

# FERPA Basics for Faculty/Instructional Staff

The following document is intended to serve as a one-page, double-sided summary of FERPA, particularly focused toward faculty and instructional staff. It can be used as a handout as well as a training tool.

## The Essence

- ❑ Federal law designed to protect the privacy of education records. It also provides guidelines for appropriately using and releasing student education 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 education 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 directory 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 within 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.

**"PARENT:"** With reference to FERPA, the term "parent" refers to either parent (including custodial and non-custodial, if divorced).

## 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.

## Basic Rights of Students under the Act

- ❑ Be notified 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.

### *Inspection and Review*

Students have the *right* to see everything in their “education record,” except:

- ❑ Information about other students;
- ❑ Financial records of parents; and
- ❑ 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 that permission is not required.

In those instances where a signed release is required, regulations now provide the flexibility to accept an electronic signature.

#### 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 organizations conducting studies to improve instruction, or to accrediting organizations.
- ❑ Disclosure to parents of *dependent students* (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 not requested “no release.”

### **Some Specific Issues for Faculty and Instructional Staff**

- ❑ **POSTING GRADES:** Since grades can never be directory information, it is inappropriate to post grades in a public setting. An instructor may, however, post grades if the grades are posted in such a manner that only the instructor and the individual student can identify the individual and his or her grade. Grades should never be posted by any portion of the SSN. Additionally, it is recommended that such a posted list should not be in the same order as the class roster or in alphabetical order.
- ❑ **WEB-BASED TOOLS TO SUPPORT CLASSES:** Courses supported by class websites and/or discussion groups must take extra precautions to not inadvertently release non-directory student information. Only directory information can be available to the general public and other class members, so it is recommended that such Web-based tools employ a security layer so that only class members and instructors can access appropriate information.
- ❑ **STUDENTS OPTING FOR NO RELEASE IN THE CLASSROOM SETTING:** Students cannot choose to be anonymous in the classroom setting. If a student has chosen “no release” for his or her directory information, that does not mean that an instructor cannot call on him or her by name in class or that the student’s email address cannot be displayed on an electronic classroom support tool such as a discussion board, blog, or chat feature.