FERPA
a DISCUSSION

Office of the University Registrar
January 2009
Michael L. Rendon
POP QUIZ!

- Who does FERPA apply to?
- Does FERPA apply to former students?
- How about students who are deceased?
- What happens when a violation occurs?
- What should you do if a violation occurs?
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

“A Federal Law designed to protect the privacy of education records, to establish the right of students to inspect and review their education records, and to provide guidelines for the correction of inaccurate and misleading data through informal and formal hearings.”
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

This act is enforced by the Family Policy Compliance Office, U.S. Department of Education, Washington, D.C.
THE ESSENCE OF THE ACT

• University students must be permitted to inspect their own education records.
• School officials may not disclose personally identifiable information about students nor permit inspection of their records without written permission unless such action is covered by certain exceptions permitted by the Act.
KEY CONCEPTS

• Required annual notification
• Written permission required for disclosure of student education record
• The exceptions to written permission of student
• Students’ right to access their records
• The “musts” and “mays” in FERPA
• Parents/parental disclosure
• Legitimate Educational Interest
KEY TERMS

• Education Record
• Personally Identifiable
• Directory Information
• School Official
WHAT IS AN “EDUCATION RECORD?”

• Any record, with certain exceptions, maintained by an institution that is directly related to a student or students. This record can contain a student’s name(s) or information from which an individual student can be personally (individually) identified.

• These records include: files, documents, and materials in whatever medium (handwriting, print, tapes, disks, film, microfilm, microfiche) which contain information directly related to students and from which students can be personally (individually) identified.
“PERSONALLY IDENTIFIABLE”

Personally Identifiable means data or information which includes:

1. The name of the student, the student’s parent, or other family members;
2. The student’s campus or home address;
3. A personal identifier (such as a social security number or student number);
4. A list of personal characteristics or other information which would make the student’s identity easily traceable.
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GRADES POSTED ON BULLETIN BOARD OUTSIDE OF INSTRUCTOR’S OFFICE
## IST1233-02 Grade Book

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WHAT AN EDUCATION RECORD IS NOT!

- “Sole Possession” notes
- Law enforcement unit records
- Records maintained exclusively for individuals in their capacity as employees
  - Records of individuals who are employed as a result of their status as students (work study) are education records.
- Doctor-patient privilege records
- Alumni Records
“SOLE POSSESSION NOTES”

Are made by one person as an individual observation or recollection, are kept in the possession of the maker, and are only shared with a temporary substitute.

- This term has always been narrowly defined.
- Notes taken in conjunction with any other person are not sole possession notes (counselor’s notes, interview notes).
- Sharing these notes with another person, or placing them in an area where they can be viewed by others makes them “education records” and subject to FERPA.
- Best advice: If you don’t want it reviewed, don’t write it down.
WHAT IS AN EDUCATION RECORD?
(SUMMARY)

If you have a record that is:

- Maintained by your institution
- Personally identifiable to a student (directly related to a student and from which a student can be identified)
- Not one of the excluded categories of records…

Then, you have an education record and

It is subject to FERPA
REQUIREMENTS FOR COMPLIANCE

What we must do...

– Provide annual notification to students of their FERPA Rights

– Provide students access to their education records
REQUIREMENTS FOR COMPLIANCE

• Provide annual notification to students of their right to:

1. Inspect and review their education records
2. Request an amendment to their education records
3. A hearing if the request for an amendment is unsatisfactory
4. Request that the institution not disclose directory information items about them
5. File a complaint with the U.S. Department of Education
REQUIREMENTS FOR COMPLIANCE

• Provide annual notification to students of their right to:

6. Know that 1) school officials within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered school officials and 3) what legitimate educational interest will entitle school officials to have access to education records
REQUIREMENTS FOR COMPLIANCE

• Provide annual notification to students of their right to:

7. Know which information the institution has designated as public or directory information.

Note: This notification of directory information is NOT required to be included in the annual notification.
REQUIREMENTS FOR COMPLIANCE

Directory Information

– Although not required to be included in the institution’s annual notification, the institution must notify student of what information the institution has designated as directory information.

– The Family Policy Compliance Office has recommended that this notification be part of the institution’s annual FERPA notification to students.
REQUIREMENTS FOR COMPLIANCE

Directory Information

– Information not normally considered a violation of a person’s privacy

– Students must be notified of the items of directory information

– Students must be given the opportunity to request that directory information not be released. This right of non-disclosure applies to directory information only.
WHAT CAN DIRECTORY INFORMATION INCLUDE?

