

# FERPA

## CSI – Investigations from the Field

**Traci Gulick**

**Michigan State University**

**Associate Registrar**

**Academic Records & Certification Services**

Much of the content in this following presentation was obtained directly from the 2010 FERPA Guide.

American Associate of Collegiate Registrars and Admissions Officers. Rooker, L., Falkner, T. M., Hicks, D. J., Myers, B. A., Shirley, S. (2010). *2010 FERPA Guide*. Washington D.C.

# Outcomes

- Establish a more solid understanding of FERPA
- Further your comfort with the nuances of FERPA
- Expand your skill at applying FERPA

# The Process

- Group discussions related to specific case study
  - Presented with a hypothetical situation
  - How do you collect the evidence to inform your decision
  
- Group presents findings to entire audience
  - Minority report is encouraged – remember FERPA is nuanced
  
- The “answer” is revealed

# Collecting the evidence

- Is the item in question a student education record and therefore covered by FERPA?
- Is the person a student: does FERPA apply?
- What parameters bound the access: signature required? Copy required? Immediate release?
- What is the interplay of must vs. may: do you have to release information?
- Is the entity in question a school official? Or provide a service for us?
- Is the information in question covered under “Need to Know”: job related?
- Is the subject of the request a dependent: release to parents? Without signature?
- Is the information considered directory information: Is it listed in the annual notification? Is there a “restriction” in place?
- Are there other institutional, state or federal policies or procedures that influence the decision?
- Is the information being requested personally identifiable? If not, do I need written consent?
- If you don’t need written consent, what exception in FERPA allows for this release?
- What recordation requirement is there with the release?

## But how long did she take?

Your office receives a call from a degree verification service. The caller wants to verify that a student received a bachelors degree from your institution, and the major and conferral date. As part of her request, the caller provides you with the student's SSN and asks you to confirm the information

Your office confirms the information requested, since degrees received and majors are designated as directory information.

Is there a FERPA problem in your office's response?

# Answer

There is a FERPA problem by having the SSN. By verifying using the SSN you are making a disclosure of information from the student's education record that is not part of directory information. Therefore, this is a FERPA violation.

To avoid this being a problem, you could indicate you are verifying the degree information but not the SSN.

# Preparing for disappointment

You have an international student who is going to be suspended by your institution at the end of the day for academic misconduct. Your dean of students just contacted you and wants to inform the parents of the action before the suspension meeting occurs.

What do you tell the dean? How did you come to your conclusion?



## Answer

Since this student is an international student, he or she does not qualify for the “dependent student” clause in FERPA since the parents do not file US taxes. However, if the dean has a legitimate health or safety concern for either the student or the campus community then he or she could contact the parents. If the dean chooses to contact the parents under the health or safety emergency exception, FERPA requires that the dean record in the student record what was shared, why it was shared and with whom. See § 99.31(a)(10)

## What a revolting situation

A student is found guilty of assaulting another student on campus. The victim wants to know what is going to happen to the person who assaulted him? His parents also are calling to find out the results of the judicial hearing.

What can you tell the student? What can you tell the parents? What if the perpetrator had been found “not guilty?” Which FERPA provision(s) might apply?

## Answer

In this situation, both FERPA and the Clery Act play a role in this issue. Under the Clery Act, the institution is required to disclose the outcome of a disciplinary proceeding to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, regardless of the outcome.

Regarding disclosure to the parents... if the student is found guilty of violating the campus code, the results of the disciplinary hearing can be shared. But, if the student is not found guilty, the results can not be disclosed to the parents.

# The reference letter

The Dean of the College of Letters and Sciences tells you he received an email from a student requesting a letter of reference be sent out immediately (the student was a finalist for an “amazing job”.) He said he did so and included the following in the letter, “this student was a great leader, had a 3.67 GPA but was a 4.00 student her last year after overcoming significant personal, financial, and academic hurdles. She was a great example of how one effectively deals with adversity.” The Dean was surprised that the student had filed a compliant as a result of the letter being sent.

