Family Educational Rights and Privacy Act (FERPA)

Rachel Krinsky Rudnick, J.D., CIPP/US
Assistant Director of Compliance/Privacy
Office of Audit, Compliance & Ethics
University of Connecticut
- [link] https://www.staysafeonline.org/data-privacy-day/
- [link] http://privacy.uconn.edu
- [twitter] @UConnPrivacy
What is FERPA?

• Family Educational Rights and Privacy Act of 1974

• FERPA applies to "any public or private agency or institution which is the recipient of funds under any applicable program“ of the U.S. Department of Education.

• FERPA gives certain rights to students to protect the privacy of their information, and make decisions regarding their records (and the contents of those records).

• Updated University FERPA Policy: (effective Feb. 13, 2015) http://policy.uconn.edu/?p=368
Who has rights under FERPA?

- Students who are enrolled or have been enrolled at the University of Connecticut, and about whom the University maintains records
- Regardless of age (even if under 18)
Definition of “ATTENDANCE”

- Regulations take distance learning and changing technology into account.
- Degree & Non-Degree/Credit & Non-Credit
- A student is considered to be “in attendance” if he/she participates in distance education via videoconference, satellite, internet or other electronic means or telecommunication technologies.
What rights do students have under FERPA?

• Students have the right to know the purpose and content of their “education” records, and which University offices maintain those records.

• Students have the right to request changes be made to education records.
• Students have the right to appeal a decision of a University faculty or staff member not to make the changes requested.

• To appeal, students should contact the Assistant Director of Compliance/Privacy (for Storrs/Regionals) in the OACE
• Students generally have the right to control the disclosure of their information from education records.

• Students have a right to expect that information in their education records will be kept confidential and disclosed only with their permission or under provisions of the law.
• Students have a right to direct concerns of a FERPA violation to the University administration.

• Students also have a right to file a complaint with the U.S. Department of Education concerning alleged failures by the University to comply with the requirements of FERPA.

To file a complaint:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5901
What about Parents?

- The right to privacy and to disclosure belongs to the student.

- Need *prior written consent* to disclose education records or their contents to parents.

- However, parents have the right to expect confidentiality of certain information about them in student education records, such as income tax returns.
Dependent Students
(tax purposes)

• FERPA permits (but does not require) schools to disclose a student's education records to his or her parents if that student is "dependent" for tax purposes.

• HOWEVER, at UConn we consider all students to be "independent" for purposes of FERPA, regardless of tax status.

• This means we DO NOT share information about students with their parents without the students’ written permission (except under very limited exceptions where permitted by law).
What is an “Education Record?”

1. records, files, documents, and other materials that contain information *directly related to a student*, and

2. that are *maintained by an educational agency or institution* or by a person acting for such agency or institution.
What is an “Education Record?” (con’t)

**Two prong test:**

1. Does the University / University employee **maintain** the record?
2. Does it contain information **related to a student** (such that they could be **individually identified**?)
“Personally Identifiable”

- Not just NAME!!!
- “Alone, or in combination”, “linked or linkable” to a specific individual
- Would “allow a reasonable person in the school or community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty.”
- **Examples**: SSN, biometric identifiers, names/addresses of family members, address, date/place of birth, mother’s maiden name, etc.
What is **not** covered by FERPA?

There are certain categories of records that are not covered by FERPA, even though they identify a student and are maintained by the University.
One example of records not covered by FERPA:

**Employee records:**

- Records relating to an individual who is employed by the University *not as a result of his or her status as a student* are excluded.

- However, employment records relating to University students who are *employed as a result of their status as students* are considered educational records.
“Prior Written Consent”

• Assume you need consent.

• Online FERPA Waiver (for some offices/records)
FERPA requires us to use reasonable methods to identify and authenticate the identity of ANYONE to whom the institution discloses personally identifiable information from education records.

Consider:

- University email
- Phone calls
- Other University employees
A Word About SSN’s...

Educational institutions may **NOT** use Social Security Numbers, either alone or in combination with other data elements, *to identify or help identify a student or the student’s records when disclosing* **or confirming** directory information!
In what situations can you release information about a student without that student’s permission ("Prior Written Consent")?
You can always release information about a student directly to that student.
Common Exceptions to “Prior Written Consent”:

• “School Officials” with a “Legitimate Educational Interest”
• “Health & Safety” exception
• Judicial Proceedings, Subpoenas & Court Orders
• “Audit & Evaluation” and “Research” exceptions
• Directory Information
“School Official”

- Generally includes all University employees (*including student employees*)
- Board of Trustees
- “Agents” of the University (e.g., AG’s office)
- Outsourcing ➔ contractors, consultants, volunteers who provide services or functions that the University *would otherwise use its employees to perform.*
"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 professional responsibilities.
“Return to Sender”

- May release or return an education record, or personally identifiable information from an education record, to the party identified as the party that provided or created the record (i.e., the source of the record).

- Enables schools to confirm the authenticity of records.

