Family Educational Rights and Privacy Act (‘‘FERPA’’ or ‘‘Buckley Amendment’’)

The purpose of FERPA is to protect the privacy of students’ educational records.

FERPA applies to all records directly related to a student and made or maintained by UNCW, EXCEPT certain medical, employment and law enforcement records.
Who Has FERPA Rights?

A student who is 18 years of age or older or who is attending the university; or a parent/guardian.
WHAT ARE EDUCATIONAL RECORDS?

- Educational records are records, files or documents in any format, including electronic, regardless of where they are maintained and which directly relate to a student; **and**

- Are maintained by the university or an agent of the university in his/her official capacity
TWO TYPES OF INFORMATION

- “Directory Information” is information that would not generally be considered harmful or an invasion of privacy if disclosed. Usually, these items are made available in public directories.

- “Personally identifiable information” is information that contains sensitive, non-public information that is considered private.
<table>
<thead>
<tr>
<th>Information</th>
<th>Description</th>
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<tbody>
<tr>
<td>Name</td>
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<tr>
<td>Local Address</td>
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<tr>
<td>Class</td>
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<tr>
<td>Local/contact telephone number</td>
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<td>E-mail address</td>
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<td>College &amp; Major</td>
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<td>Degrees and Awards</td>
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<tr>
<td>Dates of attendance</td>
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<td>Student activities and sports</td>
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<td>Weight &amp; height &amp; DOB of student athletes</td>
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<tr>
<td>Most recent previous educational agency</td>
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<td>or institution attended by the student</td>
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</table>
PRACTICE POINTER

BEFORE RELEASING ANY DIRECTORY INFORMATION, ASSUME ALL INFORMATION IS CONFIDENTIAL UNTIL YOU CHECK WITH THE REGISTRAR’S OFFICE (or on Banner) TO DETERMINE WHETHER THE STUDENT HAS A PRIVACY BLOCK IN PLACE ("confidential" will appear on each form in the color red)
Who can see educational records that contain personally identifiable information (non-directory)?

- Anyone with **written consent** from the student
- The consent form should state:
  - which records may be disclosed
  - to whom
  - the purpose of the disclosure

[See sample consent form]
Who can see educational records without the student’s consent and under what conditions?

- School officials who have a legitimate educational interest
- Financial aid representatives
- Parents of a dependent student
- In health and safety emergencies
- Certain educational organizations
- Anyone with a judicial order, subpoena, search warrant or IRS summons
- Officials of another school in which the student seeks or intends to enroll
- Accrediting organizations
- Certain state and federal officials
- Implied waiver and litigation
What is The University’s Obligation When it Releases Non-Directory Personally Identifiable Information?

The university must keep a record of 1) the date of disclosure; 2) the information disclosed; and 3) the person to whom the information was disclosed.

No record need be kept where the individual requesting the disclosure is the student, a school official with legitimate educational interests, or a person who has consent of the student.

The record of disclosure is available to the student, unless an exception applies.
Who is a school official?

- An employee, agent or officer of the university or GA acting in his or her official capacity
- A person serving on university committees, boards, councils or grievance panels
- A person or company with whom the university contracts to perform a certain function
- Another educational institution where the student seeks or intends to enroll
What constitutes a “legitimate educational interest”?

Any authorized interest or activity undertaken in the name of the university for which access to an educational record is necessary or appropriate to the operation of the university or to the proper performance of the educational mission of the university and is relevant to the school official’s professional duties.
CAN PARENTS HAVE ACCESS TO THEIR CHILD’S EDUCATIONAL RECORDS?

- U.S. Department of Education says that the institution cannot assume the student is a financial dependent
- Either student’s written consent or parent’s federal tax return
- If student is a dependent, both parents have access to the records, even if they are divorced and only 1 claims the dependent [unless court says otherwise]
WHAT INFORMATION CAN WE DISCLOSE TO PARENTS IN SPECIAL CIRCUMSTANCES?