Is there an issue here?

Which FERPA provision(s) might apply?

## Answer

Yes. When a recommendation letter is being provided it is okay to provide that person's personal observation or knowledge without obtaining a written consent from the student. However, if the individual providing the recommendation letter is including any type of personally identifiable information obtained from the student's education record, such as grade or GPA, a written consent from the student is required. The consent must specify the records that may be disclosed, the purpose of the disclosure and to whom the disclosure can be made. As soon as the Dean indicated her GPA without the written consent, it became a FERPA violation.

# Donor relations

You have a donor who wants the following information on his scholarship recipients: Name, GPA, class rank, estimated family contribution, bill, co-curricular activities, essays written for the scholarship, and career plans.

Under what conditions can you provide information to the donor? What information can you provide?

## Answer

This could be provided under the Financial Aid exception in § 99.31. The disclosure of such information is permitted in order to determine eligibility for the aid, amount of the aid, conditions for the aid and/or enforce the terms and condition of the aid. The question often arises regarding third parties that are not affiliated with the university, such as a donor of a scholarship. As stated in the 2010 FERPA Guide “At the very least, it is appropriate to provide enough information to establish basic eligibility to receive the aid.”

# Graduate student doing research

A student in a masters degree program contacts you about using admissions and current student data and linking it with admissions data to study the potential impact of certain incoming admissions characteristics and self-reported success measures data on student retention and persistence. The graduate student hasn't gone through the institution's human subjects board.

You wonder if you can release this data?



# Answer

If your institution determines that this study would be helpful, the “Studies Exception” clause in FERPA § 99.31(a)(6) could be used so long as there is a written agreement in place.

But...it is extremely important and necessary for the graduate student to go through the institution’s human subjects board for approval. The Institutional Review Board (IRB) is an administrative body established to protect the rights and welfare of human research subjects. Federal regulations require all proposed human research studies to be reviewed by the IRB. Until this happens, the student has not met the minimal standards for protecting personally identifiable data for research – namely storage, protection, and deletion requirements.

# Accommodations discussion

Your campus accommodations office has received many requests from faculty members requesting detailed information about students who have been granted an accommodation in the classroom. They are very concerned about sharing this information.

Is this information an education record or a treatment record? Can they share it? What about HIPAA?

# Answer

This information is an education record because the staff members in the accommodations office are not considered medical providers. That office could in turn share detailed information with the instructors, if the instructors have an educational need-to-know concerning the record. This does not mean that every instructor should/could have access to all information about every student. There are additional rules under the Americans with Disabilities Act that needs to be adhered to.

## Non-credit: Are they students?

Your institution's continuing education unit wants to know if the records it maintains on those who have taken its offerings (non-credit bearing offerings) are considered education records.

What is the right answer? What if these aren't kept in the central system?

# Answer

If the information being maintained contains personally identifiable information (such as a name) and the institution maintains it, the data is an education record and the institution must comply with the FERPA regulations regarding access.

## Yearbooks and photos

One of the departments at your institution wants to create an on-line yearbook of all their graduates. They do not want to have to contact all past graduates to get their permission to do so.

Can they post only photos of graduates but not post their names? Would they need to get permission of all the students to post with names?

# Answer

The crux of this scenario is whether or not photos are designated as directory information at the institution. If so, then it is fine to post the photos, taking into consideration that they can't post the photos of students who have chosen to suppress directory information. If the institution hasn't designated photo as directory information then they would absolutely need to get permission to post the photos, even without names.

## Returning to face the consequences

A student on your campus left before completing the conduct process associated with his disruptive behavioral issues. He now wants to return to campus but in order to do so he must complete the outstanding components of his conduct process. He has requested to view his disciplinary record. Your conduct office has asked you “Are we required to show him all reports (i.e., emails) from staff? If so, can we white out names? We have staff members who are apprehensive about retribution.”

