

FERPA Basics for Faculty/Instructional Staff
From AACRAO 2012 FERPA GUIDE

The Essence:

- Federal law designed to protect the privacy of education records. It also provides guidelines for appropriately using and releasing student education records.
- It is intended that student' rights be broadly defined and applied. Therefore, consider the student as the "owner" of his or her education records, and the institution as the "custodian" of that record.

Key Terms/Definitions:

Education Records: Include any record maintained by the institution that is related to the student (in whatever format or medium) with some narrowly defined exceptions:

- Records in the "sole possession of the maker" (i.e., private advising notes).
- Law enforcement records created and maintained by a law enforcement agency for a law enforcement purpose.
- Employment records (unless the employment is based on student status). The employment records of student employees (e.g., work-study, wages, and graduate teaching associates) are part of their education records.
- Medical/psychological treatment records (e.g., from a health or counseling center).
- Alumni records (i.e., those created after the student has graduated or left the institution).

Directory Information: Those data items that are generally not considered harmful or an invasion of privacy if publically available, so long as the student does not have a "No Release" on his or her record. Each institution establishes what is considered to be directory information. Common examples include: name, address (local, home and e-mail), telephone (local and home), academic program of study, dates of attendance, date of birth, most recent educational institution attended and degrees and awards received.

- Directory information *cannot* include: race, gender, SSN, grades, GPA, country of citizenship, or religion. Except in very specific circumstances, a student ID number cannot be considered directory information.
- Every student must be given the opportunity to have even directory information suppressed from public release. That is referred to as a "No Release."
- Everyone within the institution must respect a student's No Release on his or her record.
- It is important to understand, that a "no release" does *not* mean that a school official within the institution who has a demonstrated legitimate educational interest is precluded from using the information to perform that official's job duties.
- **Directory Information can only be released by the Director of Enrollment Services.**

When do FERPA rights begin?

A FERPA-related college education record begins for a student when he or she **enrolls in a higher education institution. At a post secondary institution, rights belong to the student in attendance, regardless of the student's age.**

Basic Rights of Students

- Be notified of their FERPA rights at least annually
- Inspect and review their records.
- Amend an incorrect record
- Consent to disclose (with exceptions).

Inspection and Review

Following a written request to Admissions and Records, students have the right to see everything in their “educational record,” except:

- Information about other students
- Financial records of parents,
- Confidential letters of recommendation if they waived their rights to access (which cannot be required).

There is no records retention policy under FERPA. It does not state what records you must make or how long you must keep them. Those are institutional decisions. You cannot destroy records once review is requested.

Right to Consent to Disclosure

Start with the premise that the student has the right to control to whom his or her education record is released. Then, there are several exceptions when that permission is not required.

Historically, we had to have a *signed* release. Regulations now provide more flexibility for utilizing electronic signatures.

WHEN IS PRIOR CONSENT NOT REQUIRED?

The institution may release records without consent, but is not required to do so.

Some examples of the exceptions for having a release include:

- School officials with “a legitimate educational interest”/“need to know;” Employees and legal agents have access to education records in order to perform their official, educational-related duties;
- Disclosure to organizations conducting studies to improve instruction, or to accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Disclosure for a health/safety emergency (must document what the emergency was and to whom the information was released); and
- Disclosure of directory information provided the student has not requested “no release.”

FERPA rights (and the right to privacy) end at death, unless otherwise specified by state law.

Students have a formal right to file a complaint with the Department of Education.

Some Specific Issues for Faculty and Instructional Staff

- **Posting Grades:** Since grades can never be directory information, it is inappropriate to post grades in a public setting. However, if the instructor posts grades in such a manner that only the instructor and the individual student know the posted grade (**e.g., with a personal ID; however, not any portion of a SSN or institutional Student ID Number**), that is acceptable. **It is recommended that such a posted list not be in the same order as the class roster or in alphabetical order.**
- **Web-Based Tools to Support Classes:** Courses supported by class websites and/or discussion groups must take extra precautions to not inadvertently release non-directory student information. Only directory information can be available to the general public and other class members, so it is recommended that such web-based tools employ a security layer so that only class members and instructors can access appropriate information.
- **Students opting for no release in the classroom setting:** Students cannot choose to be anonymous in the classroom setting. If a student has chosen “no release” for his or her directory information, that does not mean that an instructor cannot call on him or her by name in class or that the student’s email address cannot be displayed on an electronic classroom support tool such as a discussion board, blog, or chat feature.