



OFFICE OF GENERAL COUNSEL

FERPA for Faculty and Staff

What is FERPA?

FERPA, the Family Educational Rights and Privacy Act, is a federal law originally passed in 1974 and codified at 20 U.S.C. § 1232g. It is sometimes called the Buckley Amendment. The law protects the privacy of student education records and provides students the right to view and amend those records. FERPA applies to any higher education institution receiving federal funds administered by the U.S. Department of Education (DOE).

Who is protected under FERPA?

FERPA rights are granted to all eligible students. An eligible student is any individual who is or has been in attendance at the University, regardless of age (students under the age of 18 are eligible students under FERPA if they are attending or have attended the University). Applicants are not students covered under FERPA prior to initial enrollment, but because they may attend the University, CSU treats their applications confidentially. The records of deceased students cease to be education records under FERPA, but the University typically keeps those records confidential pending the administration of an estate; personal representatives (executors or estate administrators) exercise the rights of a student.

What are a student's rights?

The Family Educational Rights and Privacy Act (FERPA) affords eligible students certain rights with respect to their education records. (An "eligible student" under FERPA is a student who is 18 years of age or older or who

attends a postsecondary institution at any age.) These rights include:

1.) The right to inspect and review the student's education records within 45 days after the day Cleveland State University ("CSU") receives a request for access. A student should submit a written request that identifies the record(s) the student wishes to inspect to the University Registrar. The Registrar will make arrangements for access and notify the student of the time and place where the records may be inspected. 2.) The right to request the amendment of the student's education records that the student believes is inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA. A student who wishes to ask CSU to amend a record should submit a written request to the University Registrar, clearly identifying the part of the record the student wants changed, and specify why it should be changed. If CSU decides not to amend the record as requested, CSU will notify the student in writing of the decision and the student's right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing. 3.) The right to provide written consent before CSU discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent. CSU discloses education records without a student's prior written consent under the FERPA exception for disclosure to school officials with legitimate educational interests. A school official typically includes a person employed by CSU in an administrative, supervisory, academic, research, or support staff position (including law enforcement unit personnel and health staff); a person serving on the board of

trustees; or a student serving on an official committee, such as a disciplinary, grievance committee, or in student government positions. A school official also may include a volunteer or contractor outside of CSU who performs an institutional service of function for which CSU would otherwise use its own employees and who is under the direct control of the University with respect to the use and maintenance of PII from education records, such as an attorney, auditor, or collection agent or a student volunteering to assist another school official in performing his or her tasks. A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the University. Upon request, CSU also discloses education records without consent to officials of another school in which a student seeks or intends to enroll. See the section “**What is directory information?**” for information regarding the disclosure of student information classified as directory information. 4.) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the CSU to comply with the requirements of FERPA. The name and address of the office that administers FERPA is:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

When and how does CSU provide annual notification of FERPA rights?

The primary notification is at the Registrar’s website:

<http://www.csuohio.edu/registrar/family-educational-rights-and-privacy-act>)

supplemented by a yearly email notification sent to all active CSU students.

What are education records?

An education record is defined as any record that is directly related to the student and that is kept by the University. Education records can exist in any medium including the following: handwritten, typed, computer generated, videotape, audiotape, film, microfilm, microfiche, e-mail, and other media.

What isn’t an education record?

FERPA has a number of key exceptions to the definition of education records. One exception is “sole possession” records, such as personal faculty or staff notes that are not revealed to or shared with other parties. This may include personal grade books or a draft exam. Similarly, documents such as test questions and scoring keys are also exempt from disclosure under the Public Records Act. Even though a student may not have a FERPA right of access to the personal grade book, due process may require such access to the student’s own grade in a situation such as a grade appeal. The student’s transcript is always an education record.

Other specific exceptions to the definition of education records, include records of law enforcement units created as part of an investigation, certain medical treatment records, and employment records (unless employment is a result of student status, such as work study). While some records like medical treatment records may not be education records under FERPA, they may still be considered confidential under other provisions of law or professional ethics requirements.

