

FERPA (Family Educational Rights and Privacy Act)

College and University Roundtable
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Definition of Education Records

Records, files, documents, audio and videotapes, and other electronic media which

- (1) contain personally identifiable information directly related to a student; and
- (2) are maintained by an educational agency or institution.

Personally Identifiable Information

- Student's name
- Name of the student's parent or other family member
- Address of the student or student's family
- A personal identifier, e.g., the student's social security number or student number
- List of personal characteristics that would make the student's identity easily traceable
- Other information that would make the student's identity easily traceable

Student

Student = one who is (or was) enrolled and in attendance (including correspondence school or work-study student)

≠ rejected applicant

≠ accepted applicant who did not enroll

≠ rejected applicant who is permitted to audit

Education Records Do Not Include

- Records created by instructors, supervisors and administrators for their own use, kept in the sole possession of the maker as personal memory aid and not accessible to any person except a temporary substitute
- Medical/psychological records used solely in connection with treating student and disclosed only to persons providing the treatment
- Employment records (but student employment records are)

Education Records Do Not Include

- Campus Police Department records created and maintained solely for law enforcement officials and for law enforcement purposes.
- Alumni records containing information about a student no longer in attendance and not relating to person as a student

Three Primary FERPA Rights for Students

- (1.) **Review** Their Own Education Records
- (2.) **Seek to Amend** Their Own Education Records
- (3.) **Limit Disclosure** of Their Own Education Records to Third Parties

1. *Right to Review*

- Must make request *in writing*
- Assemble data and make available for viewing within 45 days
- Review must take place in the presence of a school official

2. Right To Seek to Amend

Students have an opportunity to challenge and seek to amend contents of their education records which they consider to be

- ⇒ inaccurate
- ⇒ misleading
- ⇒ in violation of their privacy or other rights

Students cannot question the appropriateness of a grade.

They only have a right to amend if the grade given by the instructor is not correctly recorded.

3. *Right To Limit Disclosure*

General Rule

Obtain *written* consent from students *before* disclosing any personally identifiable information from their education records to a third party.

Disclose

To permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written or electronic means.

Student Has No Right To Review

- ◆ Financial information submitted by parents
- ◆ Records with information about more than one student
 - ⇒ School must first redact information about other student
- ◆ Confidential letters and statements of recommendation which student has waived his/her right to inspect and review

Consent of Student
Not Necessary for Disclosure if:

1. Directory Information, Unless Student Has Placed a Directory Hold on Their Records

School defines directory information, which can include:

- name
- address (local and permanent)
- e-mail address
- telephone number
- date and place of birth
- major field of study
- participation in officially-recognized activities and sports
- weight and height of members of athletic teams
- dates of attendance
- the most recent previous educational agency or institution attended by the student
- degrees and awards received
- status as student employee
- photograph
- enrollment status (i.e., grad/undergrad, F-T/P-T)

Solomon Amendments

Require institution to provide directory information to military recruiters, unless:

- 1) the school certifies that, under its present policy, directory information is not collected by it; or
- 2) the school certifies that each student concerned has formally requested that the information be withheld.

2. To School Officials With Legitimate Educational Interest

This includes faculty, administration, clerical and professional employees, and other persons who need student record information in order to fulfill their professional responsibilities

CAUTION: Disclosure to an instructor with a legitimate educational interest does not authorize disclosure of that information to a third party.

3. School Receives a Subpoena Ordering Release

- The subpoena must be lawfully issued and served pursuant to state and federal rules of civil procedure.
- School must notify the student of the subpoena prior to release of the records in order to allow the student to take steps to quash the subpoena or obtain a protective order.
- School can only release records described in the subpoena (a request for academic transcripts does not authorize the release of financial aid records).
- No notification is needed if the subpoena is issued by a federal grand jury or law enforcement agency and the subpoena clearly instructs the School "to not disclose to any person the existence or contents of the subpoena or any information furnished in the response to the subpoena."

4. Disclosure Is Made in an Emergency Situation and Is Necessary to Protect the Health or Safety of the Student or Other Individuals

- Factors to be considered in making a decision to release nondirectory information in a crisis or emergency situation include:
 - ◆ the severity of the threat to the health or safety of those involved
 - ◆ the need for the information
 - ◆ the time required to deal with the emergency
 - ◆ the ability of the parties to whom the information is to be given to deal with the emergency

School is permitted to:

- Include in student's education record appropriate information concerning disciplinary action taken against a student for conduct that may pose significant risk to the safety of the student or others, and
- Disclose such information:
 - ◆ to teachers and school officials within the School who have a legitimate educational interest in the behavior of a student
 - ◆ to teachers and school officials in other schools who have a legitimate educational interest in the behavior of a student

Rights of Students vs. Rights of Parents

- Initially, parents are presumed to hold these rights
- When a student becomes 18 or attends college or university, the student becomes the “holder” of FERPA rights and privileges
- Parents of dependent college/university students do not acquire “holder” status under FERPA
- FERPA does not **require** disclosure to parents of a dependent student, but merely **permits** it without the student’s consent

5. Disclosure to Parents of Dependent Students

Student was claimed as a dependent on most recent Federal Income Tax Form

- Releasing records to parents without PROOF of dependency - even if the students are informed that they will be “assumed” to be dependent - is a violation of FERPA.
- School can have student verify if he/she has been claimed by parent(s) as a dependent for federal tax purposes on most recent tax return. If discrepancy exists, parent(s) can then be asked to send copy of tax form.

