

Q&A Session for Creating A FERPA Friendly Campus
Web Conference with Academic Impressions on October 26, 2005

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Attachment A – Email and FERPA

Quite a few of the questions submitted dealt with email and FERPA and many of the questions were similar. We have decided to provide an overview of FERPA and email that addresses most of these questions. The questions below that deal with the standard email questions have an answer that directs the reader to the appendix. We hope that this not only answers the particular question, but also provides a better perspective overall for the issue of FERPA and email. Email questions that varied somewhat from the standard thread are answered immediately after the question.

FERPA does not provide information on the use of email and the Family Privacy Compliance Office (FPCO) has yet to provide any direction for the FERPA compliant use of email. Many institutions have developed policies and procedures that attempt to apply known FERPA requirements along with a “spirit” of FERPA approach when exchanging email associated with student information. Some of the things to keep in mind when exchanging email:

Subject Lines: Can the name appear? Can the SSN appear? Can the ID appear? Can the name and the ID appear? One of the first questions is how protected is the subject line in your email service and does it contain information that is NOT directory information? When you bring up the Mailbox contents in your email service, are the subject lines visible? Given the nature of how we use email, subject lines in our Mailbox contents are often easily viewed by third parties in the normal course of business. Systems which monitor email flow often allow the subject line to be viewed by IT staff that does not have access rights. Even if your Mailbox contents hides subject lines, do you know if the recipient’s email service does the same? This in effect makes that information unprotected. Therefore, if you place an SSN or a student ID in the subject line, protected information under FERPA, you probably have a FERPA violation. If you have student’s name in your listing of FERPA directory information, then the appearance of the student name in the subject line does not violate FERPA.

Content or body of the message: If you send non directory student information that is personally identifiable, e.g. grades, test scores, disciplinary sanctions, etc., you have essentially created a student record, which falls under FERPA protection and requirements. If the information being sent is non directory student information, the particular type of protected information has no bearing, the email is a student record.

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Sending student information via email: Email is generally not a secure medium for exchange of information. (Encrypted message content that is **also** sent via ssl or a secure transmission line to a university assigned email address could normally be considered a secure exchange of email.) Sending a student record via email becomes a test of reasonableness, i.e. how sure are you that the intended recipient, e.g. the student or someone with a legitimate educational interest, is actually the person receiving the email? “Spoofing” addresses is an often used fraudulent process in which someone presents an originating address in the “From” field that appears legitimate, even though a reply will go to another address that the person committing the fraud has supplied. If a student comes to the office and provides a written request to send their non directory information to an email address which they provide, then there should be no privacy violation in complying with the student’s request. Some institutions have a policy by which they will only respond to a university address and not an ISP, e.g. AOL, Yahoo, etc. Their policy requires that students must redirect email from their university email account to their ISP account.

Responding to requests for student information via email: Non directory student information normally requires a written release or in this case, some form of electronic signature before information can be released. A number of institutions will accept an attached PDF file that contains the student’s written signature.

Again, FERPA does not provide information on the use of email and the Family Privacy Compliance Office (FPCO) has yet to provide any official direction for the FERPA compliant use of email. With this in mind, institutions might find it useful to codify their practices, not only to ensure consistency of practice across their institution, but also to provide a basis for substantiating what they do and why

1. Q: We use an electronic notepad with our computer system to record comments, actions, and communications re: students. Are these notes considered part of a student's educational records that are included under a student's right to inspect?

A. Are students aware that these kinds of records are being kept? Are these records shared among other education officials or stored in a database to which other faculty and administrators have access? Has your note-taking practice been disclosed to students in your Catalog and how?

These are questions that require answers before a definite response could be made to your inquiry. If and when these electronic notes are available to other education officials at the campus, the notes constitute education records and students would have FERPA rights to inspect and review.

You may wish to compose a disclosure statement about this note-taking practice and run it by your legal counsel for inclusion in your registration materials, whether paper-based or electronic.

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Have students acknowledge this disclosure, either by a signature or a check-box on an electronic form.

