

# FERPA Basics for Faculty/Instructional Staff

## Training Materials from AACRAO 2012 FERPA Guide

### The Essence

- Federal law designed to protect the privacy of educational records. It also provides guidelines for appropriately using and releasing student educational records.
- It is intended that students' rights be broadly defined and applied. Therefore, consider the student as the "owner" of the information in his or her education record, and the institution as the "custodian" of that record.

### Key Terms/Definitions

"Education Records" include any record maintained by the institution that contains information that is personally identifiable to a student (in whatever format or medium) with some narrowly defined exceptions:

- Records in the "sole possession of the maker" (e.g., private advising notes).
- Law enforcement records created and maintained by a law enforcement agency for a law enforcement purpose.
- Employment records (unless the employment is based on student status). The employment records of student employees (e.g., work-study, wages, graduate teaching associates) are part of their educational records.
- Medical/psychological treatment records (e.g., from a health or counseling center).
- Alumni records (i.e., those created after the student graduated or left the institution).

"Directory Information:" Those data items that are generally not considered harmful or an invasion of privacy if publicly available. This information cannot be released if student has a "no release" on his or her record. Each institution establishes what it considers to be directory information. Common examples include: name, address (local, home and email), telephone (local and home), academic program of study, dates of attendance, date of birth, most recent educational institution attended, and degrees and awards received.

- Directory information cannot include: race, gender, SSN (or part of an SSN), grades, GPA, country of citizenship, or religion. Except in very specific circumstances, a student ID number (SIN) also cannot be considered directory information.
- Every student must be given the opportunity to have director information suppressed from public release. This process is often referred to as a "no release," "opt out" or "suppression." When a student makes this request, everyone in the institution must abide by a student's request that no information be released about the student.
- It is important to understand, that a "no release" does not mean that a school official within the institution who has a demonstrated legitimate educational interest (e.g., a faculty member teaching the student in class) is precluded from using the information to perform that official's job duties.

### When do FERPA rights begin?

A FERPA-related college education record begins for a student when he or she enrolls in a higher education institution. At a postsecondary institution, rights belong to the student in attendance, regardless of the student's age. A new student is in attendance once they step into the classroom. Many institutions make a choice to start FERPA protection at the point in which a new student is registered for classes for their first semester/term/session.

### Basic Rights of Students under the Act

- Be notified/reminded of their FERPA rights at least annually
- Inspect and review their records
- Amend an incorrect record
- Consent to disclosure (with exceptions)

### "Annual Notification"

Every institution must notify students of their FERPA rights at least annually. This means a notice by individual email or US mail. It is best to take care of this activity following the end of the drop/add period but Fall and Spring semesters to make sure any new students starting in the Spring semester receive notification.

### "Inspection and Review"

Students have the right to see everything in their "education record," except:

- Information about other students (documents in a student record that have other students listed on the document)
- Financial records of parents (such as may be found in a financial aid record)
- Confidential letters of recommendation if they waived their right of access

FERPA does not prescribe what records are created or how long they are to be kept; however, you cannot destroy a record if there is a request to inspect and review. It is important to know and understand your institution's records retention policy.

#### *"Right to Consent to Disclosure"*

Start with the premise that the student has the right to control to whom his or her education record is released. Then, there are several exceptions when the permission is not required. In those instances where a signed release is required, regulations now provide the flexibility to accept an electronic signature, if your institution has this option set-up by federal standards.

#### **When is Prior consent not Required?**

The institution may disclose records without consent if certain requirements are met, but it is not required to do so. Some examples of the exceptions to the release requirement include:

- "School officials" with a "legitimate educational interest." Employees and legal agents have access to education records in order to perform their official, educationally-related duties.
- Disclosure to another institution where the student seeks to enroll or is enrolled
- Disclosure to DOE, state/local education authorities
- Disclosure in connection with the receipt of financial aid
- Disclosure to state/local officials in conjunction with legislative requirements
- Disclosure to organizations conducting studies to improve instruction, or to accrediting organizations
- Disclosure to parent of depend student (IRS definition). Check to see how your institution expects parents to demonstrate student dependent status
- To comply with a judicial order or lawfully issued subpoena
- Disclosure for a health/safety emergency (must document what the emergency was and to whom the information was released).
- Disclosure of directory information provided the student has no requested "no release."
- Disciplinary information:
  - Disclosure to the alleged victim of a crime of violence, such as information from disciplinary proceedings
  - Only when found in violation, and only for crimes of violence-release of name, sanction and outcome can be made to anyone
- Disclosure to parents of any student under the age of 21, a violation of federal, state, local or institutional laws/regulations related to substance abuse (provided that other laws governing the institution, such as state law, do not preclude such disclosures).

FERPA rights at a postsecondary institution end with a student's death. However, state law may provide for a continued right to privacy in your state. Students have a formal right to file a complaint with the Department of Education.

#### **Checklist for Requests for Access to or Disclosure of Information from Education Records**

- Is the information in question an education record under FERPA
- Is the information considered directory information?
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  - Is the subject of the request a current student, or a graduate/student no longer in attendance?
  - Did the student request a directory hold when he/she had the opportunity to do so?
  - Do you need to comply with the request?
- Does the disclosure require signed consent?
  - Does the disclosure meet one of the exceptions to signed consent found in 99.31 of FERPA?
  - Is the disclosure required to supplement other information, such as financial aid information?