

# Deep Dive into FERPA

Tina Falkner  
University of Minnesota  
[rovic001@umn.edu](mailto:rovic001@umn.edu)

Cheryl Fisk  
Crown College  
[fiskc@crown.edu](mailto:fiskc@crown.edu)

UMACRAO 2014  
Minneapolis, MN

# FERPA ESSENTIALS

# FERPA foundation:

## Background

- Family Educational Rights and Privacy Act
  - Also known as the Buckley Amendment
- Designed to protect the privacy of education records and to provide to parents (primary/secondary education) or to students (higher education)
- Intended that students' rights be broadly defined and exceptions narrowly construed
- FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education

# FERPA foundation: Defining a student

- “Student” means 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.
- FPCO has stated that each institution may determine when a student is “in attendance” in accordance with its own enrollment procedures

# FERPA foundation: Rights

- Right to inspect and review education records
  - Exceptions: record contains information on more than one student, must redact; letters of recommendation the student has waived the rights to see; parents financial records.
- Right to seek an amendment to education records.
- Right to have some control over the disclosure of information from education records.
- Right to file a complaint with the DOE.
- Institutional annual notice requirement.

# FERPA foundation: Education records

- Contain information which is personally identifiable to a student; and
  - Are maintained by an educational agency or institution or by a party acting for the agency or institution.
- Storage media and location are irrelevant.
  
- Exceptions
  - Sole possession records,
  - Law enforcement records,
  - Employment records (unless contingent upon attendance),
  - Treatment records,
  - Alumni records.

# FERPA foundation: Personally identifiable

- Student's name
- Name of student's parent or other family members
- Address of the student or student's family
- Personal identifier – SSN, student ID number, biometric record
- Indirect identifiers – date and place of birth, mother's maiden name
- Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person

# FERPA foundation: Directory information

- Information generally considered non-harmful or invasion of privacy if disclosed
- Can include:
  - Name, address, phone, email address
  - Date and place of birth, photo
  - Participation in officially recognized activities and sports
  - Field of study
  - Weight and height of athletes
  - Enrollment status
  - Degrees and awards received
  - Dates of attendance
  - Most recent previous school attended
  - Grade level
- Cannot include:
  - Student ID number and SSN
- If you have directory information:
  - Must inform students of it
  - Students have a right to refuse release of this information and the timeframe to make this decision

# FERPA foundation: School official

- Defined by the institution
- Members of the institutional community who act in the student's educational interest within the constraint of their need to know/scope of their institutional relationship
- In general, someone the institution has employed, contracted with, or has other official relationship with who would need to access pertinent student data to perform his/her designated job functions
- Interest in reviewing student education records for the purpose of performing assigned institutional research, educational or administrative function

# FERPA foundation: Disclosing education records

- Generally need signed, dated “written” consent before disclosing
- Exceptions to consent:
  - School officials at the institution who have legitimate educational interest
  - School where the student seeks or intends to enroll
  - Federal, state, and local authorities conducting an audit, evaluation, or enforcement of education programs
  - In connection with financial aid
  - Organizations conducting studies on behalf of the educational institution
  - Accrediting organizations
  - Parents of dependent students
  - Complying with judicial order or subpoena
  - Health or safety emergency
  - Directory information

# FERPA foundation: Disclosing education records

- Exceptions, continued:
  - Results of a disciplinary hearing to alleged victim of a crime of violence
  - Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rule or policies
  - Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies
  - Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State
- To the student

# FERPA foundation: Record Keeping

- Must maintain a record of each request for access to and each disclosure from an education record:
  - Must be maintained as long as the record;
  - Includes the parties who have requested or received information from education records;
  - Include the legitimate interest parties had in receiving the information.
- Exceptions to when records need to be kept:
  - The student
  - A properly designated school official
  - Party with written consent from the student
  - Directory information
  - Law enforcement subpoena or court order which specifies that the existence or contents of the subpoena or court order not be disclosed

# Working with parents/spouses

- Parents/spouses are like any third party, unless...
- Most common questions:
  - Billing
  - Financial aid
  - Grades/classroom performance
  - Attendance
  - Probation/suspension
  - Schedule
  - Midterm grades
  - Faculty/courses (intercede on behalf of student)

# Working within/ across the institution

- Sharing within the institution is still based on “legitimate educational interest”
  - With faculty/advisers
  - With campus security/police
  - With/from disability services
  - With student affairs/academic affairs
  - With alumni relation
  - With the foundation
  - With athletics
  - With information technology
  - With college offices
  - With the business office
  - With the President’s office

# Health or safety emergency

- Concern about the health or safety of a student or the campus community allows for more broad sharing of information
  - Must be based on the fact that the one being shared with can assist the student in the crisis situation
  - Has mandatory recordation requirements
  - Isn't used lightly BUT also shouldn't be a shield against sharing
- Information can be shared with:
  - Parents
  - Health/mental health providers
  - Police/campus security
  - Spouse
  - Others on/off campus who can provide assistance to the student

# Additional common FERPA application questions

- How do dual enrollment students fall into FERPA? What
- What is the intersection between FERPA and state Open Records Laws?
- What is the intersection between FERPA and HIPAA
- What should happen when student data is requested for research within the institution?
- When is information gleaned from the record, and when isn't it?
- What is the notification requirement in FERPA if data has been shared inappropriately?
- When do FERPA rights cease? What does that mean.
- What does 'meeting the terms and conditions' of aid really mean?

# Summary

- FERPA has many more “mays” than “musts” and the “mays” aren’t always black and white
- Competence and comfort FERPA comes with practice
- Ask others how they interpret the question/issue
- Develop a strategy for determining if key elements of FERPA are met or need to be met

# Conclusion

The best FERPA protection for education records is FERPA knowledge and training.

Understanding FERPA is not just an obligation, it is the right thing to do.

# Some resources

AACRAO website:

<http://www.aacrao.org/compliance/ferpa/index.htm>

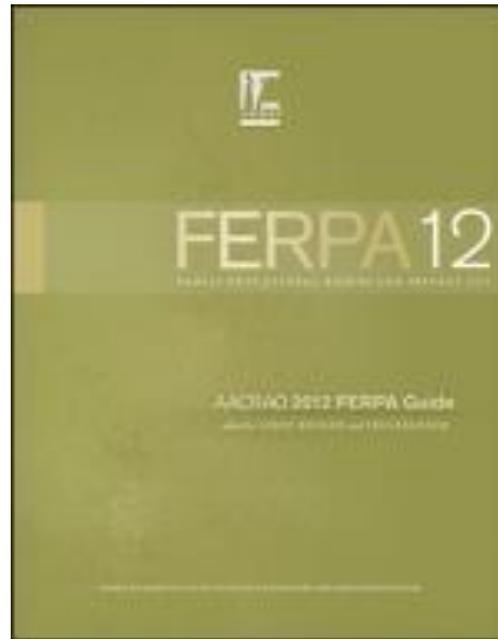
AACRAO FERPA Guide 2012

FERPA Quick Guide 2012

– [www.aacrao.org/publications/](http://www.aacrao.org/publications/)

FPCO website: <http://www.ed.gov/policy/gen/guid/fpc/index.html>

# AACRAO FERPA Guide



# Questions?

Cheryl Fisk

[fiskc@crown.edu](mailto:fiskc@crown.edu)

952-446-4172

Tina Falkner

[rovic001@umn.edu](mailto:rovic001@umn.edu)

612-625-1064