

# FERPA Basics for Administrative Staff

## 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).*
- *Right to file a complaint.*

## Inspection and Review

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

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. It is important to know and understand your institution’s records retention policy.

## Right to Consent to Disclosure

Start with the premise that the student has the right to control to whom 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 exceptions to release requirement 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 another institution where student seeks to enroll or is enrolled.
- ❖ Disclosure to D.O.E, 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 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.”
- ❖ Disciplinary information:
  - Disclosure to the alleged victim of a crime of violence, such as information from disciplinary proceedings.
  - **Only** when found in violation, and **only** for crimes of violence – release of name, sanction and outcome can be made to anyone.
- ❖ Disclosure to parents of any student under the age of 21, a violation of federal, state, local, or institutional law/regulation related to substance abuse (provided that other laws governing the institution, such as state law, do not preclude such disclosures).

FERPA rights at a postsecondary institution end with a student’s death. However, state law may provide a continued right to privacy in your state. Students have a formal right to file a complaint with the Department of Education.

## RESOURCES FOR ADDITIONAL INFORMATION

- AACRAO <https://www.aacrao.org/resources/ferpa>
- Student Privacy Policy Office of the Department of Education (administers FERPA compliance) <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn>

**CHECKLIST FOR REQUESTS FOR ACCESS TO/OR  
DISCLOSURE OF INFORMATION FROM EDUCATION RECORDS**

- Is the information in question an education record under FERPA?
- Is the information personally identifiable?
- Is the information considered directory information?
  - Is the subject of request a current student or graduate/student no longer in attendance?
  - Did the student request a directory hold when he/she/they had the opportunity to do so?
  - Do you need to comply with the request?
- Does the disclosure require signed consent?
  - Does the disclosure meet one of the exceptions to signed consent found in §99.31 of FERPA?
  - Is the disclosure required to supplement other information, such as financial aid information?
- Do you have a state open records law that directs you to treat information differently, but in a way still permitted by FERPA?