The Family Educational Rights and Privacy Act: A General Overview

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This pamphlet offers a general overview of the Family Educational Rights and Privacy Act (more commonly known as “FERPA”) for higher education administrators, faculty, and students who have or who need only a limited knowledge of student records law. Those seeking more advanced coverage and additional details regarding FERPA-related issues may want to contact their campus registrar or purchase a copy of the NACUA publication, The Family Educational Rights and Privacy Act: A Legal Compendium, edited by Steven J. McDonald (1999; updated and revised August 2002).

General Information About FERPA

What is FERPA?

FERPA is the Family Educational Rights and Privacy Act, also known as the “Buckley Amendment.” This federal law provides several important rights for students with respect to their educational records. With limited exceptions, FERPA applies to all records maintained about a student and is not limited to academic records. Individual college and university policies may contain additional guidance on and procedures for protecting student privacy rights. The institution’s registrar and legal counsel are also key resources for additional information about student records.

What rights does FERPA provide?

FERPA gives college and university students the right to inspect and review their educational records and to request an amendment to the records under certain circumstances. It limits the right of the college or university to disclose records or information from records about a student without the student’s consent. FERPA also requires that each institution give annual notice.
providing information about these rights and the procedures for exercising them. Finally, FERPA permits students to file a complaint with the Department of Education for any FERPA violation.

Which institutions are covered by FERPA?

FERPA applies to all colleges and universities that receive funding from the Department of Education, including money received through federal grant and student loan programs. One should assume that FERPA applies to one's own institution unless the college or university registrar or legal counsel has advised otherwise.

STUDENTS PROTECTED BY FERPA

Which students have rights under FERPA?

All college and university students have rights under FERPA, even those who are younger than 18 years of age. FERPA protects the educational records of students who are attending or who have attended the institution; it does not extend those rights to applicants who apply for admission, but who never actually enroll in the institution. Upon enrollment, however, the educational records of each student, including the student's application for admission and related materials, are automatically protected by FERPA.

What about requests to see the records of a student who has died?

Students continue to have FERPA rights after they have graduated or otherwise left the institution, but those rights cease upon death. Any request to review the records of a deceased student should be coordinated through the institution's registrar, dean of students, or legal counsel.

RECORDS PROTECTED BY FERPA

What records does FERPA protect?

FERPA protects all "educational records" as defined by the statute. These are (with limited exceptions) all the records that are directly related to a student and that are maintained by the institution. A record is "directly related" to a student if it is personally identifiable to the student. Thus, a student's educational record is not limited to his or her official transcript. Rather, it includes items such as financial aid records, letters of recommendation or reprimand, class schedules, and records containing personal information about the student. It may also include department and college files, electronic records and e-mail, disciplinary files, and "unofficial" files. Unless a record falls within one of the exceptions to the Act, the student has all of the FERPA rights listed above.

Which records are not protected by FERPA?

FERPA provides for several limited exceptions to the definition of educational records. Specifically, it does not apply to "directory information," records created and maintained by the institution's law enforcement unit for law enforcement purposes, certain records kept in the sole possession of the maker and not shared with anyone, or records of information obtained about the student only after the student has left the institution (for example, many alumni records). It also does not apply to treatment records made or maintained by a physician, psychologist, psychiatrist or other recognized professional or paraprofessional. Although FERPA does not give students the right to review or control records that fall under these exceptions, or to prevent their disclosure, other laws may in fact provide those rights.

DIRECTORY INFORMATION

What is "directory information"?

FERPA allows institutions to designate certain classes of information that may be released without a student's consent. This information is commonly referred to as "directory information." It may include items such as the student's name, address (local, permanent and e-mail), telephone number (local and permanent), dates of attendance at the college or university, degrees and awards received, participation in officially recognized activities and sports, height and weight of members of athletic teams, and date and place of birth. You probably will want to consult your institution's FERPA policy to determine what has been designated as directory information.

May a student block the release of directory information?

Yes, a student may make a formal request, through the Registrar's Office, that the institution not disclose any information from the student's record, including
directory information. Campus personnel will continue to have access to the student's directory information, but they may not disclose it to any third party.

STUDENTS' RIGHT TO INSPECT AND REVIEW RECORDS

What records is a student allowed to see?
With limited exceptions, FERPA gives students the right to "inspect and review" their educational records. The institution must provide the records no later than 45 days after the student asks for them. It may give the student a copy of the record to satisfy this requirement or it can allow the student to look at the requested records.

Can students inspect and review all records about them?
No. In addition to the records that are not covered by FERPA, the institution does not have to provide access to the financial records of parents or to any confidential letters of recommendation about the student if the student has waived the right to see them.

How does a student waive the right to see his or her records?
If a student wishes to waive the right to inspect and review an educational record, such as a letter of recommendation, he or she must sign a written waiver to that effect. And although the student can revoke the waiver at any time, he or she will be allowed to review only those records that were created after the revocation.

