Peralta Community College District

Don’t Let FERPA Freak You Out!
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FERPA Federal Privacy Law training...what this will not be!

Anyone...? Anyone...?
Lane Community College
Eugene, Oregon
• FERPA Basics
• Key Definitions
• Pitfalls to Avoid
• Scenarios
• Your questions

Agenda
How Well Do You Know FERPA?

- 1 Finger (FERPA, huh? I thought this was our weekly staff meeting!)
- 5 Fingers (I could hold my own if a man with a badge appeared!)
- 10 Fingers (I know this and am just here for moral support of my friends and co-workers)
Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school.
Welcome to the Family Policy Compliance Office!

The Family Policy Compliance Office (FPCO) administers two federal laws that provide parents and students with certain privacy rights: the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). In addition, FPCO administers the provisions in the Elementary and Secondary Education Act (ESEA) that require local educational agencies that receive ESEA funds to provide military recruiters with contact information on students, unless their parents opt out of the disclosure.

This Web site provides parents, eligible students, and school officials at the elementary, secondary, and postsecondary levels with a variety of resources and information regarding the federal laws FPCO administers, including links to the regulations, guidance documents, policy letters, topic briefs, webinars, videos, and a robust list of frequently asked questions (FAQs). This is an evolving Web site and will be updated as new resources and information become available.

Newly updated:
http://familypolicy.ed.gov
In Ferpa-Speak

1. Right to inspect and review educational records
2. Right to control disclosure of information from educational records
3. Right to seek amendment to incorrect educational records
1 Access to Education records, with 99.31 exceptions

2 Control over access, with exceptions

3 Right to challenge contents

In Plain English
What is FERPA?

Family Educational Rights and Privacy Act of 1974

Helen in 1974
Who is Responsible for FERPA?

• Typically the Registrar
• Who else should care? Everyone! (Financial Aid, Business Office, Legal Counsel, Counseling and Advising, President’s Office, Athletics, Faculty, Departments, Security, Foundation, Housekeeping...)
• Anyone with access to student records (including student employees)
• All students attending an institution of higher end receiving federal Title IV funds, regardless of age
• All students for whom records are maintained, regardless of method
• Parents lose rights when student is in attendance, regardless of student age
• Students retain all FERPA rights until deceased

Who has FERPA Rights?
FERPA Annual Notification Requirements

- Right and method to inspect and review
- Right and method to seek amendment
- Right to consent (other than 99.31 exceptions)
- Definition of legitimate educational interest/school officials
- Right to file a complaint with Dept of Ed
- Directory Information (defined by institution)
Should include:

1) Record(s) to be release

1) To Whom

1) Purpose

Can be:

1) Submitted to the institution

1) Submitted to a third party

1) Electronic Signature

Signature of Release
Never can release!*  
*Even to parents paying the bills
• **Student**—anyone attending your institution, any age
• **Student Record** – any information or data recorded in any medium
• **Educational Record**—directly related to a student; maintained by an educational agency or institution
• **Directory Information**—student info that would not be harmful if disclosed
• **School Official**—member of an institution acting in a student’s educational interest, limits on “need to know”

**Important FERPA Terms**
What exactly is a student?

• In attendance – institutionally defined
• All students for whom records are maintained, regardless of method
• Rights begin when in attendance regardless of age (parents lose rights at 18 or when attending)
• Acquire all FERPA rights when a student
What is attendance?

- Classroom attendance
- Video conferencing, satellite, or internet
- Telecommuting
- Does not matter whether in person or online
- Skype or Facetime

What is attendance?
What is Directory Information?

Can include (institution decides):

- Student’s Name
- Telephone Number
- Photograph
- Dates of attendance
- Major field of study
- Grade level
- Weight/height of athletes
- Participation in sports & recognized activities
- Most recent educ. agency or institution attended
- Address
- Email address
- Enrollment status
- Date and place of birth
- Degrees, honors, & awards
• Code in your system to acknowledge student’s decision to Opt-Out of Directory Information release
• Must be visible to anyone who might release information
• Most misunderstood aspect of FERPA. All records are confidential. Directory Information ok to release, unless Opt-Out in place
• Never have to release Directory information to anyone, except to student

What is an “Opt-Out”?
• Law enforcement records*
• Treatment/medical records*
• Alumni records
• Employment records (unless job is for a student only)
• Sole possession records
  *Once disclosed become educational records
Who are school officials?