- Reduces fraud.
Health & Safety Emergency

• FERPA permits the disclosure of information from education records to appropriate parties in connection with an emergency if the educational institution determines that there is an "articulable and significant threat" to the health and safety of a student or other individual(s).

• May disclose information to anyone whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

• Must be able to document the "articulable and significant threat."
Health & Safety Emergency:

If you have concern about a student, contact the Student Care Team.
Directory Information

• FERPA identifies certain categories of information as "directory information," which the University may release without student permission.

• Regulations have allowed educational institutions more flexibility regarding directory information.
Directory Information at UCONN

Category #1--May disclosed to anyone who so requests:

- Name
- NetID
- PeopleSoft Number
- School or College
- Major Field of Study
- Degree Sought
- Student Level
- Degrees, Honors & Awards Received
- Residency/Match Information (medical/dental students)
- Dates of Attendance
- Participation in Officially Recognized Activities and Sports
- Weight and Height of NCAA Intercollegiate Athletic Team Members and Other Similar Information Including Performance Statistics
- Photographic Likenesses and Video of Athletic Team Members
- For Student Employees, Employing Department & Dates of Employment
Directory Information at UCONN

Category #2--May be disclosed to the UConn Co-Op, UConn Foundation, UConn Law School Foundation and/or UConn Alumni Association:

- Date of Birth
- Addresses (physical and email)
- Telephone Number
Directory Information at UCONN

Category #3—If you have a NetID:

• You *may* search the online phone book or use the address book in Outlook to search for student email addresses.

• You *may not* use student email addresses for commercial purposes or in any other way that violates University policy.

• *Note:* Send requests for Directory Information (particularly re: groups of students) to the Registrar’s Office.
Directory Information - “Opt Out”

- Managed by Registrar;
- Opt-out remains in place even after graduation;
- Opt-out doesn’t limit the University’s ability to share records internally and as otherwise permitted under law (e.g. between school officials with a legitimate educational interest).
Recommended response to requests for information on students who have requested that directory information not be released:

"I have no information on that individual."
Judicial Proceedings, Subpoenas & Court Orders

- In connection with judicial proceedings.
- To comply with a judicial order or subpoena.

**Reminder:** Immediately forward all subpoenas to the **Office of the General Counsel.**
Between Educational Institutions

- to officials of another school, upon request, in which a student seeks or intends to enroll

- **May include**: all student records (transcripts, health, conduct)

- Even **AFTER** the student has already enrolled or transferred – if the disclosure is for a purpose related to enrollment or transfer.
Audits & Evaluations, Research

• New regulations have modified the exception dealing with Audits & Evaluations, and the exception dealing with Research.

• Contracts are required to share information without prior written consent with “Authorized Representatives.”

• If you are (or will be) involved with research, audits and/or evaluations requiring the use of student data, contact OACE immediately.
Observations

FERPA covers education records, *not first-hand observations*.

➢ *Consider*: Notes taken in response to those observations. These notes are likely covered by FERPA.
Responding to Requests for Letters of Recommendation
Letters of Recommendation

For a student applying to another school:

You do not need a student’s permission to write a letter of recommendation to officials of other schools or school systems in which the student seeks or intends to enroll.
Letters of Recommendation

For a student applying for a job:

You **do** need written permission from the student if any information included in the recommendation is part of the "education record" of the student. (Obtain FERPA waiver)

**Consider:** definition of education record
Writing Letters of Recommendation

• **Observations aren’t covered**
  - If you write a letter that solely relies on your observations of the student, you don’t need to worry about FERPA. However, if you need to refer back to that student’s records for any reason, that information is subject to FERPA and you may need a waiver.

• **Letter of Recommendation becomes an “education record”**
  - Regardless of the purpose of the letter, if you keep it, it becomes part of the student’s education record and the student has the right to read it unless he/she has specifically waived that right of access.
We talked about Parents. What about Employers?

- You **cannot** release information about a student to an employer (or potential employer) without the student’s *Prior Written Consent*. 
When can I release information?
(Data Custodians & FERPA)
Guidelines for Faculty and Staff

- **DO NOT** release information for which you are not the record/data custodian.

- **DO** keep only those individual student records necessary for the fulfillment of your job responsibilities.

- **DO** make sure to properly dispose of education records that do not need to be maintained.
Guidelines for Faculty and Staff (con’t)

➤ **DO** keep a log of FERPA requests:

- Under most circumstances, Record/Data Custodians are required to keep a log of education record provided to a 3rd party.
“When in Doubt, Don’t Give it Out”

... instead seek advice or assistance.
For Additional Information (U.S. DOE)

Family Policy Compliance Office (FPCO)
http://www2.ed.gov/policy/gen/guid/fpclo/index.html

Privacy Technical Assistance Center (PTAC)
http://ptac.ed.gov/
Resources

Office of Audit, Compliance and Ethics:
  • 860.486.5256
  • http://audit.uconn.edu/privacy/

Registrar’s Office:
  • http://ferpa.uconn.edu

FERPA Policy:
  • http://policy.uconn.edu/?p=368

General Counsel’s Office
  • 860.486.5796
  • http://generalcounsel.uconn.edu/