

Family Educational Rights and Privacy Act (FERPA)

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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 have their information protected as private, and to make decisions regarding their records (and the contents of those records).
- FERPA also obligates faculty/staff to follow certain rules about protecting student information.

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)
- Degree/Non-Degree
- Includes participation in distance education via videoconference, satellite, internet or other electronic means or telecommunication technologies

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 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.

What is not covered by FERPA?

(But... watch out for CAVEATS!)

- 1st hand observations
- Certain law enforcement records
- Certain medical treatment records
- *Employment records* (but... watch out for student employment records)

Employment 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.

Is a student employee record covered by FERPA?

1. GA, TA, RA → covered by FERPA
2. If the student hired through the Student Employment Office → covered by FERPA
3. If the student was hired through HR → NOT covered by FERPA.
4. Post-Docs → NOT covered by FERPA.

Student Rights Under FERPA

Annual Notice to Students

- Right to Know Who, What, Where, Why: Students have the right to know the purpose and content of their “education” records, and which University offices maintain those records.
- Right to Have Errors Corrected: 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.
- Right to File Complaint: Students have a right to direct concerns regarding alleged failures by the University to comply with the requirements of FERPA with the University administration (OACE), or to file a complaint with the U.S. Department of Education’s Family Policy Compliance Office (FPCO).
- Right to have their Information Protected: 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.
- Right to Control Access: Students generally have the right to control the disclosure of their information from education records (“*prior written consent*”).

“Prior Written Consent”

- Need the consent of a student in writing before we can release a record or talk about its contents
- Of course... there are exceptions

How to acquire “Prior Written Consent”

- Email from UConn email account
- Release Form (at <http://ferpa.uconn.edu>)
- Letter w/ signature
- Online FERPA Waiver (only certain offices/information)

What about requests for records?

- Who is seeking information/ access?
- What information are they seeking?
- What is your role?

Forward requests for student records to the Chief Privacy Officer (FOI, FERPA, Research, Audit)

*The Exceptions: When is Prior
Written Consent not required?*

You can always release information about a student directly to that student.

But remember...

You must redact any contents that relate to other students.

Common Exceptions to “Prior Written Consent”:

- *“School Officials” with a “Legitimate Educational Interest”*
- *Return to sender*
- *Between educational institutions (“enrolled” or “seeking to enroll”)*
- *“Health & Safety” exception*
- *Directory Information (with limitations)*
- *Judicial Proceedings, Subpoenas & Court Orders*
- *“Audit & Evaluation” and “Studies” exceptions*

“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.

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.

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.”

Directory Information

- FERPA identifies certain categories of information as “**directory information,**” which the University may release without student permission.
- Regulations allow educational institutions flexibility regarding what it considers directory information, who it will release it to and when.
- If an institution implements a “Limited Directory Information Policy,” it is required to follow that policy.

UConn's Limited Directory Information Provisions:

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 Foundation (including the Alumni Association) and the UConn Law School Foundation:

- 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 Chief Privacy Officer.

Directory Information - “*Opt Out*”

- Managed by Registrar → FERPA Shade
- 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 to share 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.***

Audits & Evaluations, Studies

- FERPA regulations permit the sharing of student information for certain types of Audits & Evaluations, Studies and 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 the Privacy Office immediately.*

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 required by law).

What about Employers?

- You cannot release information about a student to an employer (or potential employer) without the student's *Prior Written Consent*.

What are my responsibilities related to FERPA?

- When am I permitted to access student information?
 - What is my role?
 - How much access do I have?
 - What should/shouldn't I look at even if I have access?
- When should I be the one to release information?
 - What is my role?
 - What can I share?
 - When should I refer the requester to another office?

Authentication !!!

FERPA requires us to use reasonable methods to verify 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 help identify a student or the student's records.*

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.
- **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.

Resources

University Privacy Officer:

- 860.486.4805
- privacy@uconn.edu
- <http://privacy.uconn.edu>
- <http://ferpa.uconn.edu>

FERPA Policy:

- <http://policy.uconn.edu/2011/05/24/ferpa-policy/>

USDOE:

- <https://studentprivacy.ed.gov/>