The law enforcement record exception has sparked a number of lawsuits. There is no blanket exception and each case must be considered on its own merits. Records created by law enforcement for disciplinary purposes or that are shared with and maintained by another University office, such as Student

Affairs, are not subject to the law enforcement exception and thus continue to be education records. Thus, a record created within one of the exceptions may become an education record if a copy is delivered to an office or department of the University other than the one that created it. For example, a law enforcement record in the possession of the University Police Department would not be an education record, but a copy of the same document filed in the office of Student Affairs would be an education record subject to all elements of FERPA.

FERPA amendments provide additional examples of what should not be considered an education record. First, grades on peer reviewed papers are not considered education records before they are collected and recorded by a teacher. This amendment reflects the outcome of the Supreme Court case, *Owasso Independent School District v. Falvo*, 534 U.S. 426 (2002). Another FERPA amendment makes clear that records created after a student is no longer in attendance at the University are not education records; examples include alumni information such as donation history and address.

Do parents have any rights?

FERPA does allow the University to disclose education records to parents of *dependent* students just as they would to the student. Dependent means a dependent pursuant to the definition under the IRS code. Therefore, there must be proof that a parent claims a student as a dependent under the federal tax laws. The University Registrar requires a copy of the first page of the parent's 1040 Form.

Faculty and staff need to be careful when a parent or third-party calls and asks about an education record or information about a student. If there is no written FERPA waiver or the student is not a dependent, disclosure even to a parent is usually unlawful. In these

situations, faculty and staff should obtain assistance from the Registrar's Office and then from Office of General Counsel as needed. There are some exceptions when dealing with emergency situations. Please contact the Office of General Counsel with any questions at Parker Hannifin Administrative Center, Suite 327, 2300 Euclid Avenue, Phone: (216) 687-3543.

May information from a student's record be disclosed to protect health or safety?

Yes. FERPA permits the disclosure of information from student records to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. A health or safety emergency requires an "articulable and significant" threat. For example, if a student sends an email to his resident assistant saying he has been diagnosed with a highly contagious disease such as measles, the institution could alert the student's roommate and perhaps others with whom the student comes in close contact to urge them to seek medical care.

When education records are released for a health or safety emergency, the University must record the articulable and significant threat and to whom the information was disclosed.

This exception does not authorize knee-jerk disclosures, but does authorize a limited disclosure to a limited number of people, made on the basis of a good faith determination in light of the "totality of the circumstances" and whether or not there is an "articulable and significant threat" that would warrant such disclosure.

Any decision must be made on a rational basis with the information available at the time. In

general, and when reasonably possible, the initial disclosure should be made to professionals trained to evaluate and handle such emergencies. Such disclosures should not be made without first contacting the Office of General Counsel at (216) 687-3543.

What is directory information?

FERPA specifies that an institution can specifically define some education records as directory information. This is information which is generally not considered harmful or an invasion of privacy if disclosed.

In accordance with federal law, the University classifies the following information as directory information and may make it available to other students and to the public:

1. *Student Name*
2. *Home city and state*
3. *Home address**
4. *Participation in officially recognized activities and sports*
5. *Dates of attendance*
6. *Degrees and awards (honors) earned*
7. *University email address***

** Disclosure of the home address is restricted to state, local or national elected officials for the purpose of sending congratulatory letters, or to potential scholarship sponsors for the purpose of marketing scholarship opportunities. Requestors must complete and submit the Directory Information Request - Student Address Information form.*

*** Disclosure of the university email address is limited to users of the university email system only, and only for purposes of locating email addresses in the email directory.*

Directory information is one of the most critical and important concepts under FERPA as it is the first consideration in whether access to a student's education record information is permissible without a release or applicable FERPA exception.

Directory information cannot include a student's social security number or student ID number except if the ID number can only be used to gain access to education records when used with other factors known only by the student (PIN number, password, etc.).

