

FERPA THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT



This presentation should not be construed as providing legal advice. It is for training purposes only. Individuals with questions regarding FERPA interpretation related to a specific situation should contact the Office of Legal Counsel for the Mass. Community Colleges for specific legal advice.

What is FERPA?



- The Family Educational Rights and Privacy Act of 1974 (FERPA):
 - ❖ Is a federal law (also known as the Buckley Act.)
 - ❖ It can be found in the U.S. Code (20 USC 1232g), which incorporates all amendments to FERPA. FERPA regulations are found in the Federal Register (34 CFR Part 99.)
 - ❖ FERPA was most recently amended January 8, 2009, following hearings prompted by the April 2007 shootings at Virginia Tech.

To which institutions does FERPA apply?



- FERPA applies to all educational institutions that receive funds from any program administered by the U.S. Secretary of Education; a failure to comply with FERPA regulations could result in having federal funds withheld.
- The scope of this presentation, however, is limited to higher education, and will use the term “*college*” or “*school*” to refer to the educational institution.

Who is covered by FERPA?



- FERPA Rights belong to a student:
 - when the student turns 18 OR
 - begins attending a postsecondary institution regardless of age
- Before that FERPA rights belong to parents.
(Note: FERPA does not distinguish between custodial and non-custodial parents in the event of divorce unless there is a court order revoking the rights)
- Even after the rights transfer to the student, parents may still access student records without consent under certain conditions.

What does FERPA do?



- FERPA protects the privacy of **student education records** by giving students the following rights:
 - ❖ The right to inspect and review education records kept by the school (schools can charge a fee for copies)
 - ❖ The right to have education records disclosed only with student consent
 - ❖ The right to amend education records they believe to be inaccurate (if the school will not, there is a right to a hearing)
 - ❖ The right to file complaints against the school for disclosing education records in violation of FERPA

What are “education records”?



- “Education Records” are records that are
 - directly related to a student, AND
 - are maintained by the school (or a party acting on the school’s behalf.)
 - The records can be maintained in any form. Examples include written documents; computer media; microfilm; video or audio tapes; photographs; etc.

Is everything at the school considered an education record?



- No. If it is not directly related to a student, it is not an education record. If it is not maintained by the school, it is not an education record. So...
- Education records ***do not include:***
 - Sole possession records, that is, private notes of faculty and staff...as long as they are not kept in a student advising folder and are kept exclusively by and for the maker of the record and are not accessible to anyone else;
 - Campus police records

More.....

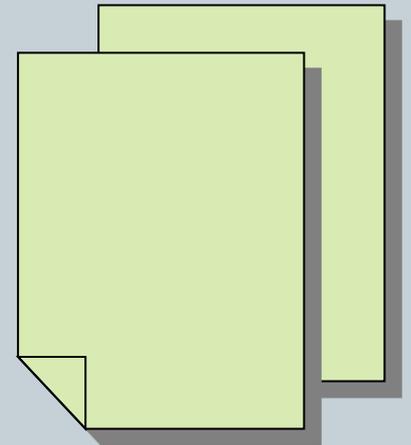


- Medical records (but other privacy rights may apply)
- Statistical data that contain no Personally Identifiable Information (PII)
- Employment records, when employment is not connected to being a student at the college
- Post-attendance records, such as alumni records, that do not relate to the person being a student at the college
- **FERPA ONLY APPLIES to EDUCATION RECORDS!**

TWO TYPES OF RECORDS



- There are 2 types of education records and they have very different protections.
 - DIRECTORY INFORMATION
 - NON-DIRECTORY (*confidential*) INFORMATION



DIRECTORY INFORMATION

- ◉ Directory information MAY (not must) include: a student's name, address, phone number, email address, photograph, date and place of birth, dates of attendance, enrollment status, major field of study, height and weight of athletes, and more.
- ◉ Although the FERPA Regulations establish what information may be considered to be Directory Information, each college has the right to set its own policy as to what is included in directory information. from that list.
- ◉ The school MAY (not must) disclose its Directory Information to a third party upon request.

UPDATE 2009

- The new regulations now allow directory information to include a student ID number, as long as the number cannot be used to gain access to education records unless it is used with another factor (known only to the student) which will authenticate the user's identity.

What is Directory Information at Middlesex Community College?

- ▶ **NAME**
- ▶ **ADDRESS**
- ▶ **DATE OF ENROLLMENT**
- ▶ **DATE OF GRADUATION**
- ▶ **DEGREE RECEIVED**
- ▶ **CURRICULUM IN WHICH ENROLLED**
- ▶ **DATE OF BIRTH**
- ▶ **PARTICIPATION IN OFFICIALLY RECOGNIZED ACTIVITIES AND SPORTS**
- ▶ **WEIGHT AND HEIGHT OF ATHLETIC TEAM MEMBERS**
- ▶ **OFFICIAL COLLEGE HONORS.**

Directory information is subject to change, so check the catalog for updates.

