

# Understanding and Applying FERPA

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# FERPA FOUNDATION

# FERPA foundation:

## Background

- Family Educational Rights and Privacy Act (enacted in 1974)
  - Also known as the Buckley Amendment
- Designed to protect the privacy of education records and to provide to parents (primary/secondary education) or to students (higher education) some control over records
- Intended that students' rights be broadly defined and exceptions narrowly construed
- FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education
- Timeframe for responding: FERPA 45 days

# FERPA foundation: Defining a student

- “Student” means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- This includes: dual enrolled students, non-degree seeking students, non-credit students
- Family Policy Compliance Office has stated that each institution may determine when a student is “in attendance” in accordance with its own enrollment procedures

# FERPA foundation: Rights

- Right to inspect and review education records
  - Exceptions: record contains information on more than one student, must redact; letters of recommendation the student has waived the rights to see; parents financial records.
- Right to seek an amendment to education records.
- Right to have some control over the disclosure of information from education records.
- Right to file a complaint with the Department of Education.

# FERPA foundation: Education records

- Contains information which is personally identifiable to a student; and
  - Are maintained by an educational agency or institution or by a party acting for the agency or institution.
- Storage media and location are irrelevant.
- Exceptions
  - Sole possession records,
  - Law enforcement records,
  - Employment records (unless contingent upon attendance),
  - Treatment records,
  - Alumni records.

# FERPA foundation: Personally identifiable

- Student's name
- Name of student's parent or other family members
- Address of the student or student's family
- Personal identifier – SSN, student ID number, biometric record
- Indirect identifiers – date and place of birth, mother's maiden name
- Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person

# FERPA foundation: Directory information

- Information generally considered non-harmful or invasion of privacy if disclosed
- OSU defined directory information:
  - student's name
  - current mailing address and telephone number
  - current OSU ONID email address
  - campus office address
  - class standing (e.g. freshman, sophomore, etc.)
  - student level (undergraduate, graduate, etc.)
  - college
  - major field of study
  - honors
  - full-time or part-time enrollment status
  - status as a graduate teaching assistant or graduate research assistant and hours of service
  - participation in officially recognized activities and sports
  - dates of attendance
  - anticipated graduation date
  - degrees and awards received
  - date(s) of degree(s)
  - most recent previous educational institution attended by student
- Cannot include:
  - Student ID number and SSN
- Since OSU has directory information:
  - Must inform students of it
  - Students have a right to limit the release of this information and the timeframe to make this decision



# FERPA foundation: School official

- Not defined at the federal level
- Members of the institutional community who act in the student's educational interest within the constraint of their need to know/scope of their institutional relationship
- In general, someone the institution has employed, contracted with, or has other official relationship with who would need to access pertinent student data to perform his/her designated job functions

# FERPA foundation: Legitimate educational interest

- Interest (defined here as **need**) in reviewing student education records for the purpose of performing assigned institutional research, educational or administrative function
- Not broadly construed
- Tied to the function being performed, not the title of the individual

# FERPA foundation: Disclosing education records

- First think: signed, dated “written” consent before disclosing
- Exceptions to consent:
  - School officials at the institution who have legitimate educational interest
  - School where the student seeks or intends to enroll or is enrolled, if sharing the information is pertinent to current enrollment
  - Federal, state, and local authorities conducting an audit, evaluation, or enforcement of education programs
  - In connection with financial aid (enforcing terms and conditions)
  - Organizations conducting studies on behalf of the educational institution (all information published from the study must be in aggregate form with no personally identifiable information revealed)
  - Accrediting organizations
  - Complying with judicial order or subpoena
  - Health or safety emergency
  - Directory information

# FERPA foundation: Disclosing education records

- Exceptions, continued:
  - Results of a disciplinary hearing to alleged victim of a crime of violence
  - Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rule or policies
  - Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies
  - Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State
- To the student

# FERPA Application: Classroom practices

- Posting/sharing grades
  - Don't unless students can't be identified
- Outside 'guests' participating in LMS
  - Quite restricted. Recommend students and faculty only (TAs for the course are acceptable). Others should not see student data.
- Returning graded materials
  - Return securely in a manner that other students can't view other student information (i.e., a campus mail envelope, picked up at an office where they must show an ID to obtain the materials)
- Addressing students in class who are 'confidential'
  - Students cannot be anonymous in class, but you cannot share information about the student with third parties without written permission from the student
- Sharing information with your TA
  - TAs are considered school officials with a legitimate need to know for the classes they are attached to