Can a Student refuse to allow directory information to be released?

Yes. The University must allow a student to opt out or preclude directory information from being disclosed. Once a student is no longer attending the University, the University must continue to honor valid requests to opt out of directory information disclosure made while the student was in attendance at the school.

A student can opt out within a certain amount of time after the annual notice is published. Students who wish to restrict the release of the foregoing information can do so through CampusNet or by submitting the Directory Information Restriction Request form to Campus 411, located in the Main Classroom Building, Room 116. Faculty and staff need to be careful about simply assuming that because an item is directory information it can be freely disclosed. Faculty and staff need to check first with the Registrar's Office to see if the student opted out.

Any directory information based on SSN must have written consent before disclosure.

How does a student give specific consent for release of education records?

The student can provide a written release giving specific consent to the disclosure of his or her education records. The release needs to be dated and signed and must describe the records, the purpose for the release, and a list to whom the records can be given. The job reference is one area where faculty and staff typically forget to obtain a release.

Are electronic signatures in consents valid under FERPA?

Yes, FERPA permits electronic signatures if the University follows certain steps to authenticate the signature, attribute it to the consent, ensure the transmission is secure, and document the transaction. Thus, a signed and dated consent may include a record and signature in electronic form that (i) identifies and authenticates a particular person as the source of the electronic consent; and (ii) indicates the person's approval of the information contained in the electronic consent. This makes practical sense because electronic signatures are now recognized in federal and state law. Electronic signatures are recognized under federal student loan programs as well.

When should I get a written consent from a student?

In addition to the above, the general rule is that when the faculty or staff member will be disclosing or referring to an education record, the faculty or staff member should get written consent. If you believe an exception may apply, please contact the Office of General Counsel to confirm the exception before releasing a record. *Information obtained from education records is protected to the same degree as the education record itself.* Here are some examples of information for which written consent should be obtained before release: Student Identification Number, Grades/Exam Scores, Grade Point Average, Social Security Number, Parent Address/Phone, Details of Registration Information (i.e., courses, times), Race, Ethnicity, Nationality, Gender, Date of Birth, Total Credits, Number of Credits Enrolled in a Semester, and Emergency Contact.

When is written consent not necessary?

FERPA provides specific exceptions when faculty and staff may disclose education records without specific student consent. Many

of these exceptions are provided in the regulations to allow for the reasonable and practical workings of an educational institution. One of the key exceptions is when the disclosure is to other school officials within the University who have "legitimate educational interests." Specifically, this includes faculty who have a need to review the education record in order to fulfill their responsibilities. For example, grade information from all of a student's classes is a legitimate educational interest for that student's academic advisor. A faculty member may sit on a committee, such as a grade appeals board, and then also have a legitimate interest.

School officials include parties contracted to perform University services. The outsourced parties must be under the direct control of the University and perform services that would otherwise be done by the University. Outsourced parties are subject to redisclosure requirements.

Legitimate education interest does not include simply having a curiosity about a student's academic record or disciplinary proceedings. Thus, all records of all students are not open to all faculty or staff at the University. University offices that house students' education records must maintain a record listing the names of all parties, other than University officials with a legitimate educational interest, who have requested or obtained access to and/or copies of student records. This record must be shown to students requesting such information regarding their own records.

Other exceptions include disclosure to other schools where the student intends to enroll, disclosure to certain federal officials in connection with financial aid, and disclosures in compliance with lawful subpoenas. The University may return an education record to the source of the education record without

notice. In the event of a transfer, application, or suspected fraud, an education record may be returned to its source to verify its authenticity. As previously mentioned, exceptions also include disclosure to parents of dependent students, directory information and emergencies.

Are student disciplinary records covered under FERPA?

