

# The Family Educational Rights and Privacy Act

A FERPA update for the  
Arkansas Association of Collegiate  
Registrars and Admissions Officers

October 2008

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# The Act

- Originally it was signed by President Ford on August 21, 1974 as part of a bill extending the Elementary and Secondary Education Act of 1965 and has been amended over the years since
- FERPA was enacted as a species of civil rights legislation, designed to assert and protect the rights of students and their parents
- FERPA is also referred to as the Buckley Amendment, in honor of its sponsor Senator James Buckley

# What is FERPA?

- FERPA is the Family Educational Rights and Privacy Act of 1974. It protects the privacy of student records. Any educational institution that receives federal funds under any program administered by the Secretary of Education must comply with FERPA. Rights given to students include:
  - The right to inspect and review their education records
  - The right to request and amend their education records
  - The right to limit disclosure of some “personally identifiable information” (directory information)

- This act is enforced by:

The Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-4605

<http://www.ed.gov/policy/gen/guid/fpco/index.html>

# Legislative History

Congress has amended FERPA a total of nine times since its enactment.

- P.L. 93-568, Dec. 31, 1974, effective Nov. 19, 1974 (Buckley/Pell Amendment)
- P.L. 96-46, Aug. 6, 1979 (Amendments to Education Amendments of 1978)
- P.L. 96-88, Oct. 17, 1979 (Establishment of Department of Education)
- P.L. 101-542, Nov. 8, 1990 (Campus Security Act)
- P.L. 102-325, July 23, 1992 (Higher Education Amendments of 1992)
- P.L. 103-382, Oct. 20, 1994 (Improving America's Schools Act)
- P.L. 105-244, Oct. 7, 1998 (Higher Education Amendments of 1998)
- P.L. 106-386, Oct. 28, 2000 (Campus Sex Crime Prevention Act)
- P.L. 107-56, Oct. 26, 2001 (USA PATRIOT Act of 2001)

# USA PATRIOT Act

- The USA PATRIOT Act is a controversial Act of Congress that was signed into law October 26, 2001. The acronym stands for “**U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism Act of 2001.”
- The Act expands the authority of U.S. law enforcement agencies for the stated purpose of fighting terrorism in the United States and abroad. The Act increases the search ability of law enforcement agencies.
- The General Education Provisions Act (Section 507) was amended to allow the U.S. Attorney General or Assistant Attorney General to collect and retain educational records relevant to an authorized investigation or prosecution of an offense that is defined as a Federal crime of terrorism and which an educational agency or institution possesses. The Attorney General or Assistant Attorney General must “certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information [that a Federal crime of terrorism may be being committed].” An education institution that produces education records in response to such a request is given legal immunity from any liability that rises from such a production of records.

# Lawfully Issued Subpoenas and Court Orders

- FERPA permits educational agencies and institutions to disclose, without consent, information from a student's education records in order to comply with a *lawfully issued subpoena or court order* in three contexts.
  1. Grand Jury Subpoenas: In addition to release of education records they may order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response.
  2. Law Enforcement Subpoenas: In addition to release of education records they may, under good cause shown, order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response. The institution has the option of requesting a copy of the good cause determination.
  3. All other Subpoenas: Only disclose educational records if the school makes a reasonable effort to notify the eligible student of the order or subpoena in advance of compliance, so that the student may seek protective action.



# Health or Safety Emergency

- FERPA permits non-consensual disclosure of education records, or personally identifiable, non-directory information from education records in connection with a health or safety emergency.
  - “to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals”
  - The exception will be “strictly construed” which limits any interpretation
- The Department consistently has limited the health and safety exception to a specific situation that presents imminent danger to a student, other students, or other members of the school community – or to a situation that requires the immediate need for information from education records in order to avert or diffuse serious threats to the safety or health of a student or other individuals.

# Crisis Situations/Emergencies

- If non-directory information is needed to resolve a crisis or emergency situation, an education institution may release that information if the institution determines that the information is "necessary to protect the health or safety of the student or other individuals." Factors considered in making this assessment are: the severity of the threat to the health or safety of those involved; the need for the information; the time required to deal with the emergency; and the ability of the parties to whom the information is to be given to deal with the emergency.

# Law Enforcement Unit Records

FERPA narrowly defines a law enforcement record as a record that is: (i) created by the law enforcement unit; (ii) created for a law enforcement purpose; and (iii) maintained by the law enforcement unit.

FERPA specifically exempts from the definition of 'educational records' records that a law enforcement unit of a ... postsecondary institution creates and maintains for law enforcement purpose.