What is your response?



# Answer

One of the three primary rights students have been given under FERPA is the right to inspect and review their education records, which are any records that directly relate to a student and are maintained by the institution. In this case, any and all reports maintained are considered part of the education record, therefore, under FERPA, must be viewable by the student if they request. All personally identifiable information regarding another student must be redacted, but all other information remains for inspection. Therefore, whitening out the names of staff members is not advised and should be displayed to the student.

## Knowing too much by accident

You have been contacted by a high school guidance counselor who informs you that she knows for sure the principal of her school wrote an entirely false letter of recommendation for his younger sister as part of her admissions file. The admissions counselor found out from a former colleague in admissions at the college the principal's sister had applied for admission. The guidance counselor wants to know if she can contact the admissions office and "blow the whistle" on this falsification and she asks your advice.

Does FERPA allow this information to be shared?

# Answer

Because the student never attended the school in which the letter was written about, it is not part of the education record and is not subject to FERPA. The guidance counselor can do whatever she would like with the information.

## Donor relations

Your advancement office is planning a golf fundraiser for the student scholarship fund. They have requested that the financial aid office supply them with the parent's email addresses from students FAFSA documents. The director of financial aid asks you for your opinion on the request.

Would you authorize this as a legitimate use of data?

# Answer

No. The parent's email addresses were supplied on the FAFSA documents for financial aid purposes only. Using the email addresses for any other purpose than intended would be prohibited.

## Immunization records: HIPAA or FERPA

Your state requires proof of immunization for new students before they are allowed to attend orientation and enroll. There is debate on your campus about the status of the proof of immunization.

Are these covered by HIPAA or FERPA? What would make you change your mind?

# Answer

It depends. If the proof of immunization is provided by the student to the institution, they are considered education records and covered under FERPA. If the proof of immunization is provided by a physician directly to the health unit of the institution, they are considered treatment records, therefore covered under HIPAA.

# The rest of the story

The admissions director at another institution contacts you concerning the authenticity of a transcript from your institution submitted by an applicant. In reviewing the copy, you determine that it is a fraud. The student in question was also placed on disciplinary probation. Wanting to set the record straight, you fax the disciplinary record to the Admission Office of the other institution, as well as verify that the transcript is bogus. The student files a complaint with the FERPA Compliance Office against BOTH institutions, stating that she did not sign a release to allow the sending of any of those records between the schools.

Guilty? Not Guilty? Defend your action under FERPA.

What if the former student is now in attendance at the other institution?



# Answer

Not guilty. The FERPA regulations finalized in 2009 clarify that an institution can re-disclose non-public information back to the originator of the data to verify its authenticity. So returning the transcript and the original school stating it is fraudulent is acceptable. The regulations also state that it is acceptable for a school to share parts of the education record, including disciplinary records, to the school a student is planning on attending or already attending if it is pertinent. So sharing the disciplinary record is acceptable too.

**What if the former student is now in attendance at the other institution?**

It is still OK.

# All I want to know is what she owes!

You are contacted by your bursars office regarding a mother who called to find out the balance on her son's bill so she can send in a check. Your institution has an online application where a student can provide this information to his/her parents, but this student hasn't done so.

What can the bursar tell the mother?

Which FERPA provision(s) should be considered?

# Answer

The content of a student's bill is not considered directory information and should not generally be shared with third parties, including parents. If your institution has a policy that you will release non-directory information to parents of dependent students, you can get proof of dependency and then share this information.

# Payment means permission

A rather well dressed individual comes to the financial aid office, and states “I would like to see my son’s financial aid award, the basis for the family contribution, and discuss the loan stipulations before I make a payment.” Your institution has a policy of releasing student education record information to parent’s of dependent students. You discover that the individual making the request, while confirmed as the father, did not claim the student as a dependent (the mother did).