The disclosure would notify students that in the course of the term, faculty and other administrators (if applicable) keep electronic notes about students to facilitate the teaching, advising, and disciplinary processes of the institution. Such notes are created and maintained solely for the purposes of the creator and are considered confidential, sole possession records exempted under FERPA. The caveat here is that you must make sure that those notes are not accessed or made available to other education officials. Once that happens, disclosure or no, you have created a depository of education records and students have FERPA rights to inspect and review those records.

[CAR]

2. Q: What about distance learning students?

A. FERPA does not distinguish between types of students. Section 99.3 of the regulations defines student as *any* individual who is or who has been in attendance at your institution and about whom you maintain education records. Distance learning students are students, with rights under FERPA.

[CAR]

3. Q: Please address FERPA regulations as they impact employees in outside companies for which we supply contract training. Thank you.

A. How do your contracts with these outside companies define the scope of the service you are offering? And are company trainees considered students of your institution?

If the trainees are considered students—in attendance and about whom you maintain education records (FERPA's definition in Section 99.3)—then the records of those trainees are education records. Those students have FERPA rights. But if training is provided as an ad-hoc service to an employer, you need to examine the articles of your contract to determine the institution's relationship to the trainees.

An obvious indication of the relationship is to determine what records your institution is keeping of trainee attendance. If you are assigning CEUs or college credit, you are maintaining official education records and, therefore, you do have eligible students under FERPA. Most likely, however, your relationship is with the employer and participant names are kept as a record of events, not as student records.

[CAR]

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4. Q: Please clarify an educational record, on top of grade records

A. According to Section 99.3 of the regulations, education records are records that are directly related to the student and that are maintained by the education institution. This includes a wide variety of records.

“Directly related to the student” means that you can identify a particular student from the record. Forms that have student names, Social Security Numbers, and/or Student ID Numbers are directly related to a student. But you can also deduce a student’s identity from data on a student records systems screen, from correctly angled photographs, from voice and image records, and from any number of other types of records. As long as the record is maintained by the institution, it is an education record.

Look at your student record files. You have application forms, essays, memos and correspondence to and about the student, academic forms, evaluative forms, and other miscellaneous documentations. All of these, in addition to grades, are education records.

[CAR]

5. Q: Are notes about student workers part of an educational record?

A. Section 99.3 declares that “records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records.”

The statement is made in the section where exceptions to education records are identified. Employment records are an exception to education records, except in this one case. That is, if a student is employed in a position where being a student is a condition of such employment, then those employment records are education records. These kinds of positions include student workers, work study students, and teaching assistants.

[CAR]

6. Q: Can an institution designate its campus police dept as having a "legitimate educational interest" in the "education records" of students, even when it may involve a police investigation of a student that might result in disciplinary action or criminal pros

A. Legitimate educational interest is not a default of any category of employee or type of education official. Legitimate educational interest is a condition that must be determined in a specific situation where access to education records is being requested.

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Your campus police may be considered education officials because they are employed by the institution in a supervisory position. But this does not mean that they have carte blanche access to all student records any more than a faculty member has access to all student records. A legitimate educational interest or “need to know” must be demonstrated in each and every instance before police, or any other education official, may be given access to particular student records. Moreover, access should only be provided to those records relevant to the situation or inquiry.

“Relevancy” is determined through dialogue between the recordkeeper and the police or other education official. This means that you, as the records custodian, make the determination of legitimate educational interest.

[CAR]

7. Q: If someone calls to verify a degree or attendance over the phone, by asking for the caller for the SSN -- is this a violation of FERPA?

A. The Family Policy Compliance Office prohibits us from using Social Security Number as directory information. This means that we cannot disclose Social Security Number without the prior, written consent of the student.

If a caller wishes to verify student attendance or degree, and the student has not restricted that information, you can verify the information if attendance and degree are part of your directory information. If the caller provides the Social Security Number to assist in positive identification of a student, there is no problem. We, however, should never disclose Social Security Number because that would be a violation.