5. Disclosure to Parents of Dependent Students

- What if only one parent declares student as dependent due to divorce, separation or custody issues?
 - ◆ Both parents still get access!
 - ◆ The law permits disclosure to the other parent unless there is a court order, state statute, or legally binding document stating otherwise.
- Consent by non-dependent student to disclosure to one parent is not consent to disclosure to the other parent.

6. Student Violates School Drug and Alcohol Policies

- School may disclose to a parent or legal guardian information regarding any violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use or possession of alcohol or a controlled substance, IF:
 - ◆ the student is under the age of 21 (20 or younger);
AND
 - ◆ the school determines the student has committed a disciplinary violation with respect to such use or possession.

7. Student Disciplined for Crime of Violence or Nonforcible Sex Offense

- School may release “final results” of disciplinary proceeding if it determines through disciplinary proceeding that a student committed a violation of the school’s rules or policies with respect to a crime of violence or nonforcible sex offense.
 - The ONLY information the school may reveal is:
 - ◆ the name of the student being disciplined
 - ◆ a description of the violation committed
 - ◆ any sanction imposed by the school on that student
AND
 - ◆ the names of any other students, such as any victims or witnesses, BUT ONLY if the other students consent in writing to the release of their names

7. Student Disciplined for Crime of Violence or Nonforcible Sex Offense

- Disclosure should clarify that student has been sanctioned through disciplinary system, and not charged with or found guilty of any criminal offense.

8. Disclosure to Court, Without Court Order or Subpoena, of Relevant Education Records

- If school initiates legal action against a parent or student, to enable school to proceed with the legal action as plaintiff.
- If parent or student initiates legal action against school, to enable school to defend itself (i.e. waiver).

9. Disclosure is to Another Institution Where Student Intends to Enroll

- Make a reasonable attempt to notify student at last known address, unless
 - 1) Disclosure is initiated by student
 - 2) Annual notification includes notice that institution forwards education records to other institutions that have requested records and in which student seeks or intends to enroll
- Give student, upon request, copy of record that was disclosed

Disclosure to Others

10. To the Comptroller General of the U.S., the Secretary of the Department of Education or authorized representatives of state and local educational authorities
11. To the Veterans Administration on matters of institutional compliance
12. In connection with the student's financial aid
13. To organizations conducting certain studies
14. To accrediting organizations

15. Investigation and Prosecution of Terrorism

- Institution may respond to court order for production of education records related to federal investigation or prosecution of act of domestic / international terrorism

Disclosure under FERPA's Terrorism Exception

- Requires Court Order
- U.S. Attorney General or designee must apply for court order and show that records are being sought relevant to an authorized investigation or prosecution of domestic or international terrorism

*Law Enforcement Official
WITH A COURT ORDER may:*

- Collect education records relevant to an investigation or prosecution of terrorism
- Retain, disseminate and use the records for investigation or prosecution of the student

Responding to a Court Order Under FERPA's Terrorism Exception

- Do not notify student
- Notify administrator responsible for processing court orders, warrants and subpoenas before responding
- Notify school's attorneys before responding

Liability for Disclosure Under FERPA's Terrorism Exception

- An educational institution that in good faith produces education records pursuant to a court order under this section shall not be liable under FERPA

Duty to Notify Not to Redisclose

- The school is responsible for informing parties to whom personally identifiable information is released (parents and others) that recipients, as a general rule, are not permitted to disclose the information to others without the written consent of the student.

Ex: "The attached information has been forwarded to you at the request of the student with the understanding that it will not be released to other parties. The Family Educational Rights and Privacy Acts of 1974 as amended, prohibits release of this information without the student's written consent. Please return this material to us if you are unable to comply with this condition of release."

Duty to Notify Not to Redisclose

- This notification/non-redisclosure rule does not apply if the information is:
 1. Directory information
- **Or is information released:**
 2. Pursuant to subpoena or court order
 3. To the student
 4. To parents of dependent students
 5. In connection with litigation (i.e., student v. school)
 6. To parents regarding drug/alcohol violations
 7. In connection with disciplinary proceedings regarding violence/non-forcible sex offenses

Recordkeeping Requirements Concerning Requests and Disclosures

- Maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student
- For each request or disclosure the record must include:
 - The parties who have requested or received personally identifiable information from the education records
 - The legitimate interests the parties had in requesting or obtaining the information

Recordkeeping Requirements Concerning Requests and Disclosures

Exceptions-
if the request was from or disclosure was to:

- student
- school official with legitimate interest
- person with consent from student
- person seeking directory information

Recordkeeping Requirements Concerning Requests and Disclosures

Exceptions- if disclosure was pursuant to:

- subpoena where non-disclosure ordered
- court-ordered production in connection with investigation of act of terrorism

Annual Notification

- Right to inspect within 45 days of written request
- Right to request amendment
- Right to consent

Annual Notification

- Institution's right to disclose without consent
 - ◆ to officials with legitimate educational interest in the information
 - ◆ to officials of another school in which student seeks to enroll
- Description of directory information and right to refuse
- Right to file complaint with Department of Education

FERPA and Foreign Students

- FERPA itself does not distinguish between students based on their immigration status
- U.S. Citizenship and Immigration Services holds that foreign students/scholars consent to releases of information by accepting their status and entering the U.S.

Applicability of Other Laws
Gramm-Leach-Bliley (GLB) Act

- Colleges and universities are “financial institutions” by virtue of their student financial aid and loan activities
- Compliance with FERPA is deemed compliance with privacy provisions of GLB
- Colleges and universities must still comply with GLB’s “safeguarding” provisions

Applicability of Other Laws
Health Insurance Portability and Accountability Act
(HIPAA)

- “Protected Health Information” does not include:
 - Education records covered by FERPA
 - Student health records defined by FERPA

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