

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT



2019 MANAGEMENT SEMINAR

FERPA BACKGROUND AND BASICS

FERPA is:

➤ **FAMILY EDUCATIONAL RIGHTS and PRIVACY ACT**

➤ **Also known as** the “BUCKLEY AMENDMENT”--
Federal Law enacted on **August 21, 1974**

➤ **FEDERAL STATUTE--U.S.C. § 1232g**

➤ **FEDERAL REGULATIONS-- 34 CFR PART 99**

STATE COMPANION TO FERPA

- Florida Statutes also governing student education records found at:
 - **Sections 1002.22 and 1002.221, Florida Statutes (F.S.),** govern education records\reports, rights of students and parents, notification, consent requirements and penalties as the K-12 public institutions.
 - **Section 1002.225, F.S.,** governs education records of students in public postsecondary educational institutions as well as penalties.
 - Requires state public postsecondary institutions to comply with FERPA with respect to education records
 - Education records are defined as provided in FERPA regulation 20 U.S.C. §1232g and associated federal regulations
 - **Section 1006.52, F.S.,** student's education records and applicant records exempt from Sec. 119.07, F.S. and Article I, Sec. 24, Florida Constitution

FERPA BACKGROUND AND BASICS

➤ FERPA

- Applies to public and private institutions that receive funds under any applicable program administered by the U.S. Department of Education
 - Applies to elementary, secondary and postsecondary educational institutions and to parents of children under 18. **At 18** or **upon attendance** at a postsecondary institution (**at any age**), such rights are transferred to the student, unless the student is a dependent for tax purposes under IRS rules.
- Protects the privacy of a **student's education records** by:
 - Prescribing student rights to inspect, review, amend and consent to the disclosure of such records
 - Prohibiting unauthorized disclosure or dissemination
 - Permitting disclosures only under certain circumstances

ANNUAL NOTIFICATION OF RIGHTS

- FERPA requires institutions to:
 - Notify students annually of their rights under FERPA to:
 - Inspect, review and amend education records;
 - consent to disclosure of personally identifiable information; and
 - file a complaint with the Department of Education concerning alleged violation by institutions
 - Include in its notices: the procedure for exercising right to inspect and review; the procedure for requesting amendments; and if records are disclosed within the institution, criteria for determining who constitutes a school official and what constitutes legitimate educational interests
 - Give notice of its list of directory information and the procedures for “opting out” from release of their directory information

RIGHTS OF INSPECTION, REVIEW AND AMENDMENT

- FERPA grants **students** the right to inspect and review **their own education** records within 45 days of a student's request and to receive reasonable explanations and interpretations of the records
- FERPA does not require the institution to provide copies unless circumstances prevent such review and inspection and alternate arrangements for review cannot be made
- FERPA **does not** permit students to review and inspect:
 - Records that contain information on more than one student
 - Financial records, including that of the student's parents
 - Confidential letters/confidential statements of recommendations that students have waived the right to review
 - Treatment records

RIGHTS OF INSPECTION, REVIEW AND AMENDMENT (Continued)

- If a student believes his or her education records contain **inaccurate, misleading** information or **information in violation of** the student's **privacy rights**, the student may ask the institution to amend the record
- Within a reasonable time of receipt of the request, the institution must decide whether to amend the record--If institution agrees, amend record and notify student in writing
- If the institution decides not to make the requested amendment, it must inform the student of its decision and their right to a hearing
 - Hearing is to be conducted in accordance with minimum requirements set forth in 34 C.F.R. § 99.22

KEY FERPA DEFINITIONS

➤ STUDENT

➤ any individual **who is** or **has been** in **attendance** at an educational agency or institution and regarding whom the agency or institution **maintains education records**.

➤ *Student-Rights apply to students after graduation and expire only upon the student's death*

➤ **ATTENDANCE** includes, but is not limited to:

➤ Attendance in person (physical presence) or by paper correspondence, video conference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom

➤ The period during which a person is working under a work-study program

KEY FERPA DEFINITIONS (Continued)

➤ EDUCATION RECORD

- any record **directly related** to a student that is **maintained** by an educational agency or institution or by a party acting for the institution
 - A record is considered directly related to a student if/when record contains personally identifiable information.
- is not limited to academic records or records maintained in a specific format

➤ PERSONALLY IDENTIFIABLE INFORMATION

- is information easily connected to or that expressly identifies a student (directory or nondirectory information) which includes, but is not limited to:
 - The student's name or the name of the student's parent or other family members;
 - The address of the student or student's family;
 - A personal identifier, such as the student's social security number, student number, or biometric record;
 - Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 - Other information that, 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; or
 - Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates
- ***PII—records which contain enough demographic or other info that would point to a single student***

KEY FERPA DEFINITIONS (Continued)

➤ Education Record does not include:

