Family Education Rights and Privacy Act of 1974

• Essence of the Act
  – Protect the privacy of student education records.
    • Regulations provide detail for release of student records.
  – Students have a right to inspect & review own records.
    • Regulations provide detail for correcting record errors.

• Authority:
  – United States Code  20 U.S.C. 1232g
  – Code of Federal Regulations  34 CFR 99.1 et seq
FERPA Issues for Administrators, Faculty and Staff

• What duties and responsibilities do administrators, faculty, and staff have?
• What access rights do administrators, faculty and staff have to student records?
• What access rights do parents have?
• What about the Public Records Act?
• What if there is a campus emergency?
FERPA Rule #1

An educational institution may not release student education records or personally identifiable information from the records without prior consent of the student.

- A school official with a legitimate educational interest may access student records without student consent.
Important FERPA Terms

• What is an “education record”? 
  – And “personally identifiable information”?

• Who is a “school official”? 
  – And who has a “legitimate educational interest” to review an education record?
What is an ‘Education Record’?

• **Directly related** to a student; and

• **Maintained** by the institution.
What is Not an ‘Education Record’?

• Sole possession notes
• Law enforcement records
  – But not if in the hands of Student Affairs
• Employment records
  – But not if relate to work-study students
• Physician created records pertaining to treatment
• Alumni records
• Peer grading
What is ‘Personally Identifiable’?

• Student Direct Identifiers
  – Name, or name of close family member;
  – Address and phone number.
  – “Personal Identifier” such as social security number or student ID number.

• Student Indirect Identifiers
  – Birth date and place of birth;
  – Mother’s maiden name
What is ‘Personally Identifiable’?

• “Other information, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”

• Information requested by someone who the educational institution reasonably believes already knows the student’s identity.
FERPA Quiz

• It’s common knowledge that a local politician graduated from the nearby community college in 1981. Rumors circulate that politician plagiarized other students’ work while a student at the college. The local newspaper asks for copies of redacted disciplinary records for all students who graduated in 1981 who were disciplined for plagiarism.

• Is College in compliance with FERPA (and the Public Records Act) if it redacts the politician’s name from the records?
De-Identify Student Information

• FERPA not violated if student’s identity is not personally identifiable.

  – May be challenge for institutions when information can be linked or linkable.

  – Institutions should be cognizant of multiple records requests.
Disclosure to School Officials

Disclosure of student personally identifiable information is permitted to school officials who have a legitimate educational interest.
Who is a school official?

• **Employed** by the college in an administrative, supervisory, academic, research, or support staff position (law enforcement and health staff personnel may be a school official);
  – May extend to someone under outsourcing contract to perform a special college task (such as an accountant, collection agent, computer programmer, AAG).

• Member of the board of trustees.

• Student appointed to a college committee.
Determining Legitimate Educational Interest

• Institution has established criteria for school official; and

• School official has a “need to know” the information to fulfill his or her professional responsibility.

• Institution is responsible for internal safeguards to control access to student records.
FERPA Quiz

• A professor teaches an upper-level course for which there are prerequisites. In order to prepare for the course and with a desire to tailor the curriculum to the needs of the students, the professor reviews his students’ academic records to determine their performance in the prerequisite courses.

– Does FERPA permit this?
Faculty Right to Review Not Absolute

• Faculty need to be designated as having a legitimate educational interest to review student records.
  – Academic advisor
  – Grade appeal committee
  – Other role as designated by administration

• Faculty may only review records when they have a legitimate educational interest.
  – Administrator makes determination.
FERPA Quiz

You witnessed an assault by a student on your campus and an arrest was made. The local paper has contacted you for details of the assault and wants to know the name of the charged student.

• Does FERPA permit you to discuss this with the local paper?
Directory Information

• Students must also be notified of institution’s directory information. Specifically the right to:
  – Know what information is designated by the institution as directory information;
  – Refuse to allow any or all information to be included in the directory. (Opt Out)
• Does not apply to classroom
Directory Information at Belmont

- Name,
- Major field of study,
- Dates of attendance,
- Degrees and awards received, and
- Most previous educational agency or institution(s) attended by the student.
Student Access

• Institution required to have good business practices and safeguards in place to authenticate identification of student.

• Ex: PIN, password, signature card

• Also applies to sending information to student.
Limitations on Student Access

• Parent’s financial information;

• Education records that contain information about more than one student ... but must permit access to the part of the record that pertains only to the inquiring student;

• Confidential letters and recommendations for which the student has waived right of inspection.
Disclosure to Others

General Rule:

– The institution must obtain written consent from students prior to releasing education records or personally identifiable information from the records.
Student Prior Consent

• The written consent must:
  – Specify the records to be released;
  – State the purpose of the disclosure;
  – Identify the party or parties to whom the disclosure may be made; and
  – Signify the student’s signature and date.

• Electronic signature ok if able to authenticate
What about Parents?

– Parents generally have full FERPA rights for minor children throughout K-12.

– Rights transfer to students when they reach 18 or attend a post-secondary institution.

• Parents do not get access just because they are paying the bills.
Disclosure to Parents

• Institutions may disclose information about students to their parents if ...
  – Obtain the student’s written consent;
  – Parent(s) establish the student’s dependency (IRS Form 1040);
  – Directory information;
  – Information from campus law enforcement;
  – Information based upon personal observations.
Disclosure to Parents

Also parents may be informed of:

– Violations of alcohol/substance abuse policy (if student is under 21);

– Information relating to health & safety emergency (if knowledge necessary).
Other Exceptions: Subpoenas

• If subpoena is lawfully issued, the institution generally must comply and provide the information that is ordered to be disclosed by the subpoena.

• But, institution must first make reasonable effort to notify the student and give student opportunity to seek court protection.

A.A.G. can assist.
Other Exceptions: Health/Safety Emergency

• In general, appropriate information may be given to school officials with legitimate educational interest in student’s behavior.
  – May extend to other schools.

• Institution may also disclose student information to other parties “if knowledge is necessary to protect the health or safety of the student or other individuals.”
Health/Safety Emergency

For health and safety exception to apply:

1. Take account of “totality of circumstances.”

2. If articulable significant threat, may disclose to person(s) whose knowledge is necessary to protect health and safety.
   
   Standard: Rational basis based upon info at time.

3. Must keep record of reason and to whom disclosed.
Other Exceptions: Certain Disciplinary Records

- Final results of disciplinary hearing to victim of crime of violence or non-forcible sex offense;

  To other parties if:
  - Student found to have committed institution’s policy/rules.

- Alcohol/Substance Abuse violations to parents if:
  1. Institution determined violation of policy; and
  2. Student was under 21 at time of disclosure.
Letters of Recommendation

• If a student asks you to write a letter of recommendation, do you have the right to review the student’s academic file?
• No--- not without express written consent to release.
  – The written release should indicate whether the student waived right to review the letter of recommendation.
Sanctions for Violating FERPA

• Students may not sue the institution directly, but students may file complaint with the Family Compliance Office (U.S. Department of Education).

• Investigation may lead to loss of federal funds for a particular program.
Questions?