

FERPA 101: A PRIVATE CONVERSATION

Presented by Arturo Torres
Central Washington University Registrar
Arturo.torres2@cwu.edu



Agenda

- > **FERPA Basics**
- > **Key Definitions**
- > **Pitfalls to Avoid**
- > **Your Questions**



How well do you know FERPA?



> 1 Finger

- FERPA, huh? I thought this was the weekly staff meeting!



> 5 Fingers

- I could hold my own if a man with a badge appeared!



> 10 Fingers

- I know this and am just here for moral support of my friends and co-workers!



In Plain English

1

Right to
inspect and
review
educational
records

2

Right to
control
disclosure of
information
from
educational
records

3

Right to
seek
amendment
to incorrect
educational
records



Who is Responsible for FERPA?

- Typically the Registrar
- **Who else should care? Everyone!**
 - Financial Aid
 - Business Office
 - Legal Counsel
 - Counseling and Advising
 - President's Office
 - Athletics
 - Faculty
 - Departments
 - Etc.
- Anyone with access to student records, including student employees



Who has FERPA Rights?

- **All students attending an institution of higher education receiving federal Title IV funds, regardless of age**
- **All students for whom records are maintained, regardless of method**
- **Parents lose rights when student is in attendance, regardless of age**
- **Students retain all FERPA rights until deceased**



Considering Releasing Student Data?

Ask yourself the “W” questions:

- **Why am I being asked to release student data?**
- **Who is asking?**
- **What student release is needed?**
- **What determines that this is a student record?**
- **What is the record being requested?**
- **Where is this student record going?**
- **Where do I need to record that it was released?**



FERPA Annual Notification Requirements

- **Right and method to inspect and review**
- **Right and method to seek amendment**
- **Right to file a complaint with the DoE**
- **Directory information**
 - **Defined by institution**



Signature of Release

Should include:

- 1) Record(s) to be released
- 2) To Whom
- 3) Purpose

Can be:

- 1) Submitted to the institution
- 2) Submitted to a third party
- 3) Electronic signature



Eight Data Points You May Not Release!* **(Even to parents paying the bills)**

- **Social Security Number**
- **Citizenship**
- **Gender**
- **Ethnicity**
- **Religious preference**
- **Grades**
- **GPA**
- **Daily class schedule**



***Except to students and school officials**



Important FERPA Terms

- **Student**
 - Anyone attending your institution, of any age
- **Student Record**
 - Any information or data recorded in any medium
- **Educational Record**
 - Any information directly related to a student, maintained by an educational agency or institution
- **Directory Information**
 - Student info that would not be harmful if disclosed
- **School Official**
 - Member of an institution acting in a student’s educational interest, limits on “need to know”



What Exactly is a Student?

- **In attendance**
 - **Institutionally defined**
- **All students for whom records are maintained, regardless of method**
- **Rights begin when in attendance regardless of age**
 - **Parents lose right at 18 or when attending**
- **Acquire all FERPA rights when a student**



What is Attendance?

- **Classroom Attendance**
 - **In-Person**
- **Video conferencing, satellite, or internet**
- **Telecommuting**
- **Skype or Facetime**
- **It does not matter whether a person attends in-person or online**



FERPA Allowed Directory Information

- > Central Washington University classifies the following as “directory information”:

- > Student name
- > Telephone number
- > University & permanent addresses
- > Previous institutions attended
- > Major field(s) of study
- > Participation in officially recognized sports and activities
- > Achievements and academic awards or honors
- > Degrees conferred (including dates)
- > Photographs
- > Years of attendance and terms enrolled
- > Height and weight of members of athletic teams



What is an “Opt-Out”?

- **Code in your system to acknowledge students’ decision to opt-out of directory information release**
- **Must be visible to anyone who might release information**
- **Most misunderstood aspect of FERPA**
 - **All student records are confidential**
 - **Directory information is ok to release, unless opt-out is in place**
- **Never have to release directory information to anyone, except to student**
- **If you do not know how to see the Opt-Out “FERPA No” you should not release any information**



What are not Educational Records?

- Law enforcement records
- Treatment/medical records
- Alumni records
- Employment records (unless job is for a student only)
- Sole possession records



Who are School Officials?

