

FERPA for Dummies

The Family Educational Rights and Privacy
Act of 1974

For those of us who are *time-challenged*

Background

- Statute” Family Educational Rights and Privacy Act of 1974 (aka the Buckley Amendment)
- Deals with the release of student education records, and affords student certain rights regarding their records (34 CFR § 99.3)
 1. **Right** to inspect and review their records
 2. **Right** to seek to amend their records
 3. **Right** to have some control over the disclosure of information from their records

Definitions 34 CFR § 99.3

- FERPA applies to each educational agency or institution which receives funds under any program which is administered by the Secretary of Education

Definitions - continued

- **Educational Records** are those records which:
 - contain formation that is *directly related to a student*
 - and are maintained by an educational agency or institution, or by a party acting on the behalf of the agency or institution
 - This type of information is normally referred to as “personally identifiable information” and **may** include, but is ***not limited to***
 - Student’s name
 - Name of the student’s parent or other family members
 - A personal identifier, such as social security number
 - *Any personal characteristics* that would make the student’s identify traceable by a reasonable person in the school or community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable accuracy.

EXCEPTIONS to the Definition

- Certain records, otherwise educational in nature, are exempt from the definition. These include:
 - *Sole possession records* – records maintained by **one** person in the pursuit of that person's job (e.g., records in the custody of the Director of Special Needs)
 - Employment records – unless these are contingent on attendance

Exemptions continued

- Law Enforcement records – Northern doesn't have this department
- Medical/Health records – Northern doesn't provide health care
- Alumni records -- those that **only** contain information about a student after that person is no longer a student

Directory Information

- FERPA permits the release, with written permission from a student, of what is described as “Directory Information”
 - This information is such which would not generally be considered harmful or be an invasion of privacy if disclosed
 - Each educational agency or institution must have a policy for assigning directory information

DIRECTORY INFORMATION

- At Northern, we have classified the following as directory information
 - Name
 - Address
 - Date of birth
 - Enrollment status (e.g., FT/PT, UG/GRAD)
 - Weight & height of athletes
 - Participation in an officially recognized sport
 - Degrees received
 - Grade level (e.g., fresh, senior)
 - Most recently attended school prior to Northern
 - Field of study
 - Dates of attendance
 - E-mail address

Directory Information – continued

- We could have chosen to include other information as part of “directory information,” but we have chosen to not do so. These items include
 - Place of birth – although we do not collect this
 - Phone number – we believe in protecting students from all types of harassment

Directory Information

- **EXCLUDED** from Directory Information are
 - Social Security Number/Student ID number
 - Race/ethnicity/nationality
 - Gender
 - Grades
 - Details about schedule (i.e., day/time/location of classes)

What is a STUDENT?

- This is a two-part definition:
 - Any individual who **is** or **has been** in attendance * at an institution; **and**
 - A person regarding whom the institution maintains educational records
- * In attendance means physically in a classroom or receiving instruction by any distance media

Records

- Records are defined as any information available in any way, including, but not limited to:
 - Handwriting
 - Computer media
 - Print
 - Video or audio tape
 - Film
 - Microfilm/microfiche
- Note: If you are given any type of non-directory information by a student during a conversation, as soon as you *make a note* about it, that note *becomes an educational record*. The moral: don't make notes you might be sorry about later. They could be subpoenaed.
- The practice of "peer grading" does not violate FERPA

Annual Notification – 34 CFR § 99.7

- We have an obligation to annually notify students who are “in attendance” of their *rights* under FERPA to:
 - Inspect and review their educational records
 - Request amendment of records the students believe to be inaccurate or misleading
 - Consent to/deny access to disclosure of personally identifiable information in their records (with certain exceptions)

Annual Notification - continued

- File a complaint with the US Department of Education
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Our policy must also include the following:

- Procedure to inspect and review records
- Procedure for requesting an amendment
- Statement that education records may be disclosed without prior written consent; this must include

Annual Notification - continued

- Specification of the criteria we use to determine who school officials are, and
- What constitutes a legitimate educational interest
- The right to restrict access to all or specific parts of a student's educational record

HOW do we handle “annual notification”?