Directory Information may include the following student information:

- Student’s name
- Address
- Telephone number
- Date/place of birth
- Major
- Fields of study
- Participation in officially recognized activities and sports
- Height/weight of athletic team members
- Dates of attendance
- Degrees and awards received
- Most recent educational institution attended

- Other similar information as defined by the institution that would not normally be considered an invasion of a student’s privacy
WHAT CAN DIRECTORY INFORMATION INCLUDE?

Directory Information **may** include the following **recent additions** to student information:

- E-mail address
- Photographs
WHAT CAN DIRECTORY INFORMATION NEVER INCLUDE?

- Race
- Gender
- Social Security Number
- Grades (of any kind)
- GPA
- Country of citizenship
- Religion
TAMUCC University has designated Directory Information according to the Family Educational Rights and Privacy Act of 1974 to be the student’s:

- Name
- Local and permanent address/telephone number
- Major field of study
- Participation in officially recognized activities/sports
- Weight/height of members of athletic teams
- Dates of attendance
- Degrees and awards received and dates
- Most recent previous educational institution attended
- Academic level
- Enrollment status (FT/PT)
DIRECTORY INFORMATION

• It is important to remember that directory information be defined as such.
• If a data element isn’t defined as directory information it isn’t directory information and can only be released if the student’s written permission is obtained or the release can be justified under one of the expectations to student’s written permission found in FERPA.
REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to:

6. Know that 1) **school officials** within the institution may obtain information from education records **without obtaining prior written consent**, 2) the criteria for determining who will be considered school officials and 3) what “legitimate educational interests” will entitle school officials to have access to education records.
“SCHOOL OFFICIALS”

A school official can be a person:

1. Employed by the college in an administrative, supervisory, academic, research, or support staff position (including law enforcement and health staff personnel),
2. Elected to the Board of Trustees,
3. Or company employed by or under contract to the college to perform a special task such as the attorney, auditor, or collection agency,
4. Or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.
AT TAMUCC, A SCHOOL OFFICIAL IS A PERSON:

- Employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff);
- Or company with whom the University has contracted, e.g., attorney, auditor, collection agency;
- Serving on the Board of Trustees;
- Or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.
REQUIREMENTS FOR COMPLIANCE

• Provide annual notification to students of their right to:

6. Know that 1) school officials within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered school officials and 3) what legitimate educational interest will entitle school officials to have access to education records.
REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their FERPA Rights
- Provide students’ access to their education records
REQUIREMENTS FOR COMPLIANCE

• Provide students with access to their education records

They have the right to:

1) Inspect and review within 45 days of the request to inspect.
REQUIREMENTS FOR COMPLIANCE

Provide students with access to their education records

- Limitations to the right to inspect
  - Parental financial information
  - Confidential letters and recommendations to which the student has waived his/her right of inspection
  - Education records containing information about more than one student
    - The institution must permit access to that part of the record which pertains only to the inquiring student
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

1. Institutions shall obtain written consent from the student before disclosing any personally identifiable information from their education records (with the exceptions as noted in sections 2 and 3 below). The written consent must:
   
   a. Specify the records to be released
   b. State the purpose of the disclosure
   c. Identify the party or parties to whom disclosure may be made
   d. Be signed and dated by the student.
A. Disclosure of educational record information

2. Institutions must disclose education records without written consent of students to the following:

   a. Students who request the information from their own records
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

   a. Authorized representatives of the following for audit, evaluation, or enforcement of federal and state supported programs:
      - Comptroller General of the United States
      - The Secretary of the United States Department of Education
      - U.S. Attorney General (law enforcement only)
      - State educational authorities
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records *without written consent* of students to the following:

b. Personnel within the institution determined by the institution to have a legitimate educational interest
c. Officials of other institutions in which the student seeks to enroll, on condition that the issuing institution makes a reasonable attempt to inform the student of the disclosure
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records *without written consent* of students to the following:

   d. Persons or organizations providing to the student financial aid, or determining financial aid decisions
   
   e. Organizations conducting studies to develop validate, and administer predictive tests, to administer student aid programs, or to improve instruction
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:

   f. Accrediting organizations carrying out their accrediting functions
   g. Parents of a student who have established that student’s status as a dependent - IRS Code of 1986, Section 152
A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

h. Persons in compliance with a judicial order or a lawfully issued subpoena, provided that the institution first make a reasonable attempt to notify the student. **Exception:** If the subpoena is issued from a federal grand jury, or for a law enforcement purpose, and orders the institution not to notify the student.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions *may* disclose education records *without written consent* of students to the following:

i. A court if the student has initiated legal action against the institution or the institution has initiated legal action against the student
3. Institutions may disclose education records **without written consent** of students to the following:

j. Persons in an emergency, if the knowledge of information, in fact, is **necessary** to protect the health or safety of the student or other persons.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

k. An alleged victim of any crime of violence of the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

1. Veterans Administration officials in response to requests related to VA programs

m. Representatives of Homeland Security for purposes of the coordinating interagency partnership regulating international (CIPRIS)
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

n. Parents of a student under the age of 21 regarding a violation of any law, at any level, or institutional policy or rule governing the use of alcohol or a controlled substance.