Schools may disclose information from this type of record to anyone without the consent of the eligible student.

Educational records disclosed to the law enforcement unit based on 'legitimate educational interest' are not converted to law enforcement unit records and cannot be disclosed without the student consent

# Tutorial

Review questions excerpted from the  
University of Southern California  
tutorial required of all employees

# Question 1

The FERPA rights of a student begin:

- a. when the application for admission is received.
- b. when the student is formally admitted.
- c. when the student makes his/her first payment.
- d. when the student registers and attends his/her first class.

# Question 1 (tricky) Answer

Tricky answer:

The institution defines when the student is an *enrolled student*. An enrolled student is a student who has satisfied all of the institutional requirements for attendance at the institution. The Family Policy Compliance Office has stated that each institution may determine when a student is "in attendance" in accordance with its own enrollment procedures (Federal Register, July 6, 2000, p.41856).

## Question 2

To be an *education record*, the information must be:

- a. personally identifiable to the student.
- b. maintained by the institution.
- c. kept in the registrar's office.
- d. made available to law enforcement.
- e. All of the above
- f. a and b only

# Question 2 Answer

Choice f is correct.

Among other things, an education record is personally identifiable to the student and maintained by the institution. All education records are not necessarily kept in the registrar's office and education records are not made available to law enforcement.



## Question 3

Directory information may contain all of the following EXCEPT the student's:

- a. photograph
- b. major
- c. e-mail address
- d. country of citizenship

# Question 3 Answer

Choice d is correct.

Under FERPA, institutions have the option to declare a student's photograph, major, and email address (among a number of things) as part of his/her officially designated directory information. ASU-Beebe has designated students' photographs, majors, and email addresses (among a number of things) as part of our official directory information. Directory information can NEVER include: race, gender, social security number, grades, grade point average, country of citizenship, or religion

# Question 4

Under FERPA, which of the following would NOT be acceptable:

- a. the release of the title of a congressman's degree to the local paper
- b. the Provost/Vice Chancellor of Student Services having access to all students' education records
- c. notifying students of their FERPA rights in the student handbook
- d. a faculty member announcing to his/her class that they can pick up their graded term papers from the chair outside the office

# Question 4 Answer

Choice d is correct.

Release of degree information without prior approval is permitted because it has been identified as directory information. (This assumes that the congressman did not provide a written request that his directory information not be released.) Due to the nature of the Provost's or Vice Chancellor's day to day duties, his/her access to all student records would be deemed to be a *legitimate educational interest*. Executing the FERPA provision that requires institutions to notify students of their FERPA rights via the student handbook is acceptable. Faculty members have a FERPA obligation to protect the privacy of student's graded assignments. Allowing other students to sift through the graded papers of their classmates is not permitted.

# Question 5

Under FERPA, which of the following is NOT an *education record*:

- a. a student's traffic violation
- b. the grade from a student's term paper
- c. a student's e-mail address
- d. the women soccer team's roster showing home town, height, weight, and current class level
- e. work-study student's work record

# Question 5 Answer

Choice a is correct.

A student's traffic violation is not an education record maintained by the institution.

# Question 6

At the college level, FERPA states that parents:

- a. have the same rights of access and review as their child.
- b. can only see their child's records after receiving permission from the dean of students (or designee).
- c. can review progress reports and grades sent directly to the student's permanent home address.
- d. None of the above.

# Question 6 Answer

Choice d is correct.

When a student reaches age 18 or begins attending a postsecondary institution, regardless of age, FERPA rights transfer from the parents to the student. The dean of students (or designee) cannot assign FERPA rights; only the owner of the records (the student) can give permission to the parents. Regardless of where progress reports and grades are sent, they are still confidential records, intended for delivery to the student. The student may choose to share these records, but without this authorization from the student, the parents do not have a FERPA right to review these records.



# Question 7

An institution must permit a student to review his/her records within how many days from the day the student requests the review:

- a. 10 days
- b. 20 days
- c. 25 days
- d. 30 days
- e. None of the above

# Question 7 Answer

Choice e is correct.

An institution must permit a student to review his/her records within 45 days from the day the student requests the review.

# Question 8

Institutions must annually notify students of their rights under FERPA:

- a. TRUE
- b. FALSE

# Question 8 Answer

TRUE is correct.

Currently enrolled students must be notified annually by their institution of their FERPA rights.

## Question 9

It is permissible for a professor to post student grades on an office door if only a student's social security number is used:

- a. TRUE
- b. FALSE

# Question 9 Answer

FALSE is correct.

