FERPA for NCASFAA

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Find this ppt, Info and Forms at:

http://uncw.edu/generalcounsel/LTFERPA.htm
• Family Educational Rights and Privacy Act ("FERPA" or "Buckley Amendment")

  ▪ Enacted by Congress in 1974
    ▪ 20 U.S.C. § 1232g

  ▪ Department of Education adopted implementing regulations in 1988
    ▪ 34 C.F.R. Part 99
Who is Subject to FERPA?

- Any school that provides educational services attended by students; or

- Any educational entity that directs and controls public educational institutions

- That receive federal funds through Department of Education programs

34 CFR 99.1
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 the school, EXCEPT certain medical, employment and law enforcement records.
Education 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
  - May not access except as authorized and may not further disclose without student written consent
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.
Potential Directory Information
This information is public unless the student has a **privacy block** on file with the Registrar’s Office

- Name
- Address
- Telephone number
- Date & Place of Birth
- E-mail address
- College & Major
- Degrees and Awards
- Dates of attendance

- Participation in Recognized Activities and Sports
- Weight & height of student athletes
- Most recent previous educational agency or institution attended by the student
Each institution designates what will be considered ‘directory information’ at its campus.

It gives public notice of same, including to students.

Gives time for student to ‘opt out’, i.e. their directory information will not be provided to outside parties.
PRACTICE POINTER

BEFORE RELEASING ANY DIRECTORY INFORMATION, ASSUME ALL INFORMATION IS CONFIDENTIAL UNTIL YOU CHECK WITH THE REGISTRAR’S OFFICE (or thru your school’s system) TO DETERMINE WHETHER THE STUDENT HAS A PRIVACY BLOCK IN PLACE
The recommended response to requests for information on students who have requested that Directory Information not be released is “I have no information on that individual.”
Creates Two Basic Rights

Right to access education records by Student

Right to privacy
Right Of Access

- **Eligible” Student**
  - Person for whom the University maintains education records; AND
  - is 18 Years or older OR
  - is or has been attending the University
Attendance at an Institution

When an individual arrives to campus with an intent to remain

- Student athletes may be in attendance months prior to the semester for fall practice
- Housing staff or student employees may arrive a month early for training
- Residential students may arrive weeks early for move in

34 CFR 99.3(a)
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.
The institution must provide access to the records within 45 days of a request and must respond to reasonable requests for explanations and interpretations of the records. 34 C.F.R. § 99.10(b) and (c). FERPA does not require the institution to provide copies of records to the student, unless "circumstances effectively prevent" the student from exercising the right to inspect and it is not possible to "make other arrangements" for inspection. 34 C.F.R. § 99.10(d).
Records Not Subject to FERPA

- Personal notes of staff and faculty if
  - Kept in sole possession of the maker and
  - Kept Confidential

34 CFR 99.3(b)
Records Not Student Accessible

“A postsecondary institution does not have to permit a student to inspect and review education records that are: (1) Financial records, including any information those records contain, of his or her parents”

34 C.F.R. § 99.12(b)(1)
Compliance with Requests

- Within “reasonable” time
- *Never* more than 45 days
- Must explain or interpret upon request

34 CFR 99.10(b)
Privacy

- Implies no disclosure.

- Access to
- Release
- Transfer or otherwise
- Communicate information to any person orally, written or electronically

34 CFR 99.3
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]
Student’s Written Consent Must

- Be written, signed and dated by the student
- Specify records that may be disclosed
- State the purpose for disclosure
- ID to whom the disclosure will be made
- Provide copies to student upon request

34 CFR 99.30
Electronic Consent

- Identifies & authenticates a particular person as the source of electronic consent; and
- Indicates such person’s approval of information in the electronic consent.

34 CFR 99.30(d)
Electronic Consent (cont’)

- Family Policy Compliance Office of the US DOE’s (FPCO) supports an institution’s decision to only accept electronic signatures presented by the student or on behalf of the eligible student by certain third parties, e.g. Federal/state agencies.
- Security standards consistent with other Federal government standards for electronic signatures and documents
  - Federal Student Aid guidance for electronic student loan transactions
  - Electronic Signatures in Global & National Commerce Act (E-Sign)
  - Government Paperwork Elimination Act (GPEA)

34 CFR 99.30(d)
Electronic Record Access & Disclosure

- Regulations do not govern system in which student may view, alter or update his/her own records electronically, rather regulations govern means by which institution would disclose records to eligible student or a third party.