[CAR]

8. Q: How does FERPA impact minors enrolled in the institution?

A. FERPA applies to students who, according to Section 99.3 of the regulations, have reached the age of 18 or attend a postsecondary institution. This is an either/or situation. If a minor is enrolled at your institution, enrollment means that the minor is a student of a postsecondary institution. FERPA applies to that individual as it would to any other student of your institution.

[CAR]

9. Q: Can you touch a bit on the Financial Aid end of FERPA with dependent students on a parent/guardia tax return? Are parents/guardians GUARANTEED access to all records or can the institution choose what info to disclose?

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A. Financial Aid records are covered by financial regulations as well as by FERPA. Parents and guardians may be granted access to financial records with the prior, written consent of the student. And such access may be given for a specified period of time or until such access is revoked by the student. Access, however, is limited to financial records and can never include academic or other education records. Access to academic and other education records requires the prior, written consent of the student for each and every request for access.

The language of your statement providing access to financial records should specify the extent of access in regards to those financial records.

[CAR]

10. Q: Are health requirements and criminal record background checks required for health science programs considered educational records and therefore cannot be shared with third parties, such as a hospital where students attend clinical experiences?

A. Hospitals, clinics, counseling centers, and other research facilities where students are sent for training, internships, and other educational experiences should be considered agents of the education institution. Many will provide evaluative feedback on student performance in the particular setting, thus providing an extension of the institution's educational mission. Under those circumstances, you may wish to determine those with supervisory, advisory, and teaching authority to be education officials, with whom you can share relevant non-directory information on a need to know basis.

Such relationships between the institution and a third party entity should be formalized with FERPA agreements built into the institutional contracts and arrangements for information sharing disclosed to program participants through marketing and application materials. Consult your campus counsel regarding language for communicating these provisions in contracts and other disclosures.

On a simply ethical level, it seems appropriate to share information from the background check of a student with contracted teaching parties where participation in the training or internship program impacts the safety of patients and other human beings.

[CAR]

11. Q: Can you please discuss the distinction between FERPA and HIPAA and how that relates to universities with infirmaries, health centers, and athletic departments that hire physicians?

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A. This is a question better addressed to your campus counsel since neither of us are HIPAA experts. HIPAA regulates the management of medical information while FERPA applies to the management of student or education records.

Medical records are exempt under FERPA Section 99.3, which means that FERPA defers privacy and records management issues completely to HIPAA and other medical records regulations. FERPA would only apply when medical records become education records. This happens when medical records are introduced into an education record and maintained as part of that education record.

[CAR]

12. Q: How does FERPA apply to students under the age of 18?

A. See Question No. 8.

13. Q: Are background checks used for certification purposes part of the educational record?

A. What are your policies and procedures regarding the retention of background checks? If you maintain them in a student file, they become education records and are covered by FERPA.

[CAR]

14. Q: Do counseling records fall under FERPA regs? How about student medical records?

A. FERPA identifies a number of exceptions to education records and medical records are one of the exceptions. Medical records are “made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity” (Section 99.3). Such records would more appropriately be covered by HIPAA and other specific regulations.

[CAR]

15. Q: Can you give some examples of directory information and those that need release, especially regarding financial aid and billing?

A. First of all, financial aid and student account information requires the prior, written consent of a student in order for you to release such information to parents, guardians, or any other third party. See Question No. 9, above.

Directory information (Section 99.3 of the regulations) is defined as information that is not considered harmful or an invasion of privacy if released. Institutions must define what

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constitutes directory information for them. Directory information may include data such as the following.

Name
Address
Telephone Number
E-Mail Address
Major field of study
Dates of attendance
Enrollment status
Degrees and awards received
Date and place of birth
Most recent previous school attended
Photographs
Participation in officially recognized activities and sports
Height and weight of athletes

Institutions are forbidden to designate Student ID Number, Social Security Number, Race, Ethnicity, Nationality, or Gender as directory information.

Once you determine what constitutes directory information for your campus, you must disclose this information in your Annual Notification.

