

SUNY College at Buffalo FERPA PRESENTATION

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Lewis E. Rosenthal
Associate Counsel

Introduction

A federal law, the Family Educational Rights and Privacy Act of 1974 as amended, affords students specific rights concerning their student education records. The law is also known as FERPA and the Buckley Amendment. The law covers K-12, as well.

Who has rights under FERPA?

- Eligible Student:
 - A student who is or has been in attendance at; and
 - About whom the College has maintained education records.
 - An applicant who does not enroll is not covered by FERPA

Primary Rights of Students Under FERPA

- Right to inspect and review their education records. Please note this does not include financial records or certain confidential letters of recommendation.
- Right to have some control over the disclosure of information from education records

Primary Rights of Students Under FERPA (continued)

- Right to request amendments to their education records if the student believes, the records are inaccurate, misleading or in violation of the student's right to privacy.
- Right to appeal a decision of the College not to make the changes requested.

Copies of Records

- The College may charge a fee for copies of records unless the imposition of that fee effectively prevents the student from exercising his/her FERPA rights
- The College may not charge a fee to search for and retrieve a student's education records.

Other Student Rights under FERPA

- Right to direct concerns of a FERPA violation to the College administration. This includes the right to a hearing.
- Right to file a complaint with the U.S. Department of Education concerning alleged failures by the College to comply with the requirements of FERPA. Complaints are sent to:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5920
202 260 3887

Parent Rights Relating to Educational Records

- With most undergraduate students, records can be provided to parents, if the student is claimed as a dependent.
- Either parent can receive information under this exception.
- Dependency is determined by IRS rules.
- Best practice is to get annual statement from student.

What is an “Education Record?”

“Education records” are defined as:

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

How is it related—It is related if it contains **personally identifiable information**

AND

2. *are maintained by an educational agency or institution or by a person acting for such agency or institution.*

PERSONALLY IDENTIFIABLE INFORMATION

Includes but is not limited to:

- Student's name
- Parent's name
- Address
- Personal identifier such as a social security number
- Information that would make the student's identity easily traceable

Exceptions to the Definition of “Educational Records”:

- Sole Possession Records: Records of a professor or staff member are not considered education records (even if the records contain personally identifiable information about a student) if the maker of the records does not share the records with anyone, except a temporary substitute. The records are supposed to be kept as a personal memory aid.

Exceptions to the Definition of “Educational Records”:

- Law Enforcement Records: Records of a law enforcement unit which are kept apart from education records, are maintained solely for law enforcement purposes, and are not made available to persons other than law enforcement officials of the same jurisdiction, provided that personnel of a law enforcement unit do not have access to education records.

Law Enforcement Records

continued

- A “law enforcement unit” does not lose its status if also performs other, non-law enforcement functions for the college, including investigation of incidents or conduct that constitutes or leads to disciplinary action or proceedings against the student

Law Enforcement Records

continued

- Not exempt from FERPA are:
 - copies of law enforcement unit records that are maintained by a component of the college other than the law enforcement unit; and
 - any records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action by institution, or
 - copies of education records maintained by the law enforcement unit.

Exceptions to the Definition of “Educational Records”:

- Medical Records: Physician, psychiatrist, or psychologist treatment records of students.

Exceptions to the Definition of “Educational Records”:

- Alumni Records: Records that only contain information about a student after he or she is no longer a student at the College.

Exceptions to the Definition of “Educational Records”:

- Employee records:
 - ❖ Records relating to an individual who is employed by the College not as a result of his or her status as a student are excluded.
 - ❖ However, employment records relating to College students who are employed as a result of their status as students, such as graduate assistants or student workers, are considered education records.

DISCLOSURE

The general rule is absent prior consent, the institution may not release personally identifiable information without the student's consent. The consent must:

- Specify records that may be disclosed;
- State purpose of disclosure; and
- Identify party or class of parties to whom disclosures may be made.

Note--there are multiple exceptions to this general rule.

Directory Information

- FERPA identifies a category of information as “directory information,” which institutions may release without the student’s prior consent/permission.

Directory Information

The Buffalo State Rules

- Name, address, e-mail address, telephone number, dates of attendance, part-time/full-time status class, academic advisor.
- Most recent previous institution attended, major field of study, awards honors (includes dean's list), degree(s) conferred (including dates).
- Past and present participation in officially recognized sports and activities, physical factors (height, weight of athletes), date and place of birth, photographs.

Directory Information - “*Opt Out*”

- A student must inform the College Registrar in writing if they do not want their directory information disclosed to third parties.

School Officials and Legitimate Educational Interests

- FERPA permits the College to disclose education records to “School Officials” who have a “Legitimate Educational Interest.”

School Officials

- People employed by the College in administrative, supervisory, academic or research, or support staff positions.

School Officials (continued)

- People or companies, such as attorneys, auditors, collection agencies, or other entities with whom the College has contracted.
- Students serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks

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

Other Exceptions to the General Prohibition on Nonconsensual Disclosure

- To officials to comply with a judicial order or lawfully issued subpoena;

SUNY Counsel are always available to review and advise on compliance with court orders and subpoenas.

- To appropriate parties in a health or safety emergency. This is especially significant in light of the Virginia Tech tragedy;
- To officials of another school, upon request, in which a student seeks or intends to enroll;

Other Exceptions to the General Prohibition on Nonconsensual Disclosure (continued)

- In connection with a student's request for or receipt of financial aid, as necessary to determine the eligibility, amount, or conditions of the financial aid, or to enforce the terms and conditions of the aid;

Other Exceptions to the General Prohibition on Nonconsensual Disclosure (continued)

- To certain officials of the U.S. Department of Education, the Comptroller General, to state and local education authorities, in connection with certain state or federally supported education programs;

Other Exceptions to the General Prohibition on Nonconsensual Disclosure (continued)

- To accrediting organizations to carry out their functions;
- To organizations conducting certain studies for or on behalf of the College;

Other Exceptions to the General Prohibition on Nonconsensual Disclosure (continued)

- The final results of an institutional disciplinary proceeding against the alleged perpetrator of a crime of violence or a non-forcible sex offense may be released to the alleged victim of that crime, regardless of whether the institution concluded that a violation was committed.

Other Exceptions (continued)

- The final results of a disciplinary proceeding may be released to anyone, if that student is an alleged perpetrator of a crime of violence or non-forcible sex offense, and if it is determined that the student has committed a violation of the school's rules or policies.

Other Exceptions to the General Prohibition on Nonconsensual Disclosure (continued)

- Disclosure to a parent of the results of an investigation that the student (under the age of 21) has committed a violation with respect to the use and possession of alcohol or a controlled substance.

Redisdisclosure

- Institution needs to inform parties receiving education records that the information may not be further disclosed.
- Exceptions when disclosure is to:
 - parent or eligible student
 - directory information
 - court order or subpoena