



For Your Eyes Only!
FERPA:
Basics and Beyond



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What is FERPA?

FERPA is the Family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment. Statute: 20 U.S.C. 1232g; Regulations: 34 CFR Part 99. The intent of the Act is to protect the rights of students and to insure the privacy and accuracy of education records. The Act applies to all institutions that are recipients of federal aid administered by the Secretary of Education.

Who is protected by FERPA?

- ▶ Students who are or have been “in attendance” at the institution, in person or by correspondence, regardless of their age or status in regard to parental dependency are protected by FERPA.
- ▶ Students who have applied to but have not “attended” an institution, and deceased students, are not protected by FERPA.

How is “in attendance” defined?

- ▶ “In attendance” may be defined by each institution.
- ▶ Some institutions consider a student to be “in attendance” as early as during the admission process and others consider them to be “in attendance” as late as the first day of class of the student’s initial term of enrollment.
- ▶ UVA considers a student to be “in attendance” once he or she has enrolled in courses for his or her initial term of enrollment.

What are a student's primary rights under FERPA ?

- ▶ The right to inspect and review his or her education records.
- ▶ The right to request an amendment to his or her education record that he or she believes to be inaccurate or misleading.
- ▶ The right to consent to disclosures of personally identifiable information contained in his or her education records, except to the extent that FERPA authorizes disclosure without consent.
- ▶ The right to file a complaint with the United States Department of Education concerning alleged failures to adhere to FERPA.

What is a “record”?

A record is any information recorded in any way, including, but not limited to:

- ▶ Handwriting
- ▶ Print
- ▶ Computer media
- ▶ Video or audio tape
- ▶ Film
- ▶ Microfilm or microfiche

What is an “education record”?

An “education record” is any record that is:

- ▶ Directly related to a student; and
- ▶ Maintained by an educational agency or institution, or by a party acting for the agency or institution.

What is not considered an education record?

- ▶ Sole possession records or private notes held by a school official that are not accessible by or released to other personnel.
- ▶ Law enforcement records that are solely for law enforcement purposes and maintained by the law enforcement unit.
- ▶ Records relating to individuals who are employed by the institution (unless the employment is contingent on their status as a student).
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What is not considered an education record (cont.)?

- ▶ Records relating to treatment provided by a physician, psychiatrist, psychologist, or other recognized professional and disclosed only to individuals providing treatment.
- ▶ Records of an institution that contain information about an individual obtained only after that person is no longer a student at the institution, i.e. alumni records.

What if a student wants to inspect or review his or her education record?

- ▶ The institution must comply within 45 days.
- ▶ The institution must respond to reasonable requests for explanations and interpretations of the records.
- ▶ The institution is required to provide copies, or make other arrangements for inspection of the records, if failure to do so would effectively deny access by the student, such as if the student does not live within commuting distance.
- ▶ The institution may not destroy records if there is an outstanding request to inspect or review the record under this provision.

How may a student request amendment to his or her education record?

- ▶ The student may request amendment if he or she believes the education record is inaccurate, misleading, or in violation of his or her privacy rights.
- ▶ The institution must decide whether to amend the record within a reasonable period of time.
- ▶ If the institution's decision is to not amend the record, it should notify the student and inform the student of the right to a hearing.
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How may a student request amendment to his or her education record (cont.)?

- ▶ If the student requests a hearing, and the hearing body's decision is to not amend the record, it should notify the student of its decision and inform the student of the right to place a statement in the record commenting on the record or stating why he or she disagrees with the decision of the institution not to amend the record. ★
- ▶ If such a statement is added to the record, it must be maintained as long as the record is maintained, and it must be disclosed when the contested portion of the record is disclosed. ★
- ▶ Each institution should develop procedures related to this requirement. ★

What is personally identifiable information?

Personally identifiable information includes, but is not limited to:

- ▶ The student's name;
- ▶ The name of a student's parent or other family member;
- ▶ The address of the student or student's family member;
- ▶ A personal identifier, such as the student's social security number or student number;
- ▶ 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.

How may personally identifiable information be released from an education record when the student's consent is required ?

- ▶ To release information to someone other than the student, the student must have given written consent.
- ▶ The consent must:
 - ▶ Specify the records to be disclosed;
 - ▶ State the purpose of the disclosure;
 - ▶ Identify the party or class of parties to whom the disclosure may be made; and
 - ▶ Include a signature and date.

When may personally identifiable information from an education record be disclosed without the student's consent?

When the disclosure is:

- ▶ Releasing directory information;
- ▶ To school officials who have legitimate educational interest;
- ▶ When the disclosure is to officials of another school or institution where the student seeks to enroll;
- ▶ To federal, state, and local authorities involving an audit or evaluation of compliance with educational programs;
- ▶ To organizations providing financial aid;

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When may personally identifiable information from an education record be disclosed without the student's consent (cont.)?