Yes. There have been inconsistent results in litigation around the country on this issue. FERPA does allow disclosure to parties other than the disciplined student in certain situations. For example, the results of a disciplinary proceeding must be disclosed to the victim of a sex offense. FERPA also allows, but do not require, disclosure to the parents of students who are under the age of 21 in relation to students found in violation of any law or policy concerning the use or possession of alcohol or a controlled substance. Disciplinary records can be disclosed to parents of dependent students. Further information regarding such disclosure to parents can be found in the Student Conduct Code.

Is student email on the Campus webmail system an education record?

Education records include electronic records. Student email address is included in CSU's definition of directory information but limited to users of the university email system only.

Email messages that meet the definition of "education record" are subject to FERPA requirements.

What about information on a student who is a registered sex offender?

The Campus Sex Crimes Prevention Act amended FERPA to allow campuses to give out information on registered sex offenders as defined in the Campus Sex Crimes Prevention Act. Sex offenders must identify where they are attending or plan to attend school. The

University must also notify the campus of where this information can be found. The University Police Department provides this notification on their website.

What about giving information to the INS?

The University has the authority and responsibility to turn over information on its foreign students to the Immigration and Naturalization Services to determine non-immigrant status. Foreign students are required to sign a form I-20 consenting to such disclosure.

In addition, there is a special exception to FERPA in 8 USC § 1372 allowing the U.S. Attorney General to collect data on foreign students from specified countries identified as terrorism risks. An automated system called SEVIS has been implemented, which requires electronic reporting on the status of such students.

Should I be careful how I post grades?

Definitely! This is one area where FERPA is often violated. Faculty should not identify the grade to a name, student ID number or social security number. The social security numbers are protected under FERPA. Social security numbers are also specifically protected under the Federal Privacy Act and state law. Therefore, faculty need to have a system of separate numbers or other alternatives when posting grades. In addition, do not leave a stack of graded exams with names on them on a table to be picked up. This has happened from time to time. It is also poor practice to leave graded exams, even if posted with the alternate numbers, on a table or in collection areas where students can see other students' exams as they may be able to identify who wrote the exam.

Also, do not disclose to students another student's grades in class, (for example, on a paper or test) without consent, as that is

disclosing a “record”. In situations where students are required to see and discuss other students’ work in class, for example in groups, it is best practice to get consent at the beginning of the class and explain this in the syllabus. As previously stated, FERPA changes clarified that grades on peer reviewed papers are not considered education records before they are collected and recorded by a teacher.

What standard security practices must I follow?

All staff must utilize reasonable measures to preserve the confidentiality, security and integrity of CSU information systems and the information contained therein. All CSU staff should practice appropriate security measures: never disclose, share or loan your username(s) and password(s) to anyone (*e.g.*, another employee, faculty member, supervisor, student assistant, etc.) and never use generic/group IDs when accessing confidential academic record information. In addition, staff should take reasonable measures to restrict unauthorized persons from viewing confidential academic record information. For example, you should: never leave your computer workstation unattended while signed on without appropriate screen locking (*e.g.*, a password-protected screen saver), never leave personal login information (*e.g.*, username, password, network mapping, etc.) in view of unauthorized persons and never program (or ‘hot-key’) automatic access to confidential academic record systems.

What about terrorism and Federal government?

After 9/11, various institutions were contacted by the FBI for information on students. DOE eventually published guidance on the applicability of the emergency exception and subpoenas. The USA PATRIOT Act of 2001 authorized the U.S. Attorney General to obtain court orders authorizing release of information

on students without notice to the student. Handling of subpoenas and determining when information can be turned over to law enforcement authorities is complicated. If faculty or staff were to ever be approached by law enforcement for records, they should contact the Office of General Counsel immediately.

May I discuss a student with other faculty, TA’s or student workers?

If the other party has a “legitimate educational interest” then the answer is “yes”. The question assumes that something from a “record” is being disclosed, either directly or indirectly. Discussion that is not based on a “record” is not prohibited under FERPA; for example, giving an opinion about a student generally. The issue, then, is more a matter of professional ethics. Always be aware that conversations about a student might be overheard by others.

