

Legal/Safety Issues
for
Internships/Field Placements/Co-ops
Workshop

August 24, 2001

Family Educational Rights and Privacy Act*

I. History, Application and Purpose

- A. The Family Educational Rights and Privacy Act (FERPA) was introduced by Senator James Buckley to protect the confidentiality and accuracy of student education records. Also referred to as the Buckley Amendment, FERPA was enacted by the U.S. Congress in 1974. (20 U.S.C. § 1232g) Regulations implementing FERPA were first promulgated in 1976, and are found at 34 Code of Federal Regulations Part 99.
- B. FERPA applies to all public and private institutions of higher education that receive funds through programs administered by the Department of Education.
- C. FERPA provides certain rights to students regarding their education records. Generally speaking, FERPA:
 - 1. Prohibits disclosure of information contained in a student's education record to third parties without written permission of the student;
 - 2. Permits access by a student to his/her education records; and
 - 3. Allows a student to amend his/her education records.

II. Definitions

- A. Who is a "student"?

Any individual who is attending or who has attended the University and for whom the University maintains education records.

* This outline is a brief summary of a complex law, and does not contain all of the information that may be necessary to address any particular situation involving FERPA. If you have any questions about FERPA, please do not hesitate to call the Office of the General Counsel at extension 2340.

B. What is an "education record"?

Generally, an education record is any record directly related to a student and maintained by the University or a party acting for the University. A record can be in any form, including handwriting, print, computer media, video or audio tape, and film.

Some examples of information which constitute an education record include: grades; performance evaluations; courses taken; course schedules; and social security numbers.

Some examples of information which does not constitute an education record include: records that are kept in the sole possession of the maker of the record for use as a "personal memory aid"; and records that contain information about an individual after that person is no longer a student at the University.

C. What constitutes "disclosure"?

To permit access to, or the release, transfer, or other communication of information contained in a student's education records to any party by any means, including oral, written, or electronic means.

III. Disclosure of Education Records

A. Written Permission of Student Required

Generally, a signed and dated written consent from the student is required before a student's education records may be disclosed to a third party. Such consent must: 1) specify the records that may be disclosed; 2) state the purpose of the disclosure; and 3) identify the party or class of parties to whom the disclosure may be made. Third parties include a student's spouse, prospective or current employer, and the parent of a non-dependent student.

B. Written Permission of Student Not Required

1. In certain situations, information from a student's education record may be disclosed without the student's prior consent. Some examples of situations for which student permission is not required is when the disclosure is:

- a. Directory information, which is information designated by the University and which is not generally considered harmful or an invasion of privacy if released, **unless** the student has requested that his/her directory information not be disclosed. YSU has designated the following as directory information:

student's name; address (campus and home); telephone listing (campus and home); e-mail address (campus and home); date and place of birth; field of study; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; the most recent previous educational institution attended; and photographic, video or electronic images of student;

- b. To University officials who have a "legitimate educational interest" in the information. At YSU, an individual requesting information about a student shall be considered to have a "legitimate educational interest" in an education record if the information is necessary to fulfill his/her professional responsibility for YSU;
- c. To other educational institutions where the student seeks or intends to enroll;
- d. To certain federal or state or local educational authorities;
- e. In connection with financial aid for which the student has applied or received, if the information is necessary to:
 - i. determine eligibility for aid;
 - ii. determine amount of aid;
 - iii. determine conditions for aid; or
 - iv. enforce terms and conditions of aid;
- f. To accrediting organizations to carry out their functions;
- g. To a dependent student's parent or legal guardian, as defined by the Internal Revenue Code (*Note: Parents have no inherent right to their children's education records. To gain access to their children's records, parents must establish their student child's dependency or obtain the written consent of their child.*);
- h. To organizations conducting studies for, or on behalf of, educational institutions or agencies related to predictive tests, the administration of student aid programs, or for the improvement of instruction;
- i. In connection with a health or safety emergency; or
- j. In compliance with a lawfully issued subpoena or judicial order. While permission is not required from the student for disclosure in this case, the University generally may not disclose the requested information without prior notification to the student. *If you are served with a subpoena or receive any other legal document seeking information about a student, please contact the Office of the General Counsel so that we may assist you in responding.*

C. Limitations on Redisclosure

Generally, the University may disclose information from an education record only on the condition that the party to whom the information is disclosed will not further disclose the information to any other party without the prior consent of the student, and will use the information only for the purposes for which the disclosure was made. Exceptions to this requirement include disclosures made pursuant to a health and safety emergency, a

subpoena, disclosures of directory information, and disclosures to parents of dependent students.

IV. Students' Right to Inspect and Review Education Records

A. A student may inspect and review:

1. His/her own education records. The University must provide the records within 45 days of a request and reasonably provide explanation and interpretation of the records. Records may not be destroyed if there is an outstanding request for inspection.

B. A student may not inspect and review:

1. Information contained in his/her education record concerning another student;
2. Financial records of the student's parents;
3. Confidential letters and statements of recommendation if:
 - a. the student has waived in writing the right to inspect and review the letters and statements; and
 - b. the letters or statements are related to the student's admission to an educational institution, application for employment, or receipt of an honorary recognition.

However, the student may request the names of persons providing letters and statements.

V. Students' Right to Amend Education Records

If a student believes that his/her education records contain inaccurate or misleading information, the student may request an amendment of the records. If the University agrees with the requested amendment, it will amend the record and notify the student in writing. If the University does not agree, it must inform the student in writing and advise the student of the right to a hearing.

The hearing must meet the following minimum requirements: the hearing must be held within a reasonable time after the request; the student must be provided with reasonable notice of the date, place and time of the hearing; the individual conducting the hearing must not have a direct interest in the outcome; the student must have a fair opportunity to present his/her case; and a decision must be rendered in writing within a reasonable time after the hearing, must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

If the decision after the hearing is to not allow the requested amendment, the student will be advised that he/she may place a written statement in the file contesting the information. If the student elects to place such a statement in the file, the statement must be maintained with the contested information and disclosed in conjunction with disclosure of the contested information.

VI. Enforcement

The Family Policy Compliance Office of the U.S. Department of Education is responsible for administering FERPA. The Office reviews and investigates complaints of non-compliance. A failure to comply can result in the withholding of federal funds to the University.

Contact information for this office is:

Family Policy Compliance Office
U.S. Department of Education
400 Mayflower Avenue, SW
Washington, D.C. 20202-4605
(202) 260-3887
<http://www.ed.gov/offices/OM/fpco/>

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