

WALSH, ANDERSON, GALLEGOS, GREEN and TREVISIO, P.C.
ATTORNEYS AT LAW

CELEBRATING 30 YEARS OF SERVICE TO PUBLIC EDUCATION

COMPLYING WITH FERPA WHILE USING ONLINE EDUCATIONAL SERVICES

Presented by:
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THE BASICS

- **FERPA does not prohibit online educational services**
 - Family Educational Rights and Privacy, 76 Federal Register 75604, 75612 (2011)
- **BUT, Districts remain responsible for FERPA compliance**
 - 34 C.F.R. § 99.31(a)(1)(i); 73 Federal Register 74806, 74816 (2008).

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THE "SCHOOL OFFICIAL" EXCEPTION

- **FERPA permits disclosure to "school officials" with a "legitimate educational interest."**
 - 20 U.S.C § 1232g(b)(1)(A); 34 C.F.R § 99.31(a)(1)
 - See Board Policy FL (Local)
- **"Acme Cloud Computing Co." may be a "school official."**

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HOW TO MAINTAIN CONTROL

- Regulations require districts to retain control under the “school official” exemption
 - 34 C.F.R. § 99.31(a)(1)(i)
- Regulations require outside party to not disclose personally identifiable information.
 - *Id.*; 34 C.F.R. § 99.33(a)
- You do this through the **CONTRACT** and **MONITORING**

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THE CONTRACT WITH “ACME”

- Require Acme to comply with FERPA & the Protection of Pupil Rights Amendment
- Prohibit sale or disclosure to 3rd parties
- District must retain right of access to data
- Parents allowed to opt out of directory information disclosure

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MONITORING

- Know where and how data is stored
- Make sure Acme cannot modify contract unilaterally or in any sneaky way
 - Watch for clauses allowing end-user modification
- Know who you are doing business with
 - Can duties be assigned to other parties?

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CRISIS MANAGEMENT

- **Does Acme have a good track record?**
 - <http://www.privacyrights.org/data-breach>
- **What is the plan in the event of a breach of security?**
 - Tex. Bus. & Comm. Code §§ 521.002 & .053; Tex. Loc. Gov't Code § 205.010

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