- Records kept in the **sole possession** of the maker, used only as a personal memory aid, and not accessible or revealed to any other person except a temporary substitute for the maker of the record.
- Records of the **law enforcement** unit of an educational agency or institution (commissioned or non-commissioned) created and maintained by the law enforcement unit for a law enforcement purpose.
- Records relating to an individual **employed** by an institution, that: (1) are made and maintained in the normal course of business; (2) relate exclusively to the individual in that individual's capacity as an employee; and (3) are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted.
- Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are: (1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment. For the purpose of this definition, "**treatment**" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.
- Records **created** or **received** by an educational agency or institution after an individual is no longer a student in attendance and that are **not directly related to the individual's attendance** as a student.
- Grades on **peer-graded** papers before they are collected and recorded by a teacher.

DISCLOSURE OF EDUCATION RECORDS

➤ PERMITTED DISCLOSURES OF A STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA

➤ Disclosure to student

➤ Parents of a dependent student

- Verify student's dependent status-

➤ Disclosure made with consent of student

- Student shall provide a *signed* and *dated written* consent prior to disclosure

- Written consent must also: (1) Specify the records that may be released; (2) State the purpose of the disclosure; and (3) Identify the party or class of parties to whom the disclosure may be made

PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA (Continued)

- FERPA also provides exceptions for disclosure **absent student consent**:
 - **Disclosure of Directory Information**
 - Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. **Directory information includes, but is not limited to:**
 - the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.
 - **Directory information does not include a student's** -- (1) Social security number; or (2) Student identification (ID) number, except -- Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.
 - Institutions are allowed to designate certain classes of information as directory.
 - Students have the right to "opt-out" or request that **(all or a portion of)** their directory information not be disclosed and such requests made while student was in attendance must be honored even after graduation.

PERMITTED DISCLOSURES OF A STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA (Continued)

- FERPA also provides exceptions for disclosure **absent student consent**:
 - **Disclosure to internal school officials who have a legitimate educational interest in the information**
 - The disclosure is to other school officials within the agency or institution whom the agency or **institution has determined** to have legitimate educational interests;
 - **School official**--person employed by the institution in an administrative, supervisory, academic or research, or support staff position (including law enforcement and health staff) or a contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party (e.g. an attorney, auditor, Board member, etc.) -- (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to the requirements of Sec. 99.33(a) governing the use and redisclosure of personally identifiable information from education records
 - **Legitimate educational interest** - a school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her responsibilities for the University (U.S. Dept of Education, Family Policy Compliance Office)

PERMITTED DISCLOSURES OF A STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA (Continued)

- FERPA also provides exceptions for disclosure **absent student consent**:
 - Disclosure to another educational institution where a student seeks or intends to enroll or where student is already enrolled as long as the disclosure is for a purpose associated with the student's enrollment or transfer
 - Disclosure is in connection with financial aid for which the student has applied or which the student has received
 - Disclosure made in connection with a health or safety emergency
 - Disclosure to the parent of a student who is under age 21, both at the time of disclosure and at the time a determination is made that the student violated any federal, state or local law or institution policy related to drug or alcohol use and possession

PERMITTED DISCLOSURES OF A STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA (CONTINUED)

- ❖ FERPA also provides exceptions for disclosure **absent student consent**
 - Disclosure to comply with a **judicial order** or lawfully issued **subpoena**
 - Disclosure *to a court* in a **lawsuit** that a student brings against the institution or an institution brings against a student
 - Disclosure of final result of a **disciplinary proceeding** against a student with whom an institution has determined violated institutional rule/policy connected to alleged acts which would, if proven, constitute a crime of violence or non-forcible sex offense
 - Disclosure *to a victim* of an alleged perpetrator of a crime of violence or non-forcible sex offense and consists only of final results of the institution's disciplinary proceeding in connection with that alleged crime
 - Disclosure related to sex offenders which consists of information provided to an institution under the Violent Crime control and Law Enforcement Act of 1994 (Wetterling Act)

PERMITTED DISCLOSURES OF A STUDENT'S PERSONALLY IDENTIFIABLE INFORMATION UNDER FERPA (Continued)

- FERPA provides additional exceptions for disclosure absent student consent
 - **Disclosure to authorized representatives of The Comptroller General of the United States; The Attorney General of the United States; The Secretary; or State and local educational authorities**
 - **Disclosure to accrediting organizations to carry out their accrediting functions**
 - **Disclosure to organizations conducting studies for educational institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction**

REDISCLASURE

- Redisclasure of education records are **generally prohibited** without the **prior** consent of the student
- Institution must **inform recipient** that it must **use** the information only for the **purpose for which disclosure was made** and that it **cannot further redisclose** the information without the student's consent
 - **Exceptions**: disclosure of directory information, disclosure to student or parents of dependent student, disclosure to parents as a result of drug/alcohol violation, court ordered disclosures, subpoena disclosures, lawsuit disclosures, disciplinary proceedings involving alleged crime of violence or non-forcible sex offenses, *sex offenders*