Can the information about the son be released?  
Which FERPA provision(s) might apply?

# Answer

FERPA stipulates that if one of the parents claims the student as a dependent, both parents may have access to the information regardless of the custodial nature of the family. So, in this case yes the information can be shared with the father as well as the mother.

## Calling everyone (almost) on the carpet

A student brings to your attention that one of his faculty members sent an email to 2/3 of the class (using the “To” field) informing them that their performance is “the worst in her entire teaching experience.” The faculty member then went on to say that “If you fail, which, at this point, most of you will...” and that they would find it difficult to enroll in the course in a future term. The student was very concerned that other students knew his status in the course.

Is this a FERPA violation?

# Answer

Yes. Any information that is FERPA protected (not directory information – in this case, grade status in the course) may not be released in any way that would make the student's identity easily traceable. Because two thirds of the students were specifically identified in the "To" field to each other, coupled with the statement that most of the student will fail the course, tracing this would be fairly easy.

## And how did you do?

It is common practice for your faculty to return graded exams/papers by placing them in an alphabetical pile on the table in the back of the room. Students are informed that they can pick their exam/paper up after class ends. Grades are always on the front of the exam/paper – usually fairly large and red.

You are notified by the Family Policy Compliance Office that a student has filed a complaint about this practice.

You're a bit baffled, your campus has returned exams and papers this way forever. Is this a problem?



# Answer

Since the graded materials are viewable/accessible by people other than the subject of the exam/paper this is a FERPA violation. Graded materials should always be returned in a secure manner in which the subject is the only one who can access the information. For example, graded materials can be returned in sealed, addressed envelopes or by a person in a central office who checks IDs.

## Student athlete

A former football player has graduated, but now questions have arisen concerning possible favored treatment of this athlete. An investigative report is ordered, and the student newspaper has requested a copy under your state FOIA.

What do you do?

# Answer

Even though the student is an athlete, FERPA applies the same as it does to all other students in general.

Of course, as a public institution, there may be an state open records law that you need to be aware of that could have some bearing on this situation.

In Michigan, if the records can not be disclosed under FERPA, than they can not be disclosed under MI FOIA.

# Witness protection, really?

You have a student who is stating that his family is in witness protection. The family does have the paperwork to show their identities have been changed and they have new SSNs. The student wants to only work with one person in the office. Your office isn't staffed to allow for this type of heightened security.

Is there a FERPA issue?

Do you have to provide the heightened security?

How do you work with the record of the former student, since there is now a new record?

# Answer

This is not a FERPA issue. Restricting directory information is, but this is much more than simply restricting directory information. As an institution, there is no requirement to provide heightened security. But for the protection of the student, it is best for the institution to provide the heightened security if at all possible.

The records would have to be merged under the new record with any previous name being eliminated from the record.

## Ease of combining sections

An instructor on campus who teaches multiple sections of the same course contacts you about combining sections in Blackboard. The result would be that students from all sections this instructor teaches would see the names and interact with other students enrolled in the same course.

Is there a FERPA concern with doing this? Is it different if you take it out of the on-line world and back into a bricks and mortar classroom? What about if the combined sections are taught by different instructors?

# Answer

According to the 2009 amendments to FERPA, students cannot be “anonymous” in class, even if it is an online class. As stated in the 2010 FERPA Guide “While grades and other personally identifiable information that relates to the student’s progress in the class cannot be disclosed, it is appropriate that contact information be shared if the class includes online discussions.” This is true for all courses, online or not. If the course requires communication of some sort for everyone in the class, then having necessary information, such as student names, is important and crucial and is not a FERPA concern. Combining sections though would not be advised if they are run as separate entities. Just as we wouldn’t give a list of all the students enrolled in section 1 of Chem 1001 to the students enrolled in section 2 of Chem 1001.

