aptitudes, knowledge, and skills of an individual, not on his or her perceived deficits.

Physical and Functional Capacities Assessments: assessments provided in schools, workforce preparation centers, clinics, rehabilitation facilities, and at work sites to determine how an individual can physically perform in specific situations.

Record reviews: assessment activities that incorporate prior assessment results including records from schools and care providers, as available.

Reliability: a quality that indicates a test provides consistent results over time.

Resource Mapping: a type of environmental scanning that is a useful means of identifying, recording, and disseminating all related resources and services that comprise a service delivery system.

Screening: a process used by lay people to determine whether further diagnostic assessment should be provided by professionals.

Situational Work Assessments: occupational skills and work behaviors that are assessed in real or simulated settings and measure capacities and competencies to perform essential job duties of specific competitive employment positions.

Specific Learning Disabilities (SLD): learning problems that affect an individual's ability to interpret what they see and hear or to link information from different parts of the brain.

Testing: an activity that consists of administering a particular set of questions to an individual to obtain a score.

Transition: the period of time when adolescents are moving into adulthood and is often concerned with planning for postsecondary education or careers. In the workforce environment, it usually encompasses the ages 14 to 25.

Traumatic Brain Injury (TBI): a sudden physical assault on the head that causes damage to the brain. This injury may be closed or penetrating and the range of severity of a TBI can run from a mild concussion to the extremes of coma or even death.

Validity: the extent to which a test measures what its authors or users claim it measures; specifically, test validity concerns the appropriateness of the inferences that can be made on the basis of test results.

Vocational Aptitudes and Skills Assessments: activities used in schools and workforce preparation programs to measure or determine an individual's ability or potential to learn or perform in order to hold specific jobs or to train for specific careers.

Vocational Interest Assessments: activities used in schools and workforce preparation programs to match an individual's interests, goals, and values to available employment, training, or post-secondary education programs.

Work Accommodations Assessments: activities used to determine the need for adjustments to work sites, schedules, training procedures, etc. to improve a person's ability to do a job.

Work Sampling: a process of using standardized instruments that are used to help assess the job potential of an individual.

Work Tolerance Assessments: physical activities that use a structured process for examining and measuring the physical endurance, strength, motor coordination skills, and emotional capacities of a worker when performing essential job tasks.