



THE LEGAL ISSUE

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FERPA: What Is It And How Does It Apply To CU?

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The University of Colorado's new Administrative Policy Statement ("APS") entitled "Access to Student Records" goes into effect on May 1 of this year. The APS directs each campus to develop guidelines and procedures to ensure the responsible management of education records in compliance with the **Family Educational Rights and Privacy Act** ("FERPA"). This article is intended to serve as a refresher of FERPA principles as each campus reviews its current FERPA guidelines and procedures and makes any necessary changes in order to comply with the APS.

A draft of the APS is available at <https://www.cusys.edu/policies/drafts/CUonly/Access-Student-Ed-Records.pdf>

During the early 1970's, privacy issues in all areas became hot political topics. Parents and students submitted horror stories of schools creating education records and then refusing to allow the parents and students to look at the contents of those records. Students were being passed over for honors and university admissions, and were being disciplined for reasons that were not disclosed. Not only were students not allowed to correct their own education records, but in some cases, students were being refused access to their own records. In response, Congress passed FERPA, a federal law governing the privacy of education records. FERPA grants four specific rights to any student who is or has been in attendance at an institution of higher education in relation to their education records:

1. The right to inspect and view education records;
2. The right to seek amendment to education records if there are inaccuracies;
3. The right to consent to any disclosure of education records; and
4. The right to file a complaint with the U.S. Department of Education FERPA Compliance Office.

In connection with the third right listed above, FERPA imposes certain restrictions on the ability of any federally-funded school, college or university to release information pertaining to a student's education record. Because all University of Colorado campuses receive federal funds, each campus has adopted procedures that comply with FERPA restrictions.

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What are Education Records?

As stated above, students who are or have been in attendance at a campus of the University of Colorado are entitled to inspect and review their own education records. "Education record" is broadly defined and includes virtually all information directly related to the student regardless of how the record is maintained and who maintains it, i.e., an education record consists of paper as well as electronic data. Besides grades, education records include information such as test scores, evaluations, financial aid records, papers or assignments submitted by the student, housing records, and other similar information about a student maintained by an instructor, counselor, or any other school official.

FERPA specifically excepts the following from its definition of education records:

- Private notes of individual faculty or staff members, if the notes aren't accessible or revealed to any other person except one performing the same function temporarily;
- Campus police records;
- Medical/counseling records used for treatment;
- Financial records of a parent or spouse; and
- Aggregate (statistical) data that contains no personally identifiable information about a student

FERPA prohibits the improper disclosure of a student's education records by any person connected to the University, including faculty and administrators. The right to protect an education record "belongs" to a student once he or she enrolls at the University; therefore, even the parents of the student do not have any right to obtain any information pertaining to the student's education record unless the student authorizes such disclosure in writing or the parent provides the University with a signed copy of his or her most recent federal tax return demonstrating that the student is the parent's dependent for tax purposes.

What Student Information Can Be Disclosed?

Directory Information

With the passage of FERPA, Congress attempted to create a balance between a student's right to privacy and the institution's need to release certain types of information that would not generally be considered private or confidential. Directory information includes the following student identifiers¹:

- Student name;
- Address;
- E-mail address;
- Telephone number;
- Dates of attendance;
- Registration status;
- Class level;
- Major field of study;
- Awards, honors, and degrees conferred;
- Past and present participation in officially recognized sports and activities; and
- Physical factors (height and weight) of athletes.

Although these items are designated by the University as directory information, the University retains the discretion to refuse to disclose directory information if it believes the disclosure would be an infringement of students' privacy rights. Moreover, a student can request in writing that his or her directory information not be disclosed and that request must be honored by the University. Prior to disclosing "directory information" to anyone, you should consult with your campus registrar to determine whether your campus releases student directory information and whether a student has placed a privacy block on his or her directory information.

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¹ The Boulder and Colorado Springs Campuses have designated additional information as directory information. You should consult your campus registrar for a complete list of what your campus has designated as directory information.

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Other Exceptions

Non-directory information contained in education records may not be disclosed, unless the information falls within one of FERPA's exceptions that allows for its release. For example, FERPA provides that the University can disclose non-directory information:

- To University faculty or staff members with a legitimate educational interest
- To officials from other education institutions in which a student intends to enroll
- To state and local education authorities
- When responding to a lawfully issued subpoena or judicial order. If your office receives a subpoena or judicial order, contact the Office of University Counsel immediately.

FERPA also allows the release of student information to appropriate parties in emergency situations, but only if the information is necessary to protect the health and safety of the student or other individuals.