The public posting of grades either by the student's name, student identification number or Social Security number without the student's written permission is a violation of FERPA.

# Question 10

Student representatives on university committees (e.g., honors, curriculum, etc.) may have the right to see other students' education records during the deliberations of that committee:

- a. TRUE
- b. FALSE

# Question 10 Answer

TRUE is correct.

The students are conducting official business of the university, at the university's request. The students are considered *school officials* with a *legitimate educational interest*, and are therefore permitted to have access to specific student records.



# Question 11

The student scholarship chair of a fraternity has asked that you provide the grade point averages for all of their members, in order that scholarships and academic honors can be awarded. This information can be provided.

- a. TRUE
- b. FALSE

# Question 11 Answer

FALSE is correct.

The student scholarship chair for a fraternity is not a *university official* and therefore may not have access to grade point averages of its members. All members of the fraternity must sign written release authorizing the scholarship chair access to their grade point averages.

# Question 12

A former student has the same right to inspect and review his/her record as a student currently attending the institution:

- a. TRUE
- b. FALSE

# Question 12 Answer

TRUE is correct.

Students who have ceased attendance or who have graduated from a postsecondary institution have the same FERPA rights as currently enrolled students to inspect and review their records and may have a hearing to amend an education record.

# Deceased Students

- The privacy rights of a student expire with that individual's death. Records held by an institution for a deceased person are not an issue of FERPA but a matter of institutional policy. ASU-Beebe will exercise its own discretion in deciding whether, and under what conditions, information should be disclosed to survivors or third parties.

## Question 13

An institution must release to anyone, upon request, any information identified as directory information by the institution:

- a.TRUE
- b.FALSE

# Question 13 Answer

FALSE is correct.

An institution is not obligated to release directory information to anyone. FERPA only says that an institution MAY release directory information, but there is no obligation to do so. When in doubt, do not release information.

# Question 14

The items that comprise directory information under FERPA at your institution are identical to those at other institutions:

- a.TRUE
- b.FALSE



# Question 14 Answer

FALSE is correct.

According to FERPA, directory information MAY include the following information: student name, address, telephone number, date/place of birth, major, fields of study, participation in officially recognized activities and sports, height/weight of athletes, dates of attendance, degrees and awards received and most recent education institution attended.

## Question 15

A student's degree can be confirmed to some external (outside of your college) source without first obtaining the permission of the student as long as *degree* is identified by the institution as directory information:

- a.TRUE
- b.FALSE

# Question 15 Answer

TRUE is correct.

In this case the institution, has made degree information part of its directory information, therefore it can be released without the student's prior consent. (This assumes that the student has not made a written request for non-disclosure of directory information.)

# Question 16

Faculty members have a right to inspect education records of any student attending your institution without giving a reason:

- a. TRUE
- b. FALSE

# Question 16 Answer

FALSE is correct.

Faculty members are normally considered *school officials*. But, the faculty member will have to demonstrate a *legitimate educational interest* in his/her request to access student records, e.g., advising students, retention study, etc. Faculty members do not have access to student academic records unless their normal job duties specifically require access.

# Question 17

Former students of an institution of higher education have the right to request that their education records not be disclosed, and the institution must comply:

- a.TRUE
- b.FALSE

# Question 17 Answer

FALSE is correct.

Former students may request non-disclosure of their education records, but the institution does not have to honor the request. However, institutions can choose to grant the right of non-disclosure to former students.

## Question 18

You receive a phone call from excited parents claiming that there IS a family emergency, and they need to get in touch with their daughter immediately. Can you tell the parents the day, time and location of their daughter's class?

a. YES

b. NO



# Question 18 Answer

NO is correct.

A student's class schedule is not listed as a directory information item, therefore this information may not be released. The question presented the situation as a FAMILY emergency. FERPA also states that if the release of non-directory information is "necessary to protect the health or safety of the student or other individuals," then this information may be released.

# References and Additional Information

- American Association of Collegiate Registrars and Admissions Officers (AACRAO)
  - [www.aacrao.org](http://www.aacrao.org)
- US Senate. 107<sup>th</sup> Congress, 1<sup>st</sup> Session. *H.R. 3162 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*. ONLINE. Available: <http://epic.org/privacy/terrorism/hr3162.html>
- University of Southern California
  - [www.usc.edu](http://www.usc.edu)
- FPCO website
  - [www.ed.gov/policy/gen/guid/fpco/index.html](http://www.ed.gov/policy/gen/guid/fpco/index.html)
- Google it!

# Questions or Discussion

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