# FERPA Application: Classroom practices

- Sharing information with other faculty members
  - What is their legitimate educational interest or need to know? In general, there isn't one.
- What to do when you are concerned about a student's health or safety or the safety of the campus
  - Contact those who can assist the student; contact the Office of the Registrar as there are recording requirements
- Team teaching courses
  - Members of the team may share information with each other
- Recording and displaying course interactions
  - Don't unless you have written permission from the students to do so

# FERPA Application: Working with students

- Serving as a reference/writing a letter of reference
  - Obtain written permission from the student to do either of these; OSU is developing a form
- Using students as TAs, Research Assistants or graders
  - This is acceptable if the students are officially tied to the class; they need to complete FERPA training and understand the privacy requirement of their positions
- Peer advisers/mentors
  - Should be limited in use; if students are used in this capacity, they can have access to private student data but they need to complete FERPA training and understand the privacy requirement of their positions
- Publishing student work (locally or nationally)
  - Obtain written permission from the student prior to doing this

# FERPA Application:

## Communicating with students

- Send only to OSU assigned email account
- Use the Bcc field if communicating with a group of students
  - Don't include student specific information
- Working with students who call
  - Discuss information in general, not student specific information (e.g., suspension rules, not the specifics of a student's academics)
- Don't use Social Media to communicate non-public student information, even if it's good
- Don't post non-public student specific information to websites
- Don't hold meetings with students in public spaces if you are going to discuss non-public information
- Confirm in writing with student if parents show up for a meeting with the student



# FERPA Application: working with student data

- Conducting research within your classroom
  - Still contact IRB; likely exempt from full review; still need a consent form, and students can't be coerced
  - Any results must be de-identified
- Conducting broader research on student data
  - Still contact IRB; likely exempt from full review; still need a consent form, and students can't be coerced
  - Any results must be de-identified
- Advising notes/file notes
  - Document what occurred in the meeting
  - Students have a right to view these

# FERPA Application: Working with third parties (including parents)

- Any third party (including parents) is not permitted access to non-public student data, without written permission from the student
- If the information is 'public' and student hasn't requested being 'confidential' it may be released, if not you can't
- Most common questions:
  - Grades/classroom performance – within the term and final grades
  - Attendance
  - Probation/suspension
  - Schedule
  - Class adjustments (re-takes, moving finals/other exams, timing)
  - Acceptance to competitive majors
  - Enrollment status
  - Disciplinary status
  - Subpoenas/court orders

# FERPA Application: Working within/across the institution

- Sharing within the institution is still based on “legitimate educational interest”
  - With academic advisers
  - With campus security/police
  - With/from disability services
  - With student affairs/academic affairs
  - With housing
  - With athletics (coaches, advisers, tutors, etc.)
  - With college offices/programs
  - With the high school the student attended
  - With the President’s office

# Health or safety emergency

- Concern about the health or safety of a student or the campus community allows for more broad sharing of information
  - Must be based on the fact that the one being shared with can assist the student in the crisis situation
  - Has mandatory recordation requirements
  - Isn't used lightly BUT also shouldn't be a shield against sharing
- Information can be shared with:
  - Parents
  - Health/mental health providers
  - Police/campus security
  - Spouse
  - Others on/off campus who can provide assistance to the student

# Additional common FERPA questions/issues

- How do dual enrollment students fall into FERPA?
- How does FERPA apply to international students?
- What is the intersection between FERPA and state Open Records Laws?
- What is the intersection between FERPA and HIPAA?
- When is information gleaned from the record, and when isn't it?
- What is the notification requirement in FERPA if data has been shared inappropriately?
- When do FERPA rights cease? What does that mean.
- What does 'meeting the terms and conditions' of aid really mean?
- What is required to verify the identity of a caller/emailer?

# Summary

- FERPA has many more “mays” than “musts” and the “mays” aren’t always black and white
- No is always a fine place to start from
- The Registrar’s Office is here to help
- If in doubt, ask

# Conclusion

The best FERPA protection for education records is FERPA knowledge and training.

Understanding FERPA is not just an obligation, it is the right thing to do.

# Some resources

AACRAO website:

<http://www.aacrao.org/compliance/ferpa/index.htm>

AACRAO FERPA Guide 2012

FERPA Quick Guide 2012

– [www.aacrao.org/publications/](http://www.aacrao.org/publications/)

FPCO website: <http://www.ed.gov/policy/gen/guid/fpc/index.html>