In creating the rights outlined by FERPA, Congress charged the U.S. Department of Education with enforcing its provisions, including the authority to revoke federal funding from an institution found to have violated students' rights under FERPA. With that in mind, it is important that University employees with access to students' education records use great care to not improperly disclose information from such records.

More Information

Each campus has its own procedures regarding FERPA compliance and the release of student information. The **Boulder Campus's** Notice of Student Rights and Procedures on the Designation and Release of Directory Information is available at http://registrar.colorado.edu/regulations/ferpa_confidentiality_records.html. The **Denver and Health Sciences Center Campuses'** Notification of Student Rights is available at <http://www.cudenver.edu/Student+Life/NSO/FERPA.htm>. The **Colorado Springs Campus's** FERPA Notice of Student Rights is available at <http://www.uccs.edu/studentsuccess/newsite/pates/currentstudents/ferpa.html>.

Specific questions should be directed to your campus registrar.

FERPA: Common Questions and Answers

By Jennifer Watson, Senior Staff Associate/Researcher, UCDHSC
and Jessica Chavez Salazar, Staff Associate/Researcher, UCB

Education Records and Rights Involved

Q. If a student is employed by the University, do her employment records fall under FERPA?

A. Student employment records are part of education records only if the employment is dependent on the student's status as a student. Therefore, employment records of graduate teaching or research assistants, work-study students, etc., *are* education records and FERPA clearly applies. Access to and release of those records are governed by FERPA.

Q. Are records of campus disciplinary proceedings considered protected education records under FERPA?

A. Yes. However, FERPA **permits** the University to disclose the results of a disciplinary proceeding to the victim of a violent crime. In addition, under the Student Right-to-Know and Campus Security Act, when a sex offense is involved, The University is **required** to disclose the results of a disciplinary proceeding to both the accused and victim.

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FERPA: Common Questions and Answers

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Q. May a student's transcripts be released to his parents or spouse?

- A. Any student enrolled in an institution of higher education, regardless of the age of the student, is protected by FERPA. In order to obtain access to a student's transcripts or other education records, the parent must either submit a written consent from the student or prove that the student is a dependent student, as defined in the Internal Revenue Service Code.

There is no "spousal" exception to FERPA. Information in a student's education record cannot be disclosed to a student's spouse without written consent from the student.

Q. What are the rights of alumni with respect to education records?

- A. FERPA protects the education records of former students, but the University may release a former student's directory information, even if he or she requests nondisclosure. FERPA does not protect the education records of deceased students, although a campus may institute privacy policies addressing records of its deceased students.

Q. What if we receive a request for a list of all female African-American students?

- A. We cannot comply with this request. Neither gender nor race is considered to be directory information and the release of this information would violate the law. FERPA specifically prohibits the release of a student's social security number, race/ethnicity, and gender.

Q. How do we respond if we receive a subpoena requesting portions of a student's education record?

- A. Generally, education records may be released in order to comply with a lawfully issued subpoena. However, the student must be notified in advance of the release of any records. All subpoenas must be promptly directed to the Office of University Counsel.

Directory Information

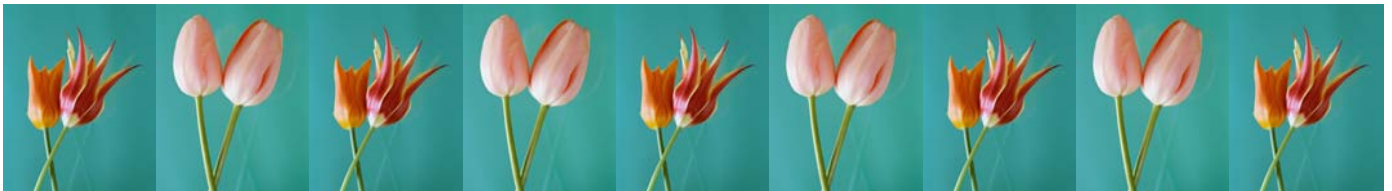
Q. Does FERPA require the release of student directory information?

- A. FERPA permits the University to designate specific portions of a student's education record as "directory" information, which information the University **may** disclose to third parties without obtaining the student's written consent. However, FERPA does not **require** the University to release this directory information.

Q. Is there any way a student can restrict the disclosure of directory information?

- A. Students have the right to request that their directory information not be disclosed to third parties, i.e., the student may place a privacy block on his or her directory information. Before releasing directory information, records custodians must check with the registrar's office to determine if the student has placed a privacy block on his or her directory information. Please consult your campus policies or contact your campus University Counsel with questions regarding what information qualifies as directory information.