- **Individual or group providing a necessary service**
 - **No inherent rights under FERPA**
 - **Have a “need to know” status**
 - **i.e. legitimate educational interest**
 - **Responsible for knowing FERPA**
 - **Records remain under control of the institution**
 - **Must not re-disclose information**



FERPA Pitfalls to Avoid



Emails and FERPA Compliance

- **Emails can present a challenge for compliance with FERPA, since even an CWU.edu email can be emulated**
- **Refrain from sharing specific student data (GPA, grades, disciplinary information) by email alone**
- **Use CWU.edu emails when sending emails. Do not use personal email addresses for students or to send and receive emails**
- **Consider adding this statement to your Outlook signature block:**
 - Privileged, confidential or patient-identifiable information may be contained in this message. This information is meant only for the use of the intended recipients. If you are not the intended recipient, or if the message has been addressed to you in error, do not read, disclose, reproduce, distribute, disseminate, or otherwise use this transmission. Instead, please notify the sender by reply e-mail, and then destroy all copies of the message and any attachments. Thank you



Law Enforcement Inquiries

- **FERPA records cannot mix with Campus Safety records**
 - Automatically become FERPA protected if this happens
- **Outside entities with badges cannot have access to student data without student permission**
 - Exception: in a health or safety emergency
- **Do not release a student's schedule or location without student's written permission**
 - Even to law enforcement!



Health and Safety Emergencies

- **“Articulate and significant threat to the health and safety of the student or other individuals”**
- **May release to local law enforcement, parents or outside entities if release is related to safety**
- **Must record release in student records**
 - **To whom**
 - **What was released**
 - **Why (health and safety emergency)**



Health and Safety Emergencies

- **If you sense that a student may be in danger to himself or herself or to any other person:**
 - **Emergency? Call 911.**
 - **FERPA exists to protect the privacy of student records, but if a threat of danger or violence is present, and you need to report FERPA protected information to non-CWU officials, you may do so.**



Faculty Issues

- **Peer Grading**
- **Letters of recommendation**
- **Releasing information to lawyers/law enforcement**
- **Posting grades/records**
- **Faculty may only access information related to the class they are teaching or advising**



Faculty Issues



Tips for Letters of Recommendation and FERPA

- **Be sure to obtain a release from the student to complete any recommendation form or to provide a letter of recommendation asking for student records beyond faculty observations**
- **Observations (i.e. student contributed significantly) are not FERPA student records and can be given freely**
- **Permission to provide a recommendation can be written and/or in an email from the student. Save it for at least six months.**
- **Know exactly what you are allowed to comment on or not:**
 - **Grades/attendance/GPA – you must have written permission from the student to release these and any other student record data points**
- **Permission to complete an external reference form must be signed by the student, if it comes externally. Often this is on the form itself.**
- **Requests from federal entities must have student permission to release any student record information as part of a recommendation**



Parents

- **You may release to parents:**
 - **With students' written permission**
 - **In connection with a health or safety emergency**
 - **If student is under 21 and violates law or school policy related to alcohol or a controlled substance**
 - **If student is a dependent for tax purposes**



Federal Employees/Military Requests

- **Solomon Act**
 - May release data to each branch of the military once each term
 - Student is at least 17, registered in at least one credit
 - Can exclude opt-out students
- **Federal/military reps must have a signed release to obtain student FERPA protected data (i.e. transcripts/bills)**



Subpoenas/Judicial Orders

- **Duces Tecum – requires documents, papers for the court**
- **Ad Testificandum – requires a person to testify**
- **Must make reasonable attempt to notify student**
 - **14 calendar days or 10 working days**
 - **Exception is for Federal Grand Jury – do not notify!**
- **Must only respond to court with jurisdiction or to a federal district court**
- **Student may “quash” subpoena**
- **Consult college legal counsel**



Third Parties

- **May disclose personally identifiable information to:**
 - **Contractor**
 - **Consultant**
 - **Volunteer**
 - **Other party doing work normally done by institution**
- **Data belongs to student and is in custody of institution**
- **Must train on FERPA/no third party re-disclosures**
- **Put in annual FERPA notice**
- **May not re-disclose in response to subpoena or judicial order without institution notifying student**



Authorized Representatives

Requests for Information

- **May release with written agreements related to studies conducted for institution**
- **Authorized reps can be any national or state authority or educational body**
- **Agencies must abide by FERPA**



Campus Leaders

- **Do not assume campus leaders all know FERPA**
- **Take care when releasing information to school officials in a position of authority**
- **Is this a school official with a legitimate need to know?**
- **If release violates FERPA, decline the request. If required to comply, make note of the request and to whom it was released in student's record.**



When in Doubt, Don't Give It Out

- **Before releasing data, consider:**
 - Educational Record?
 - Student?
 - Signature required?
 - Must vs. may: do I have to release?
 - School official: do they provide a service to institution?
 - Need to know: job-related?
 - Is this directory information? Opt-out in place?
 - Institutional policies and procedures?



When in Doubt, Don't Give It Out

- You are *never* obligated to give out FERPA protected information.
- FERPA law states that schools have up to 45 days to provide students with access to their information and this does not require the information to be copied and released, but just to make the information visible to review.



Your Questions?

Why did the chicken cross the road?



Sorry, I can't tell you without a release!