[CAR]

16. Q: Can you please define emergency situations that warrant disclosure without consent and give examples?

A. Providing access to non-directory information without the prior, written consent of the student in a health and safety emergency is permitted under Section 99.31. The most familiar and recent example of invoking this exception occurred following the tragic events in New York and Washington DC on September 11, 2001. Federal investigators began delving into the academic, research, library, and other relevant records of individuals—primarily foreign students—whom the government felt might be suspected of terrorist activity.

When I was at UCLA, I had an instance where an individual called the Registrar's Office, claiming that our student had been in an automobile accident and was in mortal danger. She identified herself as the student's cousin and she requested non-directory information: the student's next-of-kin or emergency contact information and the student's GPA. Under the circumstances, we felt that releasing emergency contact information was relevant to the situation, but we did not release the student's GPA.

A health or safety emergency is one in which there is an evident threat to the life of the student or to other individuals around the student.

[CAR]

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17. Q: You mentioned that students have a right to see what is in their file but not necessarily have copies of those records, when is a time when they wouldn't have a right to a copy of those records?

A. That would be for you to decide. FERPA merely guarantees the right for students to inspect and review education records. If you want to provide photocopies, that is your decision. If you want to charge for photocopies, that is your prerogative as well. FERPA only prohibits the imposition of fees that effectively prevent a student from inspecting and reviewing education records.

When would you not want students to have copies of their records? Many institutions place "holds" on student services when the student has outstanding obligations to the institution. In those cases, you would not want to provide a transcript or a verification of attendance/degree (education records) until the obligation had been satisfactorily addressed. Despite a hold, you must still afford a student the right to inspect and review his education records.

[CAR]

18. Q: should we verify attendance over the phone?

A. As long as Dates of Attendance are part of your directory information, and the student in question has not restricted that information, there is no problem with verifying attendance by phone.

[CAR]

19. Q: What is your opinion on distributing permission slips at the beginning of the academic year vs. when an incident arises that requires FERPA consent?

A. FERPA is intended to protect the privacy of students. Its regulations do so and still provide "exceptions" for those instances in which the institution must act with responsibility and without the prior, written consent of the student.

In that light, access to student records should not be trivialized or regarded so lightly that you distribute permission slips, actually encouraging students to provide third party access to their records. Authorizations for access to financial records are understandable because parents are often footing the bill for the college student. But academic and education records are another story. Besides, no "blanket waiver" (an authorization for access over a period of time) is allowable for education records. Access should be authorized per instance and with the prior, written request of the student. Blanket waivers may only apply to access to financial records.

Honoring the privacy of our student records and encouraging students to do the same is an important educational lesson for students to which administrators can effectively contribute.

[CAR]

20. Q: Is there a standard form for release of records?

A. FERPA does not include any forms in its regulations, but Section 99.30 does define the elements required for a prior, written consent. There are three, to which two others are inferred.

The date

Specification of the records to be disclosed

Statement of purpose for the disclosure

Identification of the party or parties to whom disclosure is to be made

The signature of the student

[CAR]

21. Q: Is there a statute of limitations for release of records

A. FERPA does not identify a statute of limitations, nor does it provide records retention guidelines. Institutions must develop their own records retention policies and adhere consistently to those retention and destructions procedures. You cannot be held accountable for a record your policies claim should no longer exist. The problem arises when you do not follow your own policies and procedures. Such negligence can be damaging and incur significant consequences in a court of law.

[CAR]

22. Q: Is a letter of representation by an attorney of a student sufficient to comply with the written consent requirement?

A. Most diligent attorneys will not merely provide a letter of representation, but an authorization for access to records signed by the student. You may wish to consult your campus counsel when presented with anything other than the prior, written consent of your student.

[CAR]

23. Q: How long would a University Housing Office keep a criminal record of a student who has been barred from living in housing due to an assault...? Clery Act? Who should have access to this?