# Announcing accepted applicants

Your admissions office wants to release the name, high school and state of all admitted applicants to the currently enrolled student body of the college. They have argued that doing so will encourage students from home states/high schools to encourage applicants to choose your institution. Your campus does not release any parts of the application to third parties, without permission from the applicants. Your admissions office is pressuring you to allow them to do this as they are convinced it will assist with their yield.

Does FERPA allow you to release this information?



# Answer

Technically applicants are not covered by FERPA and so releasing this information would not be a FERPA violation.

## Ramifications of sharing notes

An adviser shares her notes about a student with a staff member in student affairs. The staff member is student affairs is convinced that since these notes were shared under the “educational interest” since this student is exhibiting behaviors that are concerning, they still qualify as sole possession notes. The student has requested access to these notes.

Does the student have a right to see these notes? Why or why not?

# Answer

Yes. “Sole Possession” notes are those notes that are kept in the sole possession of the creator of that particular record and not shared with anyone else, except a temporary substitute. As soon as the record was shared with the student affairs staff member, the record is no longer a “sole possession” note and is now a part of the education record and subject to review by the student.

# We have to lick all 10,000 envelopes?

Wanting to do their fair share to meet the institution's \$3 billion goal, the Alumni Association decide to send a mailer to all alumni – asking them to “Please Dig Deep.” To expedite the mailing to the 10,000 alumni in the database, it is determined an outside vendor is needed to generate the letters, update addresses, and to stuff and mail the mailers. The vendor informs you that in order to do all the steps, they will need student name, SSN, most recent address, and graduation date. Your institutional research office responds that they cannot release the list of information to the vendor, as it is a FERPA violation to release the data requested to a vendor.

What is the answer here? Are there recent FERPA changes to consider?

# Answer

External agencies or companies are often hired by institutions to perform a service or function that it would normally perform itself. When this occurs an agreement/contract is established and outlines that the outside vendor is operating as a legal agent of the institution. Based on the agreement/contract, the outside vendor has access to obtain and use student data as necessary to carry out the agreement/contract.

Even though the outside vendor has the right to this information, it is still important to consider the information that is being released and question whether or not it is necessary. For example, I question why a SSN is needed to generate letters, update addresses and stuff and mail the mailers. It may be necessary, it just needs to be questioned under FERPA.

## We only want the best

The National Society of Collegiate Scholars (NSCS) is starting a chapter at your institution. You have received a request from the NSCS for a list of all students who have completed at least 3 semesters with a GPA of 3.75 or better.

Can you provide NSCS with the requested information?

## Answer

Honor societies are like any other third party requesting information; they can have non-suppressed public information. It isn't acceptable to sort data based on a private data element like specific GPA. If you have designated awards and honors as a directory data field, you could give them a list of all students who have not suppressed their directory information who have achieved honors or dean's list. They could send their solicitation to these students. You could also offer to send the enrollment request on behalf of the organization to the students who meet the criteria.

# Summary

- FERPA has many more “mays” than “musts” and the “mays” aren’t always black and white
- Competence and comfort FERPA comes with practice
- Ask others how they interpret the question/issue
- Develop a strategy for determining if key elements of FERPA are met or need to be met



# Conclusion

The best FERPA protection for education records is FERPA knowledge and training.

Understanding FERPA is not just an obligation, it is the right thing to do.