FERPA considers Teaching Assistants (TAs) to be an extension of the faculty member. Faculty members may even share their sole-possession records with their TAs. However, if other faculty and department members can inspect those notes, they are no longer sole possession and become education records. Students have the right to inspect education records that pertain to them.

FERPA allows student workers with a “legitimate educational interest” to have access to other students’ education records and confidential information. It is strongly advisable for student workers to be trained on FERPA just as if they were faculty or staff.

Why are student-athlete GPA’s publicized?
Student athletes sign a special consent form with the Athletic Department agreeing to such publication. There are a number of reasons for

this including public relations and community interest as well as academic awards. In many situations, a student may specifically want their grades or specific achievements publicized, such as being named on dean's lists.

How is military recruiting on campus affected by FERPA?

Many universities or colleges within universities, particularly law schools, have restricted access to information on students by military officials even when such information may have been given to other employers. This has been based on the position that the military discriminates against homosexuals. The Federal Government enacted a special law, called the Solomon Amendment, which provides a process for restricting Department of Defense funding to institutions, generally through the grant process, if military recruiters are not given equal access to the campus or directory information. There are some exceptions. For example, if a university did not provide directory information to any employers, it would not have to provide it to the military.

Does FERPA apply to information and documents relating to the disability of a student?

Yes. This is information or records which relate to a student and relate to their attendance at the institution and, therefore, must be handled with the same confidentiality as other education records. In some situations, these records may have a dual status as both an education record and a medical record. However, the records are treated with confidentiality under FERPA, in any event.

How does FERPA relate to the Ohio Public Records Act?

As a public institution, the University is subject to the state public records law and, therefore, absent an exception, records in the

possession of University faculty or staff may be public records. However, FERPA is an exception to the public records law as it is a federal law providing for confidentiality of student records.

There have been a number of cases around the country exploring the relationship between the Open Records Act and FERPA. Some of these cases have tried to limit the definition of education record to only those records dealing with academics. It is also possible that certain meetings at the University, which might otherwise be open, could be closed in part when discussing confidential student education records. However, if the meeting is otherwise open, only so much of the meeting can be closed that discusses the confidential records unless there is other legal authority to further close the meeting.

Examples of meetings which would be closed to discuss confidential student records would be the grade appeals board meetings and disciplinary proceedings.

What are the sanctions or liability risks for a FERPA violation?

FERPA provides for a complaint procedure to the United States Department of Education with an ultimate sanction of withholding federal funding from the educational institution that made the unlawful disclosure of student record information. It is extremely rare for cases to get to the point where the federal government would threaten to withhold funding. There has been some litigation where plaintiffs have been allowed to sue under civil rights statutes for FERPA violations. However, in 2002 the United States Supreme Court, in *Gonzaga University v. Doe*, determined there was not a private cause of action in federal court for a violation of FERPA.

At CSU, any breach of confidentiality could lead to disciplinary action. Faculty and staff

need to take the privacy obligations under FERPA very seriously.

How can a student file a complaint for a violation of this policy?

Please bring complaints to the attention of the Office of the University Registrar. Students also have the right to file a complaint with the U.S. Department of Education concerning any belief that the University has failed to comply with a provision of FERPA. Written complaints should be directed to The Family Policy Compliance Office, US Department of Education, 600 Independence Avenue, SW, Washington, DC 20202-4604. Phone: (202) 260-3887 Fax: (202) 260-9001.

Who can I talk to if I have further questions about FERPA?

Good resources on campus are the Office of General Counsel and the Office of the University Registrar. Each faculty and staff member, at a minimum, should read the annual notice on the Registrar's website as a starting point:

(<http://www.csuohio.edu/registrar/family-educational-rights-and-privacy-act>).

This outline was adapted from Rick Johnson's "FERPA for Faculty", Office of General Counsel, North Dakota State University. (9-15-09)

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