

# FERPA Basics for Faculty & Instructors

## FERPA (Family Educational Rights and Privacy Act of 1974, as amended)

### 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 or their 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). So, 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 or their record.

**NS's directory information includes** Name, address, e-mail, telephone number, dates of attendance, enrollment status (full-time/part-time; undergraduate/graduate), academic major, college and grade level, academic honors, other academic institutions recently attended, participation in NS organizations, and degrees earned and dates attended.

- "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 "No Release." Everyone within the institution must respect a student's No Release on his or her or their record.

**"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 or they enroll 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*
- *Inspection and review of their records.*
- *Amend an incorrect record.*
- *Consent to disclosure (with exceptions).*

## Inspection and Review

Students have the *right* to see everything in their “educational 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.

## Right to Consent to Disclosure

Start with the premise that the student has the right to control to whom his or her or their 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 exception for having a release 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 dependency 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.”

## SPECIFIC ISSUES FOR FACULTY & 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 their grade. Grades should never be posted by any portion of the SSN or student ID. Additionally, any 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 web-based tools should employ a security layer so that only class members and instructors can access appropriate information.
- ❖ **STUDENT 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 their directory information, that does not mean that an instructor cannot call on the student 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.

## RESOURCE FOR ADDITIONAL INFORMATION

AACRAO <https://www.aacrao.org/resources/ferpa>