The Family Educational Rights And Privacy Act

- Enacted by Congress in 1974; Signed into law by President Ford
- 20 U.S.C. § 1232g
- Commonly called FERPA (aka “The Buckley Amendment”)

(Capitol building image)
The Family Educational Rights And Privacy Act

- U. S. Department of Education adopted implementing regulations in 1988
- Most recently updated in 2011
- 34 C.F.R. Part 99
Scope & Enforcement

- FERPA applies to institutions in receipt of federal funding in programs administered by the U.S. Department of Education. UNC Asheville, as an institution of higher education, is covered by FERPA.

- The U.S. Department of Education Family Policy Compliance Office provides assistance and accepts complaints regarding FERPA and the Protection of Pupil Rights Amendment (PPRA).
Creates Two Basic Rights

- Access to files
- Confidentiality
Access To Files

- What are education records?
- Who has access to education records?
- What is a proper response to inquiries?
What Are Education Records?

- Paper Files
- Computer Records
- Photographs
- Other Documents
Education Records Are Records

- Directly related to a student; and
- Maintained by the University, or
- Someone acting for the University
Peer grading in which students score each other’s papers as teacher explains the correct answers to entire class does not violate FERPA.

Student papers at this stage are not “maintained” and therefore not education records.

Even if teacher’s grade book is an education record, student’s score for assignment is not an education record until it is recorded in grade book after grading.
Owasso (continued)

- A student is not an agent of the educational institution in grading the assignment

- Student grading can be as much a part of the educational process as taking the test.

- To define “education records” to cover student homework or classroom work would impose substantial burdens on teachers.

- Court did not decide whether FERPA protects grades on individual assignments once turned in to a teacher.
Exceptions to Education Records

- Personal notes of staff and faculty *if*
  - Kept in sole possession of the maker *and*
  - Kept Confidential

- Employment Records
- Campus Police Records – If not shared with university employees
- Alumni Records

- Medical Records *if*
  - Used only for treatment, *and*
  - Disclosed only to individuals giving treatment
  - NOTE! HIPAA does NOT cover student medical records either
    – just subject to state law confidentiality rules
United States v. University of Miami

- In the spring of 1995, the University’s student newspaper, sought student disciplinary records from the University Disciplinary Board to track crime trends on campus.

- The University initially refused to release the records, but after the editors requested the records pursuant to Ohio’s public records law, Miami released the records. Pursuant to FERPA privacy provisions, Miami redacted the identity, sex, and age of the accused students and the date, time and location of the incidents giving rise to the disciplinary charges.

- The newspaper filed an action requesting that the University only redact the name and social security number of the students in the records.

- The Ohio Supreme Court determined that disciplinary records were not covered by FERPA and compelled the University to turn over unredacted records.
United States v. University of Miami

- The Ohio Supreme Court decision prompted the *Chronicle of Higher Education* to file a public records request with both University of Miami and The Ohio State University for all disciplinary records from 1995 to 1996.

- Both Universities confirmed with the US DOE that they had received such requests and that they had to comply with the requests.

- The US DOE firmly believed that disciplinary records fell under the definition of education records.

- The US DOE filed actions against both Universities. The *Chronicle* joined the action as well.
United States v. University of Miami

- Ultimately the matter was appealed to the U.S. Court of Appeals for the Sixth Circuit.

- Unanimous decision by the Court that disciplinary records are education records and are thus protected by FERPA.
Student Access To Records

Jane Doe
XXX-XX-XXXX
Right Of Access Belongs To:

- “Eligible” Student
  - Person for whom the University maintains Education Records; AND
  - is 18 Years or Older OR
  - is or has been Attending the University

- “Qualified” Parent or Guardian
  - Student is a Dependent as defined by Tax Code
  - Verified by IRS Form 1040
Limitations

- Copies

- If failure to give would prevent access (distance)

- Reasonable fee may be charged
Limitations Of Access

- Parent’s financial records
- Medical or mental health records
- Letters of recommendation, if
  - Student voluntarily waived access in writing, and
  - Student given author’s name upon request
Compliance With Request

- Within “reasonable” time
- Never more than 45 days
- Must explain or interpret upon request
Confidentiality
First Commandment Of Confidentiality

Thou shalt not disclose personally identifiable information without written consent!!!!
Confidentiality

- What constitutes disclosure?
- What is personally identifiable information?
- The General Rule: Disclosure requires student’s written consent.
- Exceptions, e.g., directory information.
Disclosure

- Permit access to, release, transfer or communicate information to any party orally, in writing, or electronically.
Personally Identifiable Information

- Name
- Address
- Social Security Number/Student ID
- Personal characteristics (including biometric data) or other information that makes the student’s identity easily traceable
Written Consent Must:

- Be written, signed and dated by the student
- Specify records that may be disclosed
- State the purpose for disclosure
- ID to whom the disclosure will be made
- Must give student copies upon request
Exceptions

- School officials or authorized representatives with a need to know
- Other schools where student has applied
- Financial Aid authorities
- Studies to validate tests, administer aid, or improve instruction
- Accrediting agencies
- Court order or subpoena
- Health or safety emergency
Exceptions (Continued)

- Final results of disciplinary hearing involving violent crime or “non-forcible” sex offense
- Parents of minor convicted of drug or alcohol offense
- Federal, state, or local education authority necessary for audit or evaluation of program
Directory information at UNC Asheville

- Name
- Mailing and permanent address
- Telephone numbers
- Date and place of birth
- Major field of study
- Class (junior, senior, etc.)
- Enrollment status (full-time, part-time, etc.)
- Participation in officially recognized activities and sports

- Weight and height of members of athletic teams
- Dates of attendance and anticipated date of graduation
- Degrees and awards received (including Dean’s List and Chancellor’s List as well as scholarships)
- The most recent previous educational agency or institution attended by the student
Directory Information

- BUT, students may elect to “suppress” publication and release of directory information.

- Students must provide written notice to the Office of the Registrar.

- If a student has a directory restriction placed on their record it is all-inclusive (a student cannot restrict information just from certain individuals).

- A directory restriction remains in effect until the student requests that it be removed.
Other FERPA Requirements

- Annual Notification of Rights
- Right to inspect
- Consent requirement
- Right to request amendment to records
- Right to complain to Department of Education
- Recordkeeping Requirement
- Appeal Process
USA Patriot Act

- Amends FERPA to permit educational institutions to disclose education records to federal law enforcement officials without student consent
  - Require court order based on specific and articulable facts relevant to terrorism investigation
  - No record keeping requirement for disclosure
  - No university liability if good faith disclosure in response to order
  - No change to FERPA health and safety emergency exception
  - Expands FERPA to all foreign students (previously exempt) providing greater monitoring of foreign students
FERPA & Title IX

- **2001 US DOE Guidance: Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Other Third Parties.**

- Title IX requires that the complainant is notified about the outcome of his/her complaint.

- FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student.

- OCR specifically dictates that sharing such information does not violate FERPA as the outcome of the complaint directly relates to the student who made it.
Case Studies
FERPA Summary

- The University must:
  - Provide an opportunity for parents or eligible students to review education records;
  - Prevent improper disclosure of personally identifiable information; and
  - Maintain adequate records of requests and disclosures to parties without student consent, and explanations for any amendments to records.
References

 Department of Education & Family Policy Compliance Office (FPCO)

 UNC Asheville Policy, FERPA regulations and forms may be reviewed and printed at:
  • Student Handbook (https://housing.unca.edu/student-handbook)
  • Website (http://registrar.unca.edu)
Questions/Comments