What if a record includes information about more than one student?
Information about other students must be removed or redacted before the requesting student can review it.

STUDENT RIGHTS TO CHALLENGE INFORMATION IN EDUCATIONAL RECORDS

What if a student believes a record contains inaccurate or misleading information?
A student may ask the institution to amend a record to correct inaccurate information and, if the institution declines to do so, may request a hearing. This process is intended only to correct clerical errors and is not a means of challenging the underlying substance of the information itself, such as a grade or an evaluation. Thus, for example, a student could assert that a grade of "A" was incorrectly posted as a "B," but not that a professor should have given the student an "A" instead of a "B." After a hearing on the request to amend the record, the institution must either change the information or allow the student to add a statement to the file contesting the information. This statement must be included with any response to a request for that particular record. Unless an institution's policy provides otherwise, the registrar's office should be advised of any request for a FERPA hearing.

USE OF STUDENT INFORMATION BY FACULTY AND CAMPUS OFFICIALS

What about sharing information about a student within the institution?
FERPA permits the disclosure of student information to other personnel within a college or university, without obtaining the student's consent, if the person is authorized under university policy to receive the information, and has a legitimate educational interest in it. Typically, those authorized to receive student information are faculty and administrative and clerical employees who manage student records information, who act in the student's educational interests, or who have a demonstrated need to know the contents of the records. Other students who are acting on behalf of the institution may also be authorized to receive student information. In 2002, the U.S. Supreme Court held that a school did not violate FERPA by permitting students to grade each other's tests, papers, and assignments (Owasso Independent School District v. Falvo, 2002).

Can professors or instructors post student grades in a hallway or classroom, or on-line?
FERPA does not permit the disclosure of grades in this manner without the student's consent. The law does not allow the use of any personally identifiable information (e.g., name, identification number or social security number) to post grades if others would have access to that information. An institution may permit posting of grades if codes are used instead of names or other identifiable information, so that other people cannot deter-
mine the identity of students whose grades are listed. At a minimum, however, the list of students should not be posted in alphabetical order, even if codes are assigned, nor should a list be posted at all if the class is small in size. In addition, grades may be posted on secure, password-protected web sites if each student has access only to his or her own grade. Anyone with questions or concerns about compliance should consult the campus registrar or the institution’s policy on posting grades.

Is it ever appropriate to allow students to sort through a stack of graded papers or exams to retrieve their own paper or exam?

No, allowing students to have access to the grades of others in this manner violates FERPA.

Can a department post pictures of students on its website?

Photographs of students should not be posted on a website without the consent of the student, unless photographs are included in the institution’s published definition of directory information. Even then, the department needs to confirm that none of the students has asked the institution to withhold all directory information.

Can student information be accessed for personal use?

No. Faculty, staff and students who have access to student information may not use that access for any personal reason. They may review student records only to the extent necessary to perform their jobs or other official functions, and they may not use their access to look at or share information about friends, family or anyone else.

Can a faculty member discuss any aspect of a student’s performance with a colleague at another institution?

A faculty member cannot discuss a student’s performance with anyone outside of the institution unless the faculty member has the student’s consent or the discussion falls within one of the exceptions to the general rule that prohibits the release of information without the student’s consent. For example, an institution may, but is not required to, discuss a student’s educational record with officials of an institution to which the student seeks or intends to transfer. Additional exceptions are discussed below.

DISCLOSURE OF STUDENT INFORMATION TO PERSONS OTHER THAN THE STUDENT

What disclosures require student consent?

Any disclosure of information from a student’s educational record, other than to institutional officials, requires the student’s consent, unless the disclosure falls within one of the limited FERPA exceptions. Thus, consent generally is necessary before a disclosure can be made to roommates, classmates, employers, the press, or, in many cases, even parents.

When can records be released without the student’s consent?

FERPA provides only a few exceptions under which information from an educational record may be released without a student’s consent. As discussed earlier, directory information may be released without a student’s consent unless the student has made a formal request to the institution to withhold this information.

In addition, in a true health or safety emergency, FERPA allows institutions to disclose information to appropriate persons to the limited extent necessary to protect the student and others. It also allows certain information about the final results of a student conduct proceeding to be disclosed to the victim of certain crimes of violence and, in some cases, to others. Upon a finding of a drug or alcohol violation by a student under the age of 21, it allows the institution to inform the student’s parent or legal guardian. FERPA also allows the institution to disclose information in response to a duly issued subpoena or court order, as discussed below.

Finally, FERPA permits the institution to disclose information from student records without consent for audit, compliance, testing, reporting and accreditation functions.

As with all stated exceptions, however, one should first review the institution’s FERPA policy and then consult the registrar or legal counsel before considering any disclosure that is not expressly permitted by the policy to ensure compliance with applicable notification requirements.

Can a parent or legal guardian obtain access to student information?