A. I am not sure that any of the regulations specify records retention periods for specific kinds of records. FERPA does not. And the Clery Act is more about disclosing crime statistics than about maintaining criminal records of students. Remember that if you maintain a criminal record in a student file, that record becomes an education record and is covered by FERPA. As education institutions, we maintain education records, regardless if those records exist elsewhere as law enforcement, medical, or any other kind of record. Criminal records may be more

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appropriately maintained by a police or other security office on campus. Law enforcement records, as mentioned in Section 99.3, are exempted under FERPA.

You may wish to consult with the records management specialist on your campus and your campus counsel. That said, my recommendation is that you set your own policy regarding such records and abide by it.

[CAR]

24. Q: Where is the line drawn in regard to what offices or individuals have access to "educational records" (example: would the career center have legitimate access to educational records of students)

A. FERPA makes no hard and fast rules, preferring to leave determination of legitimate educational interest to the institution, the recordkeeper, and the specifics surrounding the individual request. What is the need to know? Recordkeepers should ask. From the response to this question, you can determine whether the reason offered constitutes legitimate educational interest or not.

[CAR]

25. Q: How would you recommend an institution to respond to Army/Navy, etc. recruiters who request students enrollment lists?

A. The Solomon Amendment requires institutions to cooperate with the recruiting efforts of the armed forces. But the armed forces are not given carte blanche access to our student information. You may stipulate that any requests for student information be put in writing. Further, you are only required to provide what the Solomon Amendment defines as "student recruitment information." You will recognize the list as somewhat similar to directory information in FERPA.

Name

Address

Telephone Number

Age or date of birth

Class level

Academic major

Place of birth

Degrees received

Most recent educational institution attended

Institutions are only required to respond to recruiting requests from any specific branch of the armed forces once per term. And you can provide information in whatever format your technological capabilities allow.

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For more information about the Solomon Amendment, check out the section in “The FERPA Transition: Helping Parents Adjust to Higher Education Records Laws,” available from LRP Publications (www.lrp.com).

[CAR]

26. Q: Can other departments within the institution have access to financial aid data determined necessary to perform their job? Ex. Scholarship, TRIO, or Student Employment Offices

A. The quick answer is yes. Other education officials at your campus may have access to the non-directory information of students provided you determine that there is a legitimate educational interest before providing access to the information. This means that access should be provided on a case by case basis.

If there are offices on campus with which you feel uncomfortable sharing student information, even if there is an evident and legitimate educational interest, you should advise the office that the information you are providing is protected by FERPA and cannot be further disclosed. And if they need training in FERPA, make sure they get it.

[CAR]

27. Q: Some instructors like to send around a class roster for attendance with the student's unique ID. Is this permissible and if not - what suggestions do you have for taking attendance?

A. If the instructor does not want to call roll, thus avoiding circulating a sheet with Student ID Numbers, the instructor should merely have students sign in on a blank sheet as evidence of attendance. Students would print their name and sign the attendance sheet. Student ID Number cannot be directory information and therefore cannot be disclosed to anyone without the student's prior, written consent.

[CAR]

28. Q: When a student is under 18 and commits an alcohol or drug violation, that information can indeed be made available to a parent. Ferpa would not cover that kind of disciplinary or legal record. Isn't that correct???

A. The Warren Amendment, part of the Higher Education Amendments of 1998, amended FERPA to allow institutions to notify parents when students under the age of 21 are determined to have violated federal, state, or local laws or institutional policy in regards to the use or possession of alcohol or other controlled substances. The critical points here are that a violation

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must have been determined, so you cannot act on any allegations or hearsay. Further, the student must be under 21 at the time of the disclosure. Such notification is also permitted, but not required, under the Warren Amendment.

For more information about the Warren Amendment, check out the section on the amendments to FERPA in “The FERPA Transition: Helping Parents Adjust to Higher Education Records Laws,” available from LRP Publications (www.lrp.com).

[CAR]

29. Q: When we create an educational record on a student , do we need to notify the student?

A. No. There is no requirement in FERPA that you notify students whenever you create an education record. But more than likely, the student will be aware that records are being kept as part of the student’s participation in a particular activity at the institution. And if the record is an education record, the student is guaranteed FERPA rights in regard to that record.