# Some Resources

AACRAO website: <http://www.aacrao.org/compliance/ferpa/index.htm>

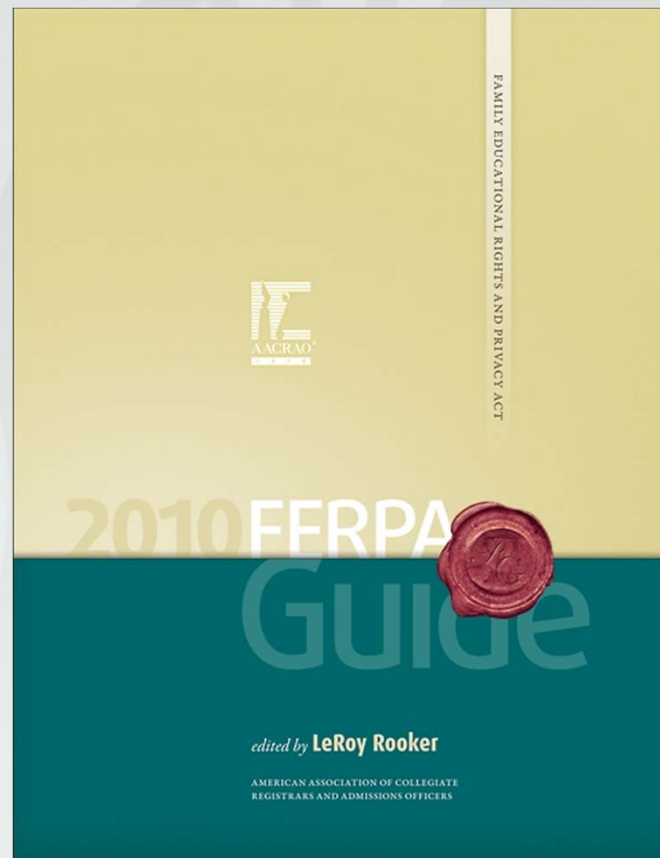
AACRAO FERPA Guide 2010

FERPA Quick Guide 2010

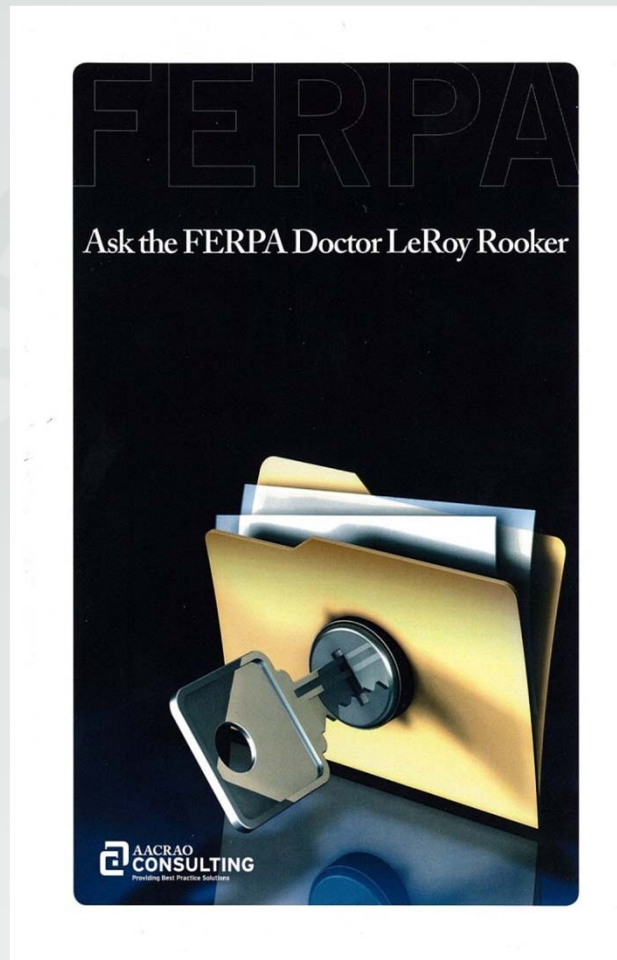
– [www.aacrao.org/publications/](http://www.aacrao.org/publications/)

FPCO website: <http://www.ed.gov/policy/gen/guid/fpco/index.html>

# AACRAO 2010 FERPA GUIDE



# AACRAO FERPA Consulting



# Questions???

Traci Gulick

Associate Registrar

Michigan State University

[gulickt2@msu.edu](mailto:gulickt2@msu.edu)

517-353-3881