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FERPA: Common Questions and Answers

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Legitimate Educational Interest

Q. What is a "legitimate educational interest"?

A. The University official probably has a legitimate educational interest if the official is participating in activities related to the education of a student, which may include the following examples:

- Performing a task specified in his or her position description;
- Performing a task related to a student's education;
- Performing a task related to the discipline of a student;
- Providing a service or benefit related to the student;
- Providing a service or benefit relating to a student's family; or
- Maintaining campus safety and security.

Q. May a career advisor access a student database containing records on students other than the students directly working with the advisor?

A. Under FERPA, the advisor may be permitted access to the database, provided that the advisor is instructed not to access the records of students other than the students with whom he or she is directly working. An official who has access to a data base that contains the records of many students should not, and in fact does not have authority to, review the records of students unless that review is supported by a legitimate educational interest.

Q. The local Rotary Club scholarship committee has requested the grade point averages for the children of club members in order to award academic honors. May we provide this information?

A. While this may appear to be a "legitimate educational interest," the individual or entity requesting the information is not a "university official." Therefore, the scholarship committee may not have access to the information requested without the written consent of the students in question. Only a **University official** with a **legitimate educational interest** may access a student's education record without written consent.

Q. How do we handle emergency situations where access and review of a student's education record may be necessary?

A. Under FERPA, non-directory information may be released if the information is "necessary to protect the health or safety of the student or other persons." This exception is strictly construed and may only be used in the case of a bona fide emergency. Remember that any University official with access to student information is responsible for the proper handling of the records and must be prepared to be held accountable for the handling of those records.

How FERPA-Savvy Are You?

By Jennifer Watson, Senior Staff Associate/Researcher, UCDHSC,
and Jessica Chavez Salazar, Legal Staff Associate/Research, UCB

Test your knowledge with this quiz. Answers are at the end.

1. A student acquires FERPA rights when:
 - a. the student completes her application for admission.
 - b. the student is formally admitted to the institution.
 - c. the student fully pays her tuition bill.
 - d. the student registers and attends her first class.

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How FERPA-Savvy Are You?

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2. To be considered an "education record" under FERPA, the information must be:
 - a. kept in the Office of Admissions.
 - b. personally identifiable to the student.
 - c. maintained by the University.
 - d. all of the above.
 - e. b and c only.
3. Directory information may contain all of the following EXCEPT the student's:
 - a. address.
 - b. phone number.
 - c. class level.
 - d. class schedule.
4. Which of the following method(s) of posting grades is/are prohibited by FERPA?
 - a. posting grades using student ID numbers.
 - b. posting grades using student social security numbers.
 - c. posting grades using student names.
 - d. none of the above.
 - e. all of the above.
5. Under FERPA, which of the following is **not** an "education record"?
 - a. a student's campus speeding ticket.
 - b. a student's grade point average from last semester.
 - c. the time frame in which a student lived in the residence hall.
 - d. the amount of grant money received from the federal government.
 - e. a work-study student's employment record.
6. According to FERPA, parents of a non-dependent University student:
 - a. have the same rights of access and review as the student.
 - b. may only review their student's records after receiving permission from a senior administrator.
 - c. may only review their student's records and grades if the parents have paid for a portion of the student's tuition bill.
 - d. none of the above.
7. After a student requests to review his education records, within what time frame must the University comply?
 - a. 10 days.
 - b. 20 days.
 - c. 25 days.
 - d. 30 days.
 - e. 45 days.
8. Faculty have a right, for any reason, to review education records of any student attending the University:
 - a. True. Faculty are considered University officials and have access to all records.
 - b. False. Faculty must demonstrate a legitimate educational interest to access education records.

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How FERPA-Savvy Are You?

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9. A mother calls to get her son's class schedule so that she can have a care package delivered. This is permissible under FERPA.
 - a. True. The University should accommodate considerate mothers.
 - b. False. A student's class schedule is considered an education record.

10. A student reviews her education record and believes that a portion of that record is false. FERPA provides the student the right to:
 - a. a hearing to challenge information she believes is incorrect.
 - b. have her record reflect her objection.
 - c. have an attorney present at a hearing.
 - d. have the University pay for any investigation necessary to resolve her objection.

Quiz answers: 1.d, 2.e, 3.d, 4.e, 5.a, 6.d, 7.e, 8.b, 9.b, 10.a.

All questions regarding access to student records and FERPA should be directed to your campus registrar's office.

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|---------------------------|----------------|----------------|
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