

FERPA Basics for Staff

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 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 is related to the 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 by a law enforcement agency for that 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 was enrolled).

DIRECTORY INFORMATION: Those data items that are publicly releasable, so long as the student does not have 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 e-mail), 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, grades, GPA, country of citizenship, or religion.
- * Every student must be given the opportunity to have even Directory Information suppressed from public release. That is referred to as a “No Release.” Everyone within the institution must respect a student’s No Release on his or her record.

PARENT: With reference to FERPA, the term “parent” refers to either parent if the student is financially dependent (IRS definition).

When do FERPA rights begin?

A FERPA-related college education record begins for a student when he or she becomes 18 or enrolls in a higher education institution at any age.

Basic Rights of Students

- * 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 basic FERPA rights at least annually.

- * The means by which that notice occurs is not specified.
- * A model notice can be found at www.ed.gov/policy/gen/guid/fpco/index.html

Inspection and Review

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

- * Information about other students,
- * Financial records of parents,
- * Confidential letters of recommendation if they waived their right of access (which cannot be required).

There is no records retention policy under FERPA. It does not state what records you must make or how long you must keep them. Those are institutional decisions. You cannot destroy records once requested.

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.

Historically, we had to have a *signed* release. Regulations now provide more flexibility for utilizing electronic signatures.

WHEN IS PRIOR CONSENT NOT REQUIRED?

The institution may release records without consent, but is not required to do so. Some examples of the exceptions for having a release include:

- * “School officials” with a “legitimate educational interest”/“need to know;” Employees and legal agents have access to education records in order to perform their official, educationally-related duties.
- * Disclosure to another institution where student seeks to enroll or is enrolled;
- * Disclosure to ED, state/local education authorities;
- * Disclosure in connection with the receipt of financial aid (validating eligibility);
- * Disclosure to state/local officials in conjunction with legislative requirements;
- * 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 show that dependent status;
- * To comply with a judicial order or lawfully issued subpoena;
- * Disclosure for a health/safety emergency; and
- * Disclosure of directory information.
- * Disciplinary information (Warner Amendment):
 - Disclosure to the alleged victim, information from disciplinary proceedings;
 - Only when found in violation, and only for crimes of violence--release of name, sanction and outcome (public information); and
- * 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 (Foley Amendment).

FERPA rights (and the right to privacy) end at death, unless otherwise specified by state law. Students have a formal right to file a complaint with the Department of Education.

Key Resources for Additional Information:

- * Your campus registrar
- * AACRAO (Federal Relations) — www.aacrao.org
- * Family Compliance Office of the Department of Education (administers FERPA compliance) — www.ed.gov/policy/gen/guid/fpc/index.html

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