

Understanding and Applying FERPA

Tina Falkner, PhD
Director, Continuity and Compliance
Academic Support Resources
University of Minnesota

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: 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 (narrowly construed).
- 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.
- Broadly defined.

- 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 (need - not desire to) 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 – narrowly construed);
 - 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; need a contract);
 - 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: Responding to 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/directory and student hasn't requested being 'confidential' it may be released; if the student has requested 'confidential' status, you can't
- Some 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
 - Issues/requests you've encountered?

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; a form is being developed
- Using student workers in your office
 - Data custodians limit access very tightly for student records; however, students can be employed in this capacity
- Peer advisers/mentors
 - 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
- Students serving on committees
 - Students can serve on committees (e.g., scholarship or scholastic standing committees), but they need to complete FERPA training and understand the privacy requirements of their roles
- File notes about students
 - Students have a right to this information, be cautious about what you record

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 within/across the institution

- Sharing within the institution is still based on “legitimate educational interest” (interest meaning, need, not curiosity)
 - 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 faculty
 - With high schools 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/

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