- ▶ To organizations conducting studies on behalf of educational institutions;
- ▶ To accrediting organizations;
- ▶ To parents of a dependent student as defined by the Internal Revenue Code;
- ▶ To comply with a judicial order or lawfully issued subpoena;
- ▶ To protect the health or safety of the student or other individuals in an emergency;

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When may personally identifiable information from an education record be disclosed without the student's consent (cont.)?

- ▶ Releasing the results of a disciplinary hearing to an alleged victim of a crime of violence or non-forcible sex offense;
- ▶ Releasing the results of a disciplinary hearing to anyone when: (1) the student is an alleged perpetrator of a crime of violence or non-forcible sex offense, and (2) the student is found to have committed a violation of the institution's rules or policies;
- ▶ To a parent of a student under the age of 21 who has violated institutional policy or the law pertaining to the use or possession of alcohol or a controlled substance.

What is directory information?

- ▶ Directory Information is information contained in an education record of a student that generally would not be considered harmful or an invasion of privacy if disclosed.
- ▶ It may be released to third parties without the consent of the student, unless the student has requested to restrict the release of his or her directory information.
- ▶ If a student has restricted the release of directory information, including his or her name, an appropriate response to inquiries about that student would be: “I have no information to release on that individual.” (This response does not acknowledge that the individual is a student.)

What are examples of data elements that can be included as directory information?

- ▶ Name
- ▶ Address
- ▶ Telephone number
- ▶ E-mail address
- ▶ Date of birth and place of birth
- ▶ Major or field of study
- ▶ Participation in officially recognized activities and sports
- ▶ Full-time or part-time status
- ▶ Level

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What are examples of data elements that can be included as directory information (cont.)?:

- ▶ Weight and height of members of athletic teams
- ▶ Dates of attendance
- ▶ Degrees, honors, and awards received
- ▶ Most recent previous educational agency or institution attended
- ▶ Photograph or image

What are examples of data elements that can NOT be included as directory information?

- ▶ Social Security Number
- ▶ Race/Ethnicity
- ▶ Gender
- ▶ Grades
- ▶ Religion

Who is a “school official” and what is a “legitimate educational interest”?

- ▶ Neither “school official” nor “legitimate educational interest” is defined by FERPA. However, institutions must establish definitions for both.
- ▶ “School officials” typically include employees of or agents for the institution. This may include an institution’s Board, students serving on institutional committees, or a company contracted to provide a service that an institution would normally provide itself.
- ▶ “Legitimate educational interest” is the demonstrated “need to know” by school officials in performing their duties for the institution.

How does FERPA apply to subpoenas?

- ▶ When a subpoena requests information about a student, the institution must make a reasonable effort to notify the student of the subpoena prior to complying with it.
- ▶ Prior notice is NOT required when responding to:
 - ▶ A federal grand jury subpoena, which specifies that the student should not be informed of the existence of the subpoena;
 - ▶ A law enforcement subpoena which specifies the same.

What is the penalty for violating FERPA and how would anyone know?

- ▶ Students may file complaints with the U.S. Department of Education.
- ▶ The Family Policy Compliance Office (FPCO) is authorized by the Secretary of Education to investigate, process, and review complaints of violations under FERPA.

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What is the penalty for violating FERPA and how would anyone know (cont.)?

- ▶ If a complaint is found to be valid, an institution would typically be notified of the need to correct policy and/or practice, and it would be given a reasonable period of time to bring the institution into compliance.
- ▶ If an institution fails to comply within the specified period of time, it may lose funds distributed by the Secretary of Education, such as federal financial aid.

What are some strategies for dealing with individuals that can not gain access to education records because of FERPA?

- ▶ Listen. Make sure that you have heard and understand the entire story before you respond.
- ▶ Empathize. Acknowledge that FERPA may seemingly be making this situation more difficult.
- ▶ Tell them what you can and cannot do, and WHY.
- ▶ Don't access the information so that you are not tempted to share information you should not or do not do so inadvertently.

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What are some strategies for dealing with individuals that can not gain access to education records because of FERPA (cont.)?

- ▶ Use information the individual is providing, with hypothetical situations and policies, to formulate answers.
- ▶ Speak directly to the student.

Hot Topics

- ▶ *Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities*
 - <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html>

Are there resources for FERPA?

- ▶ United States Department of Education, Family Policy Compliance Office:
<http://www.ed.gov/policy/gen/guid/fpco/ferpa>
- ▶ Informal requests for clarification: ferpa@ed.gov
- ▶ AACRAO web site:
<http://www.aacrao.org/compliance/ferpa/index.cfm>
- ▶ *AACRAO 2006 FERPA Guide*
- ▶ <http://www.virginia.edu/registrar/privacyact.html>



Questions and Discussion?