Can a student request that the college not release their Directory information?

- ▶ YES. Schools must notify students which information is considered directory information, and
- ▶ **must annually disclose** to students their right to restrict the release of directory information by submitting a formal written request to the school to limit disclosure.
- ▶ Schools must comply with this request if the student is still enrolled at the school and should comply with an opt-out request even after a student graduates.

NON-DIRECTORY INFORMATION

- ◎ **STUDENTS HAVE A RIGHT TO PRIVACY IN NON-DIRECTORY INFORMATION.** This info is known as Personally Identifiable Information (PII)
- ◎ Examples of non-directory information include:
 - Social security numbers
 - Race, ethnicity, nationality
 - Gender
 - Grades and transcripts
 - GPA
 - Disciplinary records

Who can access Non-directory information?

- ▶ Easy answer: Anyone that the student has authorized.
 - The student must provide a signed and dated written consent that specifies the records to be disclosed and the purpose of the disclosure, before the school discloses PII from the student's education records.

Anybody else?

Yes. But this is a tougher answer.

A school may disclose PII from a student's education record without consent if the disclosure is made:

- ▶ To school officials with a **legitimate educational interest**
- ▶ To officials of another school where the student intends to enroll
- ▶ To various governmental authorities listed in the regulations
- ▶ To appropriate parties connected with financial aid
- ▶ To organizations who have a written agreement to conduct studies for the college
- ▶ To accrediting organizations
- ▶ In compliance with a court order or legal subpoena
- ▶ In cases of health or safety emergencies
- ▶ **But what about PARENTS???**



PARENTS are SPECIAL!



- ▶ When can the parent of a college student access non-directory information without student consent?
- ▶ Schools **MAY** (not must) disclose any and all information without the student's consent:
 - If the student is a dependent for tax purposes
 - If there is a health or safety emergency involving their student
 - If the student is under 21 years old and has violated an alcohol or drug law or college policy

UPDATE 2009

- The new regulations encourage colleges to advise parents to redact all information on their tax form other than the information necessary to establish dependency. There are also 2 new forms it encourages colleges to use in place of reliance on tax forms.
- <http://www.ed.gov/policy/gen/guid/fpco/erpa/safeschools/modelform.html>

Does the school have to keep records about who sees what?

Of course! This is the government after all!

You must keep a detailed record of each disclosure with the student's records for as long as the student's records are maintained. But of course there are exceptions, and you can find these in the regulations at 99.32(d).



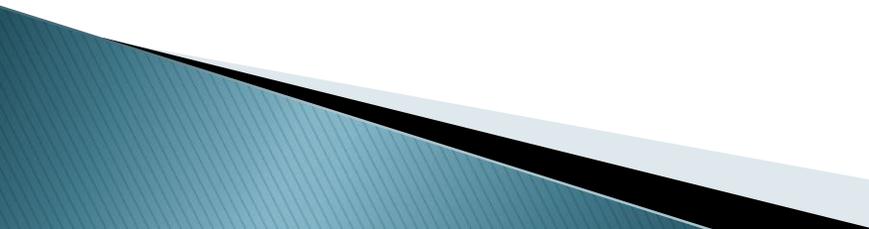
Does FERPA mean a student can see everything in his file?

▶ No. The college does not have to permit a student to inspect:

- Financial records of his parents
- Confidential letters and recommendations (if the student validly waived their right to access.)



GENERALLY

- ▶ Schools must annually notify students of their FERPA rights
 - ▶ Schools may disclose directory info in the student's education record without student consent unless the student has asked that it be kept confidential
 - ▶ Schools must not disclose non-directory info about students without written consent except in very limited situations
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TAKE A SHORT QUIZ

See how well you understand how FERPA applies in some common situations.

Answer the question asked on the left side of the page, and then click in the right hand side to get the answer.

“Hello. I am thinking about hiring....”



- Joe the Plumber calls and tells you that he is considering hiring Sammy Student. He would like you to verify that Sammy is a senior at the college. Can you?**
- Yes, as long as a student’s educational status is part of your college’s directory information, and Sammy has not formally requested that his Directory Information be kept confidential. Directory information may be released to any third party without written consent of the student.**

Hey Buddy, tell me about your best student...