- Generally, the university will not notify parents of first time alcohol violations of students under the age of 21. The university reserves the right to do so.
- The university may notify parents of all second and subsequent alcohol violations.
- The university may notify parents of any drug violations.
Sharing Information about Students who may pose a Risk of Danger to Self or Others

- Education record v. first-hand knowledge
- Disclosure to “school officials” who have a “legitimate educational interest”
- Release of information with student’s consent
- Disclosure to parents of a dependent student
- Disclosure in a health or safety emergency
“Health or Safety Emergencies”

U.S. Department of Education has provided the following interpretation: This exception is limited “to a specific situation that presents an imminent danger to a student, other students, or other members of the campus community – or to a situation that requires the immediate need for information from educational records in order to avert or diffuse serious threats to the safety or health of a student or others.”
“Health or Safety Emergencies”

- Temporally limited to the period of the emergency
- Sharing of information with “appropriate parties”
- “Appropriate parties” are typically law enforcement officials, public health officials, trained medical personnel
Disclosures to Immigration Officials

Students on F-1, M-1 or J-1 visas have signed consents when applying for such visas
Disclosures to Military Recruiters

Military recruiters and reserve officer training corps programs may have access to the following information on currently enrolled students: name, address, telephone listing, age (or year of birth), place of birth, level of education, most recent educational institution attended, and current major(s).
COURT ORDERS AND LAWFULLY ISSUED SUBPOENAS

- If you receive a subpoena for a student’s educational records, contact the Office of General Counsel to determine if it is lawfully issued.
- Generally, the university is obligated to make a reasonable effort to notify the student of the order or subpoena in advance of compliance.
- USA PATRIOT Act exceptions to the general rule.
ISSUES FOR FACULTY

- You cannot post grades by the student’s name, by social security number, by the last 4 digits of the SSN or by Banner number.*
- Electronic class discussion among students does not require the signed consent of the students provided that the discussion is limited to class members and is on a secure server.
Electronic posting of students’ course work or papers **does** require consent **unless** 1) the records do not contain professor’s comments or grades; 2) the students post the papers; 3) students are notified prior to or at the time of enrollment that posting of their work is a course requirement; and 4) the posted work is available only to members of the class during the semester.
PRACTICE POINTER

Provide notice to students in the syllabus that the course will require electronic posting of homework and papers and discussion as part of the course.
ANOTHER ISSUE FOR FACULTY

- Plagiarism detection software vendors are not “school officials”
- If faculty member submits the student paper, all personally identifiable information about the student must be taken off paper
- Otherwise must get the student’s prior written consent or student must voluntarily submit the paper
Owasso Indep. Sch. Dist. V. Falvo  
(Supreme Court 2002)

- Peer grading in which students score each other’s papers as teacher explains the correct answers to entire class does not violate FERPA
- Student papers at this stage are not “maintained” and therefore are not educational records
- Students are not serving as agents of the university in this situation
PERSONAL NOTES

Faculty and other administrators may keep personal notes concerning students, and these notes will not be considered “educational records” under FERPA provided:
- they are kept by the official and are not disclosed to others except for a temporary substitute; and
- they are used as a personal memory aid.
The university may disclose the final results of disciplinary proceedings in which a student is found responsible for committing a violent crime or non-forcible sex offense. Disclosure is limited to the name of the violator, the type of violation, and the sanction.
STUDENT EMPLOYMENT RECORDS

- If the student is working as part of a student program (interns, graduate assistants, work study), the employment is dependent on the student’s status, and records would be covered under FERPA.

- Otherwise, employment records are covered by the NC Personnel Records Act and are confidential for the most part.
MEDICAL RECORDS

- Medical treatment records are covered by patient-physician privilege and are strictly confidential under state law.

- Medical records that are used to determine a disability under the ADA would be covered by FERPA as student records, but remain confidential under the ADA [faculty do not have an absolute right to know of student’s disability or medical diagnosis].
ALUMNI INFORMATION

If the information was obtained while the individual was a student in attendance, those records are protected under FERPA.

If the information was obtained while the individual was no longer a student, those records are not protected under FERPA.
REQUESTS FOR DE-IDENTIFIED OR ANONYMOUS DATA

FERPA prohibits the release of personally identifiable data as well as:

- A list of personal characteristics that would make the student’s identity easily traceable; or
- Other information that would make the student’s identity easily traceable
- Small numbers in a group (~20) would likely make the data requested easily traceable to a student
Student Rights in FERPA

✓ May inspect or copy their own records [except cannot see records that identify other students in the same record/the institution must “white out” or sanitize the file or provide a description of the information contained in the records]

✓ May amend or contest accuracy of their records
✓ May file a complaint with the U.S. Department of Education

✗ May NOT see financial records of their parents.

✗ May NOT see confidential letters of recommendation where the student has waived that right
WHAT ARE THE CONSEQUENCES FOR VIOLATING FERPA?

The U.S. Department of Education may issue a notice to cease the practice complained of and could withhold the university’s federal student aid funding. Depending on the type of record and the nature of the disclosure, other penalties may be imposed.