- Individual or group providing a necessary service
- No inherent rights
- Have a “need to know” (AKA: legitimate educational interest)
- Responsible for knowing FERPA
- Outsourced parties performing duties done by school officials
- Listed in annual FERPA notification
- Records remain under control of institution
- Must not redisclose information
• To the student
• School officials
• Post-secondary institutions – students seeks to enroll or is enrolled
• Authorized federal, state, or local educational agencies
• In connection with fin aid - to determine award
• Organizations conducting studies for the institution
• Parents of dependent students (institutional decision)
• In compliance with a judicial order or subpoena
• In connection with Health or Safety Emergency
• Directory information: no Opt-Out

99.31 Exceptions?
FERPA Pitfalls to Avoid
• FERPA records cannot mix with Campus Safety records—automatically become FERPA protected if this happens
• Outside entities with badges cannot have access to student data without student permission (unless Health or Safety Emergency)
• Do not release a student’s schedule or location without student’s written permission: even to law enforcement

Law Enforcement Inquiries
• FERPA Does Apply to Health Clinic/Disability Services/Counseling Services records
• FERPA applies to most public and private postsecondary institutions and thus, to the records on the students at these campus services.
• These records will be either education records or treatment records under FERPA, both of which are excluded under the HIPAA Privacy rule, even if the school is a HIPAA covered entity.
Health and Safety Emergencies

- “Articulable and significant threat to the health and safety of the student or other individuals”
- May release to local law enforcement, parents, outside entities if release is related to safety
- Must record release in student records:
  1) To whom
  2) What was released
  3) Why (Health and Safety Emergency)

Photo Credit: Kidshealth.org
• Letters of Recommendation
• Peer Grading
• Releasing information to lawyers/law enforcement
• Posting grades/records
• May only access information related to the class they are teaching or related to advising roles
• Student can no longer ask/expect to be anonymous in classroom
• May release outcome of disciplinary hearing to victim of the crime
• Disciplinary records are not sole possession records and therefore are subject to FERPA
• May release information to institution where student seeks to enroll or has enrolled
• May release if related to Health and Safety Emergency

Photo Credit: learnenglishteens.britishcouncil.org
You may release to parents:

- With student’s written permission
- In connection with a health or safety emergency
- If student is under 21 and violates law or school policy related to alcohol or a controlled substance
- If student is dependent for tax purposes (only if your school employs this process)
• Solomon Act:
  • May release data to each branch of the military once each term
  • At least 17, registered in at least one credit
  • Can exclude Opt-Out students
  • May charge a fee
• Federal/Military reps must have signed release to obtain student FERPA protected data (i.e. transcripts/bills)

Federal Employees/Military Requests
• Duces Tecum – requires documents, papers for the court
• Ad Testificandum – requires a person to testify
• Must make reasonable attempt to notify student (14 calendar or 10 working days)
  • Exception is for Federal Grand Jury – do not notify!
• Must only respond to from court with jurisdiction or to a federal district court
• Student may “quash” subpoena
• Consult college legal counsel

Subpoenas/Judicial Orders
• May disclose personally identifiable information to:
  • Contractor
  • Consultant
  • Volunteer
  • Other party doing work normally done by institution
• Data belongs to student, and in custody of institution
• Must train on FERPA/no third party redisclosures
• Put in Annual FERPA notice
• May not re-disclose in response to subpoena or judicial order without institution notifying student
Disclosures under the Campus Sex Crimes Prevention Act

- FERPA law requires/encourages educational institutions to collect and maintain information on registered sex offenders
- Notify faculty if underage student in class, registered sex offender must choose another section, do not notify under age student

Registered Sex Offenders
• Social Security Numbers (any or all) cannot be used as directory information or to confirm identify of a student
• Schools should not allow easy to know information (such as date or place of birth, mother’s maiden name) as password prompt or a way to access student records
• Take care when releasing information on phone. Use data (not SSN) known only to student. Classes taken/former instructor names

Using SSN/Passwords
• May release when written agreements related to studies conducted for institution
• Authorized Reps can be any national or state authority or educational body
• Can re-disclose. Ask them not to and destroy un-used data
• Personally identifiable information can move back and forth between institution and agency now without student’s consent
• Agencies must abide by FERPA

Authorized Representatives
Requests for Information
• Do not assume campus leaders all know FERPA
• Take care when releasing information to school officials in a position of authority
• Is this a school official with a legitimate need to know?
• If release violates FERPA, decline request. If required to comply, make note of request and to whom it was released in student’s record
Before Releasing Data
- Educational Record?
- Student?
- Signature required?
- Must vs. May: Do I have to release?
- School Official: Provide service to institution?
- Need to know: Job-Related?
- Is this Directory Information? Opt-Out in place?
- Institutional policies and procedures?
• As a front line employee you are never obligated to give out FERPA protected information.
• FERPA law states that schools have up to 45 days to provide students with access to their information and this does not require the information to be copied and released, but just to make the information visible to review.
• The more pressure you are receiving to release information, the more you want to assume that the person asking does not have the right to access the student’s information.

When In Doubt Don’t Give It Out!
Your Questions?