[CAR]

30. Kathy Lang - 11:51 am

Q: Georgia McRae from Marquette University: please clarify the 'campus police' statement you made. Did you mean that they have access when it relates to the Health or Safety of the student or for any reason?

A. Please see the response to Question No. 6.

31. Q: If a college does have high school students taking college level courses on campus, are not allowed to share educational records with the parents of that student, it was previously said we could tell the parent to go back to the HS to get the information.

A. We don’t really want to tell the parent that they can get information from the high school. Remember, our charge in the postsecondary institution is to protect the privacy of our postsecondary education students.

“I’m sorry. Under federal regulations, the college may only release information with the student’s prior, written consent. You may want to consult with your student’s high school.”

[CAR]

32. Q: Are Student ID photos considered Directory information?

A. If you designate photographs as directory information, you would be able to release a student's ID photo without the student's prior, written consent—that is, provided the student has not restricted that information.

In designating directory information, you would never designate a specific type of photograph as directory information. You would need to be general and simply say Photographs.

[CAR]

33. Q: What regulations are in place regarding the college sharing this academic information with the HS?

A. There are, in fact, no regulations, to my knowledge, that address specific relationships between colleges and high schools. (The US Department of Education may have some guidelines and institutions may wish to consult www.ed.gov.) For those of us in higher education, we are bound to the provisions of FERPA. For our own protection, whenever programs are created between an institution of higher education and a high school, the contract should specify what information is to be communicated between the two institutions. These provisions should be communicated in disclosures about the program and be included in a signature acknowledgement on the program application. Because the program is enrolling high school students (minors), the applications would require the signatures of students and parents. This should take care of any disclosure requirements on the part of the program initiators.

The contract between the institutions should also have clauses that reference FERPA, stipulating that the higher education institution is bound by these regulations. It may be further indicated that parental inquiries should be referred to the high school, which will act as liaison for participants of the program. The contract should further stipulate that information shared by the higher education institution with the high school cannot be further disclosed beyond the requirements of FERPA.

At the high school level, the student is generally a minor and so FERPA rights belong to the parents. High school officials may disclose information to the parents while education officials at the higher education institution cannot.

[CAR]

34. Q: Would web server log usage be considered part of the student record as well under the unintentional area?

A. Very well could be, depending upon the information that you're capturing, e.g. date/time stamp, User ID, domain name, IP addresses. Several of these items can be used to derive

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identity, e.g. looking up the user ID in the account database, looking up the IP address in the directory, etc. The LAMP publication that I mentioned in our presentation covers this very well. The publication is available at the AACRAO website: www.aacrao.org in the publications area. There is no cost. Pay special attention to pages 29-36 under Data Analysis Results.

35. Q: Can a student give a blanket "online" authorization for the career center to allow prospective employers to view his/her resume?

A. I do not see any problem with this kind of arrangement. Usually, broad, employer access to resumes is only one of a number of options that students can select.

[CAR]

36. Q: We have a summer program on campus "College for Kids" for grades 3-9. Is it appropriate to share these student's names with our Admissions Office for their future recruiting efforts?

A. My guess is that the purpose of your "College for Kids" program is to encourage and to instill interest in higher education in young people at a very early age. Bravo! With that goal, it would seem appropriate that your recruiting efforts target participants of this program. You may, however, wish to indicate in your "College for Kids" marketing and program materials that participants of the program are automatically included in your college recruiting efforts, which means that the child and parents will continue to receive mailings and other materials from the institution. You should also include an option for parents to opt out of such participation should they desire to do so.

[CAR]

37. Q: Most of our students are claimed as dependents by their parents. When a parent requests (in person) edu record info., we always attempt to involve the student, but this isn't always possible. If we then release info to the parent, are we in compliance?

A. What does your Annual Notification say about the release of education records to the parents of dependent students? If your policy is to release information to the parents of dependent students, and you have disclosed that practice to your students, there is no problem.