FERPA does not allow the institution to release protected information to a parent or legal guardian unless the student consents in person or in writing, or unless the parent can demonstrate that the student is a depen
dent for tax purposes. This is typically accomplished by providing a copy of the most recent year's tax return showing that the parent claimed the student as a dependent. Again, the age of the student does not affect FERPA rights, since students who are under 18 are not necessarily dependents.

After the dependency for tax purposes has in fact been established, the parent or legal guardian may obtain information from the student's records. The information provided to the parent, however, is in addition to the student's rights; access by a parent does not in any way affect the student's access to his or her educational records.

It is important to understand that FERPA does not require colleges and universities to offer parents access to their dependent student's records without the student's consent (although many do so). Whatever practice an institution follows should be included in its FERPA policy.

What if an administrator or faculty member receives a subpoena for a student's records?

The institution can disclose records in response to a lawfully issued subpoena or court order. The institution's legal counsel or registrar should be notified immediately of every subpoena for student records in order to determine if the subpoena is valid.

In most circumstances, the institution must make a reasonable effort to notify the student before records are produced, so that he or she may seek protective action through the court, and it should maintain a record of the request and of the documents produced.

On the other hand, if the subpoena or court order indicates that the institution is not to notify the student of the existence or contents of the subpoena, then the institution should not provide any notice to the student. In these limited cases, the institution is not required to maintain a record of the subpoena or court order or the disclosure.

What if a department is contacted for a list of students with certain course grades or grade point averages?

The department cannot provide this information because to do so would release protected information without the students' consent. However, if the request is for aggregated information or information that would not identify individual students, then the department may respond.

In some cases, the department may be able to avoid disclosing information about students by reviewing the purpose of the request. For example, if the purpose is for a company to notify students of a valuable scholarship or employment opportunity, rather than disclose the student information to the company, the department may instead choose to make qualifying students aware of the opportunity itself, and allow those who are interested to contact the company for more information.

What about releasing student conduct records?

FERPA allows the release of student conduct records only under limited circumstances. For example, it allows institutions to release to the alleged victim of a violent crime and, in some cases, to others, the final results of (but not other information concerning) a campus disciplinary proceeding. In addition, institutions may disclose information regarding registered sex offenders as necessary to provide notice to the campus community.

FERPA ENFORCEMENT AND RECENT DEVELOPMENTS

What are the penalties for violating FERPA?

Institutions that have a policy or practice of violating FERPA risk having their federal funds withdrawn. In some jurisdictions, they may also be subject to a lawsuit by the affected student. FERPA does not create an individual cause of action or provide monetary damages for a student whose rights have been violated. Additionally, the U.S. Supreme Court has held that students cannot use 42 U.S.C. § 1983 to create an individual cause of action for a FERPA violation (Gonzaga University v. Doe, 2002). However, students may file claims under other legal theories, such as breach of contract, invasion of privacy, or defamation for unauthorized releases of information.

Has the USA PATRIOT Act changed FERPA requirements?

The USA PATRIOT Act, adopted in response to the terrorist attacks of September 11, 2001, amends FERPA to allow designated federal officials to apply for a court order to obtain copies of student records relevant to an investigation of terrorism or other crimes, without noti-

* This is not true in Oregon due to state law.

** At PSU, contact the Office of General Counsel immediately.
fying the student. All requests for records made under
the USA PATRIOT Act should be referred to the institu-
tion’s registrar or legal counsel.

How or where can one find more information
about FERPA and student privacy?
The best resource for additional information or
assistance with any FERPA-related question or concern
is the institution’s registrar, legal counsel, or published
FERPA policy. General information and links to FERPA are
available from the Family Compliance Office of the
Department of Education at www.ed.gov/offices/OM/
fpco.html, and more detailed information is available in
the NACUA publication, The Family Educational Rights

Also Available from NACUA

(member institution/non-member institution prices)

Pamphlets/Monographs
Access to Institutions of Higher Education for Students with
Disabilities. $12/$15
Accommodating Faculty and Staff with Psychiatric Disabilities.
$12/$15
Acquaintance Rape on Campus: A Model for Institutional
Response. $12/$15
Campus Police Authority: Understanding your Officers’
Territorial Jurisdiction. $18/$21
Complying with “Drug-Free Workplace” Laws. $7/$9
Computer Access: Selected Legal Issues Affecting Higher
Education, 2nd Ed. $18/$21
Copyright Issues in Higher Education, 2000 Ed. $18/$21
Crime on Campus, 2nd Ed. $25/$30
Defamation Issues in Higher Education. $8/$10
The Dismissal of Students with Mental Disorders, 2nd Ed.
$10/$13
The Family Medical Leave Act of 1993: Applications in Higher
Education. $8/$10
How to Conduct a Sexual Harassment Investigation. $10/$13
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Understanding Attorney-Client Privilege Issues in the College
and University Setting. $12/$15
What to Do When OSHA Comes Calling. $7/$9
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Campus. $8/$10
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