RECORDKEEPING

- Duty to record and maintain each request and release of personally identifiable information from a student's education record;
 - Record must minimally include: identities of requestors and recipients; the legitimate interest they had in the information; description of the perceived threat in cases of health and safety emergency,
 - Except when request is received from:
 - A school official
 - A parent of dependent student or student
 - A person with written consent from student
 - Except when:
 - Request is for directory information
 - Disclosure connected to grand jury or other law enforcement subpoena prohibiting disclosure of its contents

FERPA AND DEVELOPMENT/ALUMNI AFFAIRS

- Although FERPA does not prohibit the release of information to such offices because staff may be considered school officials with legitimate educational interest, there is no automatic right to such student education records and the release of the information by these offices is restricted, except in very limited circumstances.
- FERPA applies to records of alumni **while** they were students; however,
- FERPA does not apply to records that contain information about individuals **after** they are no longer students.

ENFORCEMENT/COMPLIANCE

- **The U.S. Department of Education, Family Policy Compliance Office:**
 - Provides technical assistance regarding FERPA compliance matters
 - Investigates, processes and reviews complaints of alleged violations of FERPA
 - If a claim has merit and is based on policy and practice, the Office recommends corrective actions and grants the institution a reasonable time to come into compliance
 - Should the institution fail to comply with the corrective actions or continually violates FERPA, the Department of Education is authorized to **terminate all or any portion of the institution's federal fund**
- **No private or individual right/cause of action is created under FERPA**
- **Under Section 1002.225, F.S.**, the aggrieved student has an immediate right to bring an action in circuit court to enforce his/her rights by injunction. If successful, the student may be awarded attorney's fees and court costs

Note

- Florida Public Records Law recognizes FERPA (access to student records limited by 1002.22, 1002.221, 1002.225; 1006.52)
- Do Not:
 - Post grades by name, social security number, student identification number or any part thereof
 - Automatically speak to parents, grandparents or guardians or attorneys about student matters
 - Redisclose information received from law enforcement units or other department within the University
 - Redisclose transcripts obtained for sole purpose of verifying degrees for employment purposes.
 - Write on memo which addresses or names multiple students—de-identify if possible
- Contact the Office of the General Counsel with questions regarding subpoenas and court orders or records disclosures when uncertain
- Questions and Comments



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

Scenarios

MEDIA

DISCLOSURE TO THE MEDIA:

- *DOES A LAWSUIT OR HIGH PROFILE CASE MAKE A STUDENT RECORD A PUBLIC RECORD?*
 - *NO*

DECEASED STUDENTS

DECEASED STUDENTS:

- *DOES THE STUDENT'S RIGHT OF PRIVACY EXPIRE WITH AT STUDENT'S DEATH?*
 - YES
 - *SEE FAMU'S FERPA POLICY*

PSYCHIATRIC RECORDS

PSYCHIATRIC RECORDS:

ARE PSYCHIATRIC RECORDS STUDENT RECORDS
UNDER FLORIDA PRIVACY LAWS?

- *NO*
- *A PHYSICIAN MAY INVOKE THE RIGHT TO PRIVACY.*

SUBPOENAS

SUBPOENAS:

DOES A STUDENT HAVE THE RIGHT TO BE NOTIFIED BEFORE COMPLIANCE WITH A SUBPOENA?

- YES

PARENTS' RIGHTS

PARENTS:

- ARE PARENTS ENTITLED TO STUDENT RECORDS ?
 - NO
 - PARENTS WITH DEPENDENT STUDENTS MAY OBTAIN RECORDS BUT THIS IS AT THE UNIVERSITY'S DISCRETION
- ARE DUALY ENROLLED STUDENT RECORDS CONFIDENTIAL?
 - YES.

Note: Do not confuse

- exceptions to “what is a record”
vs.
- exceptions for “consent to disclose”
... they are two different things

If it is not a student record, no consent is required and in fact it could be considered a public record and must be made available under Florida law (Chapter 119).

DESTROYING RECORDS

- School may not destroy records if request for access is pending.
- If the records contain information on more than one student, the requesting parent or eligible student may inspect, review, or be informed of only the specific information about his or her child's records

WORK STUDY

WORK STUDY:

**ARE RECORDS STUDENT WORK
STUDY RECORDS PROTECTED?**


- YES

DISCIPLINARY RECORDS

DISCIPLINARY RECORDS:

ARE DISCIPLINARY RECORDS PROTECTED BY FERPA?

- YES



Great things are
happening at FAMU everyday
- Larry Robinson, Ph.D.