We can use any means reasonably likely to inform our students.

We include statements in the *Student Handbook*, the annual *Catalog*, periodic *Schedules of Classes*, on our webpage, etc.

Student's Right to Review

- If students requests to review their records, we must comply within 45 days
- We allow students personal access, under direct supervision, to their original records
- We make copies for students who otherwise cannot physically visit the Records Office
- We can charge for copies -- *but we do not*
- We may not destroy records if a request for access is pending

Limitation of Rights

- Students may inspect only their own records or portion thereof. For example, they can see *only* what pertains to them on a final grade sheet or roster; they *cannot* see their parents' tax records in their admission or financial aid files.
- If the student has waived rights to confidential letters and statements of recommendation, we do not have to permit access to such data

Amendment of Records

- This is not an absolute right
- The institution must decide within a reasonable time to amend or not
 - If not, upon being informed of such a denial to amend, the student has the right to a hearing
 - After a hearing, if the decision is still not to amend, the student has the right to insert a statement in the record

Nothing permits any amendment to transcripts sent to Northern from another college nor to our own grades

Information Released w/o Consent

- We can release information w/o prior consent to
 - School officials with legitimate educational interest
 - Schools in which a student seeks or intends to enroll
 - No school does this – we all insist on written permission
 - Federal, State, and local authorities involving an audit or evaluation of compliance with educational programs or in connection with financial aid

W/O Prior Consent - continued

- Organizations conducting studies for or on behalf of our College (under written agreement)
- Accrediting organizations
- Parents of dependent children *
- * Upon becoming students, dependent children are treated in all ways as adults – however, we can release information to parents as long as they can **prove** the relationship.
- Comply with a judicial order or subpoena
- In a health or safety emergency

Prior Consent

- Normally, students provide a signed release to all others access to their records
- This might be in a variety of forms
 - A Letter, fax, or form with an original signature, with sufficient information to disclose identity
 - An email, with sufficient information to constitute an electronic signature
 - A formal release form, usually coming from a third party, with the student's signature and date

Subpoenas/Court Records

34 CFR § 99.31 (A)(9)

Although most subpoenas require we notice the student prior to the release of information....

- Prior notice to a student is **not** required when responding to:
 - A Federal Grand Jury subpoena *which specifies that the student **not** be informed of the existence of the subpoena* OR
 - A law enforcement subpoena which specifies the same OR
 - The Postal Service investigating mail fraud

Redisclosure of Information

When disclosing information from education records, we have an obligation to inform the receiving party that the information may not be further disclosed -- unless the information is “directory information.”

We add such a statement to each transcript

This rule unintentionally prohibits the recipients from sending the records back to us. This will be changed before July 2009.

Enforcement Procedures

- Who is authorized to investigate, process, and review complaints and violations under FERPA?
 - The Secretary of Education has designated the Family Policy Compliance Office (FPCO).
 - Contact information:
 - Family Policy Compliance Office
US Department of Education
600 Independence Avenue, SW
Washington, Dc 20202-4604
Telephone: 9202) 260-3887
Fax: 9202) 260-9001

And then, we have The SOLOMON Amendment

- Unless a student personally completes a form to restrict information to all parties – which basically hides that person's enrollment – the Solomon Amendment requires that we release a directory of all students upon request by any military recruiting organization. This amendment allows the military to request non-directory information needed for recruitment purposes.

Is this all there is to FERPA?

- Well, no, but
 - You're welcome to look up the complete document on FERPA in the Federal Register
<http://www.ed.gov/policy/gen/guid/fpco/index.html>
 - This is meant to be only a brief look at a very complicated law
 - If you have specific questions, visit your friendly neighborhood Registrar