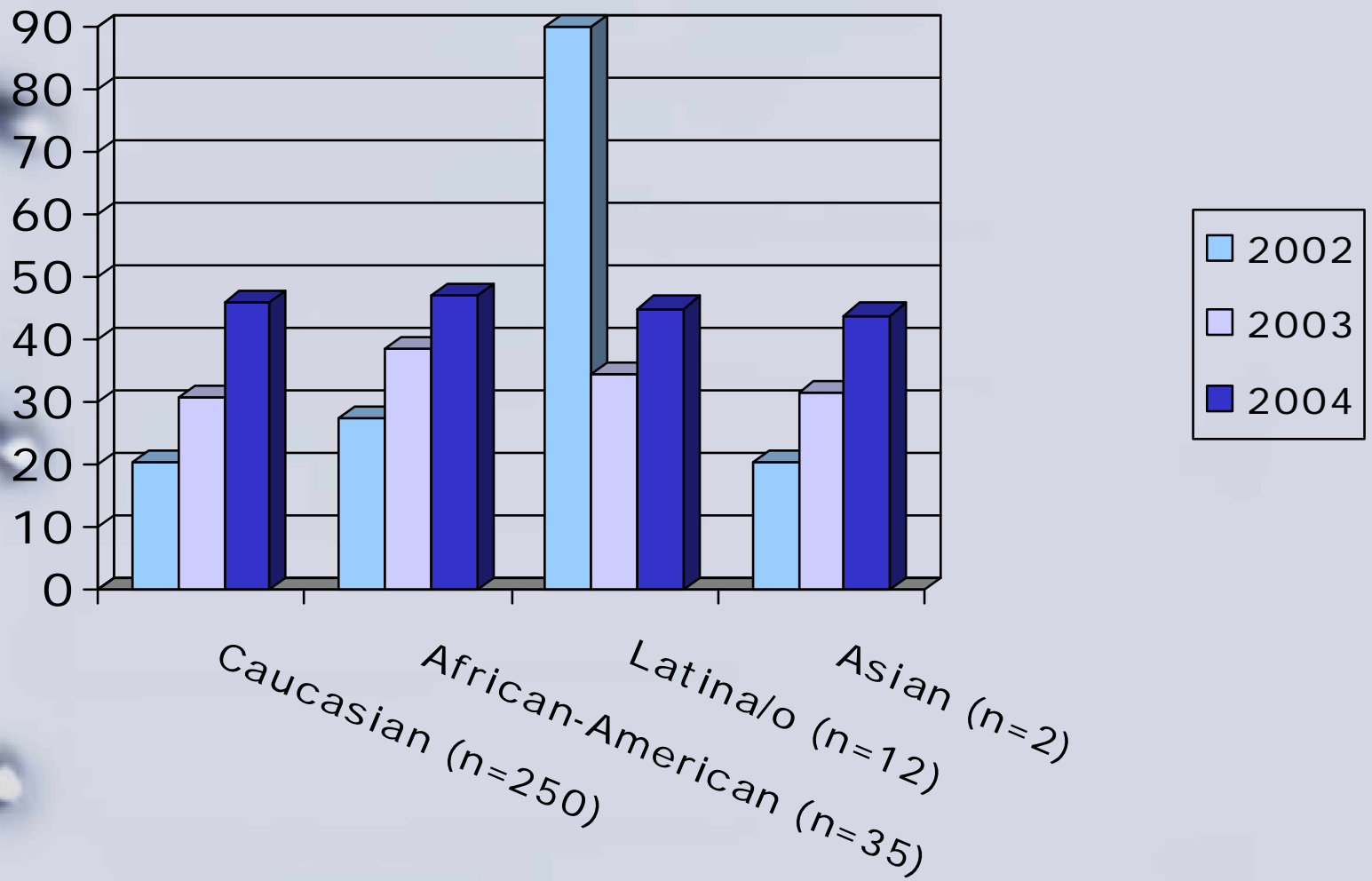


FOIA, FERPA and other  
acronyms not necessarily  
beginning with "F":  
**A Review of Information  
Privacy Issues in Public  
Education in the Information  
Age**