- Educational institutions must
  - Use all reasonable and appropriate measures consistent with current technology to maintain the integrity and security of electronically maintained or transmitted education records
  - Determine whether chosen system provides the required level of security
  - Determine whether request for disclosure meets FERPA
  - Determine whether it wishes to make the requested disclosure
  - Ensure that education records are disclosed only in accordance with FERPA
  - Ensure that the eligible student and not some other party is the receiver of the information, but the method a school uses to do so is not prescribed by FERPA regulations
FSA Standards

- Federal Student Aid (FSA) Standards for electronic signatures in electronic student loan transactions are a “safe harbor”
- FSA Standards are not set at minimally acceptable level of security, but are not too rigorous
- Institutions retain flexibility to choose whether to implement a system that meets the FSA “safe harbor” or another system to meet new FERPA electronic regulations
FSA Standards (cont’)

- FSA standards do not apply directly to FERPA because some are imposed only on lenders or borrowers. “While institutions are not required by FERPA to follow the FSA Standards, we believe schools may use the set-up and security measures described in FSA Standards, particularly Sections 3-7, as guidance for security measures in a system using electronic records and signatures under FERPA.”

Identity Verification

- Use of a Personal Identification Number (PIN) over the telephone or internet to verify the identity or consent to disclose education records
  - Not visible or easily accessible to persons other than eligible student b/c insecure
- Check picture identification if in person
- “Institutions retain maximum flexibility to implement any appropriate methodology.”
SS#

A myriad number of statutes should lead you to NOT use social security numbers to verify.

They are ‘personally identifiable information’ in and of themselves.
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
Financial aid representatives

The disclosure is in connection with financial aid that the student has applied for or received and is for the purpose of determining the student's eligibility for, the amount of, or the conditions for the aid, or to enforce the terms and conditions of the aid.

34 C.F.R. § 99.31(a)(4)
Financial Aid

Financial aid means a payment of funds provided to an individual that is conditioned on the individual’s attendance at an educational agency or institution.
Disclosure Limitations

- Must **redact** any information in the education record not subject to access including, but not limited to, information about other students.

- Must inform recipients that information may **NOT** be re-disclosed without student’s consent, except directory information.
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.
This separate record must include, at a minimum, the identities of the requesters and recipients and the "legitimate interests" they had in the information; in the case of a "health or safety emergency," it must also include a description of the perceived threat. In addition, it must be maintained with the student's education records for as long as those records are themselves maintained. 34 C.F.R. § 99.32(a).
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.
Defined Parent

- FERPA: a parent is a “natural, guardian or an individual acting as a parent in absence of a parent/guardian.” note: broader than Free Application for Federal Student Aid (FAFSA) definition that considers only natural or adoptive parents.
CAN PARENTS HAVE ACCESS TO THEIR CHILD’S EDUCATIONAL RECORDS?

- The disclosure is to parents of a student who is considered their "dependent" for federal tax purposes. 34 C.F.R. § 99.31(a)(8).

- U.S. Department of Education says that the institution cannot assume the student is a financial dependent.

- 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].
Proof of ‘dependency’

To establish the parents' eligibility to receive such a disclosure, the institution must obtain either a copy of the parents' most recent tax return (at least the first page, on which dependents are listed, but the financial portions of which the parents may redact) or an acknowledgment from the student that the student is, in fact, their dependent. Note that this exception is not available with respect to international students, whose parents do not file U.S. tax returns.
School’s Discretion

Note also that, at least as far as FERPA itself is concerned, it is entirely within the institution's discretion whether to make a disclosure under any of these exceptions. 34 C.F.R. § 99.31(b). Thus, for example, a parent never has a right, under FERPA, to see his or her college student's education records, even if the student is the parent's dependent for tax purposes, is involved in a health or safety emergency, and has violated the institution's alcohol policies – and even if the student is not yet 18 years old. A subpoena, a court order, or another law such as the Campus Sexual Assault Victims' Bill of Rights Act may require disclosure in certain circumstances, but not FERPA.
COURT ORDERS AND LAWFULLY ISSUED SUBPOENAS

- If you receive a subpoena (or IRS summons) for a student’s educational records, determine if it is lawfully issued; advised to seek legal counsel
- 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
- It is not required to fight the order or subpoena on the student's behalf, and it may (and generally must) comply regardless of the student's wishes if the student fails to take action
Ensuring Compliance

Develop written student record privacy & confidentially statements addressing:
* information on handling internal & external calls as well as written & electronically produced communications
* information on use of personal identifiers to confirm identity
* information how to communicate with non-custodial parents & spouses
* process on how records are noted if information is supplied to individuals
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.
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THANKS!

Enjoy the rest of the day.