- **You are a program director at the college and your best friend calls you up, looking for a good student to hire. So you look up your students' course grades, and choose a few to tell him about. You mention that Susie had an A in math, but even though Joe had a B he has a higher overall GPA. What's the harm...no one will know and Joe gets a job!**

- **There's lots of harm!**
- **Grades and GPA's are all non-directory information and highly confidential. Even though you have the best of intentions, violating a student's FERPA rights may expose your college to the loss of federal funds and yourself to a disciplinary action.**

May I have a recommendation, Sir?



- **Cara Coed has asked you, her math professor, to write her a letter of recommendation for a job. She provided you with her resume, which includes her GPA information in it. Is it ok for you to include her GPA in your recommendation letter?**

- **GPA is not a directory information item, so it must be treated as confidential. And even though Cara has disclosed this information in her resume, you should not disclose it in your own letter unless you have her written consent for disclosure.**

Mom wants to know



- **You call the college Registrar to ask what grades your son got this semester. Can the Registrar tell you about your son's grades?**

- **Under FERPA regulations, campus departments can give you information about your son's grades, if you can show either that**
 - **1) he has provided the school with written consent to allow you access, or**
 - **2) you can show that he is a tax dependent.**

“Check the list for your grades.”



- **A faculty member wants to post a list of grades for students in his class using the students' social security numbers. Is the faculty member allowed to post these grades under FERPA regulations?**

- **Absolutely not. It is possible to identify a student with a social security number and therefore not within FERPA regulations to post grades using it. A social security number can NEVER be designated as directory information.**

“Susie got 4 wrong, professor!”



- **Prof. Ben Heerawhile has just given a pop quiz to his sociology class. He now asks them to trade papers and grade each others answers. His Dean is not sure whether this is OK or not. What do YOU think?**

- **The US Supreme Court addressed this issue in *Owasso v. Falvo* and held that this practice is okay. The term “education record” does not include peer graded papers before they are collected and recorded by the professor. These documents are not yet “maintained” by the college.**

Help! There has been an accident...



- **There is a family emergency. Your neighbor contacts the Office of the Registrar to find your son who is in class today. Because this is an emergency, the Registrar can tell the neighbor when and where his next class is.**
- **A student's class schedule is non-directory information. For the safety of the student, you cannot tell another person where a student is at any time. If this situation arises, call the Dean of Students and ask that they contact the student directly.**

Pick Up Your Final Exam in my Office



- **Professor I.M. O'Blivious has promised to return the graded final exams to his students. But he is leaving for vacation tonight, so he stacks the papers in a basket outside his office door for his students to pick up. Is this OK?**

- **This is a violation of FERPA because it is inappropriate for students to have access to other students' personally identifiable and/or confidential information.**

Faculty must not leave personally identifiable or confidential materials (e.g., grades) in a public place.

The college wants to let you know...



- **The nursing department is preparing a mailing to all nursing students about a critical academic deadline. Is the department allowed to send this mailing to a student who has filed a formal request that no directory information be released?**

- **Yes, the student's name and address may be used for this mailing. Information about a student who has requested his directory information be kept confidential may still be released to a school official with a legitimate educational interest in the information and used by University officials to meet the direct educational needs of the student.**

Curious Kate



- **Kate, a college faculty member, has access to all her students' ID numbers. One student is the son of a famous actor and Kate wants to use the ID# to check out how much the family makes. Is this OK? (She promises not to tell anyone else!)**
- **Access to a student's ID does NOT authorize unrestricted use of student data.**
- **Records should be accessed only in the context of a LEGITIMATE EDUCATIONAL INTEREST and only under circumstances where the school official needs the information to carry out his/her official duties in conjunction with the educational success of the student.**
- **Curiosity does not qualify as a legal right to know.**

Adjuncts, janitors and work-study staff, oh my!



- **Bob is an adjunct faculty member at the college. He has never attended any FERPA training sessions because he just doesn't have time, and besides he's only an adjunct. Do adjuncts have to know about FERPA rules?**
- **Yes. Every employee of an educational institution has a duty to protect the confidentiality of student educational records in compliance with FERPA if the institution receives funds under any program administered by the U.S. Department of Education.**

Are we done yet?



- **FERPA rights cease after a student has graduated from the college. Right?**

- **FERPA rights begin once a student is “in attendance.” Former students have FERPA rights just as current students do. FERPA protections last literally for life.**

And sadly you are still not done...



- FERPA is a complex piece of legislation.
- There are many situations that are beyond the scope of this tutorial.
- When situations arise, ask yourself:
 - Is it an education record?
 - Is it directory or non-directory information?
 - Did the student consent in writing to the release of this info?
- When in doubt, ask legal counsel before releasing the information.