If you have not included such release in your Annual Notification, you may want to follow procedures similar to how you deal with a subpoena. That is, you will want to notify the student that a request has been made by the student's parents for access to education records. You need to give the student time to respond to you, that is, to object to the release of those records. And if the student does object, you will need to refer the parents back to the student.

Remember that the disclosure of education records to the parents of dependent students is not a guarantee under FERPA. It is provided in Section 99.31 as an exception, meaning that the institution may choose to disclose information to the parents on a case by case basis, upon review of certain provisions. The right to have some control over the disclosure of information from education records (Section 99.7) is, however, a basic right that is assigned to students by FERPA.

[CAR]

38. Q: Are records from student grievance hearings, kept in one administrator's office, considered part of the educational record?

A. What are your policies and procedures governing student grievance hearings? What has been disclosed to students? What administrator has been assigned recordkeeper or custodial responsibilities?

In most cases, the records will be education records. But it really depends upon how you have structured the grievance process and what you have disclosed to your students about the documentation arising from your process.

[CAR]

39. Q: What discipline records can be shared with the athletic department?

A. Where there is a legitimate educational interest or the need to know, you may share student information with education officials at your campus. It is up to you, as the recordkeeper, to determine whether there is a valid need to know when particular information is requested. This also applies to those situations where you must decide about notifying education officials on your campus about specific student information.

Sorry, we can't be more definitive than that.

[CAR]

40. Q: How long should education records be kept? Paper? Technology?

A. FERPA says nothing about records retention, except that records for which inspection and review have been requested cannot be destroyed until that opportunity is provided.

The American Association of Collegiate Registrars & Admissions Officers (AACRAO) has compiled a Records Retention Guide, formalizing recommendations for higher education institutions on the retention of specific records. Check out the AACRAO Publications link at the AACRAO website, www.aacrao.org.

See also answer 44.

41. Q: Are admissions files education records? If so, are they protected by FERPA?

A. Applicant records are not covered by FERPA. Remember that education records, defined in Section 99.3 of the regulations, refer to records that are directly related to the student and that are maintained by the education institution.

You should, of course, have or develop policies and procedures regarding your applicant records, including defining access and records retention provisions. Applicable regulations, if any, are most likely found in the public records acts of your particular state.

[CAR]

42. Q: What responsibilities do we have to students under FERPA once they have left campus?

A. The records that you create about an individual while that individual is a student will always be protected by FERPA. However, once a student has left the institution, you are no longer required to provide the FERPA rights to inspection and review, amendment of records, or enactment of specific controls. You may wish to do so, based upon alumni relations considerations, but the US Department of Education does not require you to do so.

The most common example that comes to mind is the alum who wishes to place a directory or FERPA restriction on records after having left the institution. FERPA does not require you to accept such a request, because the individual is no longer in attendance at your institution. However, you may wish to consider the individual's request, reviewing and making dispositions on such requests on a case by case basis.

[CAR]

43. Q: Does a security camera system constitute an educational record?

A. The surveillance system itself is not an education record, but the videotapes or other electronic records it produces may be education records. Do those records directly relate to individual students? That is, can you determine the identity of students from those records? And are those records maintained by the institution? Most likely, the answers to these questions are in the affirmative, making them education records. And remember, students have the right to inspect and review education records.

The Family Policy Compliance Office recommends that surveillance video be maintained by a police department or other security office on campus. Assigning records custodial responsibilities to a police department or security office allows you to treat those records as law enforcement records. Law enforcement records, per Sections 99.3 and 99.8 of the regulations, are an exception to education records.

See also question 53.

[CAR]

44. Q: What are the suggested standards for keeping/maintaining archived student records? Is there a resource available for this type of guideline?

A. A good place to check is the AACRAO publication “Retention of Records; Guide For Retention and Disposal of Student Records,” available for purchase at the AACRAO website: www.aacrao.org At my institution, the University of Southern California, we have developed a retention guide that is undergoing review before it becomes policy. Here is the draft version:

Appendix 1. Record Retention Schedule and Designation of Official Repositories

The following identifies certain types of records and the corresponding official repository of records for the university. Copies of records that are held by units other than the official repository are secondary copies and should be destroyed in accordance with record management policy when they no longer serve a useful administrative purpose.