**Jonathan D. Becker, J.D., Ph.D.**  
Hofstra University

**Scott McLeod, J.D., Ph.D.**  
University of Minnesota



# The Issue

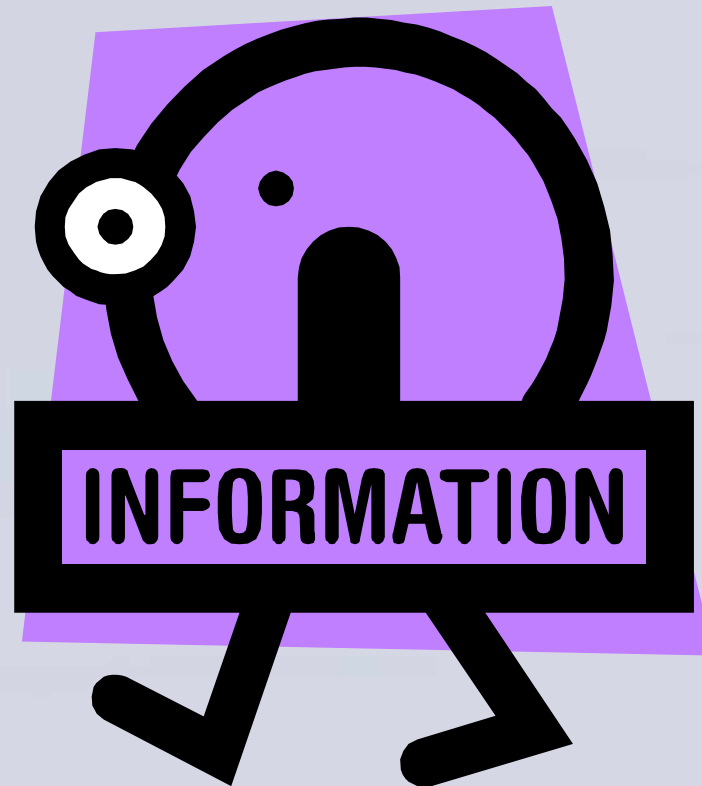
- “Public schools are information-collection machines. Public schools are also the government.”
  - Susan P. Stuart, 84 Neb. L. Rev. 1158,1159
- Public schools have a custodial responsibility for school-age children.

# The Legal Balance

- FREEDOM OF INFORMATION
  - "a free society is maintained when government is responsive and responsible to the public..."
- INFORMATION PRIVACY
  - "the result of legal restrictions and other conditions, such as social norms, that govern the use, transfer, and processing of personal data" (Schwartz, 2004,



# FREEDOM OF INFORMATION



# Freedom of Information

## Federal

- In 1966, Congress passed the Freedom of Information Act (FOIA).
- FOIA has been amended 4 times, but still generally makes federal executive branch agency records available to any person upon request and places the burden of justifying nondisclosure on the government.
- FOIA does not apply to state or local agencies, but most states have open records laws.

## State

- Today, every state has an open records law.
- The general philosophy or presumption underlying all state open records laws is full disclosure unless an explicit statutory or regulatory exception applies.
- However, at least with differing interpretation by state judiciaries, state open records laws do vary greatly in implementation.

# Information Privacy Laws and Education Records



# Information Privacy Laws in Education

- **FEDERAL**

- FERPA

- PPRA

- **STATE**

- State Open Records Laws

- State Student Record Statutes

# Federal Laws

- FERPA
  - Spending clause
  - Education Records
  - Two provisions: access + disclosure
  - Directory information
  - Family Policy Compliance Office (FPCO)
- PPRA
  - Addition to FERPA
  - Instructional materials + surveys/evals.
  - Written parental consent, if...
  - Policies and notifications

# State Open Records Laws

- Ironically, "...sunshine laws – the antithesis of privacy – provide some of the most specific protections for student records."
  - Susan P. Stuart, 108 W. Va. L. Rev. 361, 391
- Explicit exemptions for education records to the general policy of disclosure of public records
  - incorporate FERPA directly by reference
  - FERPA+
  - Bright line confidentiality exemption
  - Specificity of exemptions
  - incorporate state or federal laws by general reference

# State Student Records Statutes

- In some states, these laws on confidentiality of student records simply pull education records out from under the provisions of the open records law
- whereas some states have student records statutes that simply incorporate FERPA by reference, others have intricate statutes that protect the confidentiality of student records in a more comprehensive manner.
- some state student record statutes adopt and build upon parts of the federal law
- mini-FERPAs
- State regulations

# The Future?

- According to a provision of Maine law, “[a] public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students’ parents.”
- State constitutional right to information privacy???
- What sort of expectation of information privacy in schools do students really have?

# Recommendations

1. Provide annual notifications (FERPA and FOIL)
2. Develop clear policies and forms
  - a. Who are “school officials” with “legitimate educational interests”
  - b. What are the policies for releasing data to researchers?
  - c. Etc.
3. Safeguard the technology
4. **Appoint a data steward (Chief Information Officer)**

# Resources

- [http://people.hofstra.edu/faculty/Jonathan\\_D\\_Becker/Presentations.html](http://people.hofstra.edu/faculty/Jonathan_D_Becker/Presentations.html)
- [soejdb@hofstra.edu](mailto:soejdb@hofstra.edu)
- 516-463-5760