Does not supersede any state law that prohibits disclosure of this information.
A. Disclosure of educational record information

3. Institutions may disclose education records without written consent of students to the following:

   o. The public regarding the final results of an institutional disciplinary proceeding as long as the student has been determined to be the alleged perpetrator of a crime of violence or non-forcible sex offense
WHAT DO THE “FINAL RESULTS” INCLUDE?

• Must include only: the name of the student, violation committed, and any sanction imposed by the institution against the student.

• The institution may not disclose the name of any other student, including a victim or witness, without prior written consent of the other student.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

4. Institutions may disclose information about students to their parents by any of three procedures:

   a. By obtaining the student’s written consent
   b. By having the parents establish the student’s dependency as defined by Internal Revenue Code of 1986, Section 152
   c. By exercising its disclosure option on any students under age 21 regarding a violation of an institutional rule or federal, state, or local law regarding the use of alcohol or controlled substance as long as state law permits.
WHAT ABOUT PARENTS?

- When a student reaches the age of 18 or begins attending a postsecondary institution regardless of age, FERPA rights transfer to the student.
- Parents may obtain directory information only at the discretion of the institution.
- Parents may obtain non-directory information (grades, gpa, etc.) only at the discretion of the institution AND after it has been determined that their child is legally their dependent.
- Parents may also obtain non-directory information by obtaining a signed consent from their child.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

5. Institutions may release without written consent those records identified as public or directory information for students who are currently enrolled with the following conditions:

a. That the institution inform the students of those categories designated as directory information
b. That students be given the opportunity to refuse disclosure of any or all categories
c. That the students be given a reasonable period of time in which to state such refusals in writing
A. Disclosure of educational record information

6. Institutions may release without written consent those items identified as public or directory information on any students not currently enrolled.

7. Institutions may release without written consent information on any student found by a campus disciplinary body to have committed a crime of violence or non-violent sexual offense. The information that may be released is limited to the following: name, violation committed, sanction imposed by the institution.

8. Institutions are responsible for informing parties to whom personally identifiable information is released that recipients are not permitted to disclose the information to others without written consent of the students.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

B. Records of requests and disclosures

1. All institutions are required to maintain records of requests and disclosures of personally identifiable information

   a. These records will include the names and addresses of the requestor and his/her indicated interest in the records.
PROCEDURES AND STRATEGIES FOR COMPLIANCE

B. Records of requests and disclosures

1. Records of requests and disclosure do not have to be kept for:

   a. Requests from students for their own use
   b. Disclosures in response to written requests from students
   c. Requests made by school officials
   d. Those specified as directory information
   e. What’s left?
PROCEDURES AND STRATEGIES FOR COMPLIANCE

B. Records of requests and disclosures

3. These records of requests and disclosures are part of the student’s education records and must be retained as long as the education records to which they refer are maintained by the institution.
KEY CONCEPTS REVISITED

- Required annual notification
- Written permission required for disclosure of student education record
- The exceptions to written permission of student
- Students’ right to access their records
- The “musts” and “mays” in FERPA
- Parents/parental disclosure
- Legitimate Educational Interest
KEY TERMS REVISITED

• Education Record
• Personally Identifiable
• Directory Information
• School Official
CURRENT HIGH TECH ISSUES AND FERPA

- Faculty → e-mail → students
- Posting grades
- Distance learning
- E-signatures
- PIN’s
- E-mail transcript requests
- Tracking/logging
- Annual notification via the web
CRITERIA TO BE USED IN DETERMINING A LEGITIMATE EDUCATIONAL INTEREST WHEN WRITING RECOMMENDATIONS

- Has the school established a criterion in its FERPA policy that appears to address disclosures for the purpose at issue?
- What does the faculty contract specify regarding the duties of faculty members? Does or did the faculty member teach the student in any course?
- What is the practice regarding recommendations at the school?
- Does the faculty member otherwise have personal knowledge of the student’s abilities?
- Was the faculty member asked by the student to provide the recommendation?
- Is there any state law on this issue?
THE AUTHORITATIVE SOURCE

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