Type of Record	Official Repository	Retention Period	Legal Requirement or best practice (Source)	Archive or longer retention recommendation
STUDENT RECORDS				
Admission, Undergraduate				
Applicants who do not enroll	Enrollment Services Division	3 years after application term	IRS requires that, for tax-exempt status for private institutions, the records of applicants who apply and do not enter be retained for 3 years. (AACRAO)	
Applicants who enroll	Enrollment Services Division	5 years after graduation or date of last attendance	(AACRAO)	
Applicants who enroll, letters of recommendation	Enrollment Services Division	Until enrollment	(AACRAO)	
Non-applicants who send documents	Enrollment Services Division	One year from date of receipt	Best practice	
Admission, Graduate				
Applicants who do not enroll	School of application	3 years after application term	(AACRAO)	
Applicants who enroll	School of application	5 years after graduation or date of last attendance	(AACRAO)	
Applicants who enroll, letters of recommendation	School of application	Until enrollment	(AACRAO)	

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Type of Record	Official Repository	Retention Period	Legal Requirement or best practice (Source)	Archive or longer retention recommendation
Non-applicants who send documents	School of application	One year from date of receipt	(AACRAO)	
Financial Aid				
Federal student loans	Enrollment Services Division	Five years after application plus five years after loan is assigned, canceled or repaid	Federal requirement (NACUA)	
Non-Discrimination in Education Programs Compliance Reports		Three years after filing reports	Federal requirement (NACUA)	
Federal Student Financial Aid Program Records and Fiscal Records	Enrollment Services/ Financial Aid (?)	3 years from award year	(AACRAO)	
Federal Student Financial Aid Recipient Records	Enrollment Services/ Financial Aid (?)	3 years from award year	(AACRAO)	
Federal Student Financial Aid Program Records and Fiscal Records	Enrollment Services/ Financial Aid	3 years from award year	(AACRAO)	
Perkins original promissory notes	Enrollment Services/ Financial Aid(?)	Until loan is satisfied or documents are needed to enforce obligation	(AACRAO)	
Registration and Attendance/Academic Progress Records				
Academic records (grades, transcripts, change of grade forms, class lists, original grade sheets, graduation lists)	Registrar	Permanent	(AACRAO)	
Academic action authorizations (dismissal, etc.); advanced placement and other placement tests; correspondence; credit by examination reports/scores; curriculum change authorizations; degree audit records; graduation authorizations; military documents; name change authorizations; transfer credit evaluations	Registrar	Five years after graduation or date of last attendance	(AACRAO)	
Withdrawal authorizations	Registrar	Two years after graduation or date of last attendance	(AACRAO)	

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Type of Record	Official Repository	Retention Period	Legal Requirement or best practice (Source)	Archive or longer retention recommendation
Applications for graduation; student class schedules; medical records, personal data information forms	Registrar	One year after graduation or date of last attendance	(AACRAO)	
Audit authorizations, changes of course (add/drop); credit/no credit approvals (audit, pass/fair, etc.); registration forms; student transcript requests	Registrar	One year after date submitted	(AACRAO)	
Grade reports (registrar's copies)	Registrar	One year after date distributed	(AACRAO)	
FERPA records of disclosures and requests for disclosures	Registrar	Retained for same period as records to which they refer	(AACRAO)	
Federal Disclosure Records (crime statistics/security report, SRK graduation/completion, transfer out data, athletic participation/EADA documents, institutional information	Registrar (crime stats—see Dept. of Public Safety)	3 years from date of disclosure	(AACRAO)	
Hold or encumbrance authorizations	Registrar	Until released	(AACRAO)	
Publications, Statistical Data/Documents, and Institutional Reports (catalogues, commencement program, degree statistics, enrollment statistics, grade statistics, race/ethnicity statistics, published schedule of classes)	Registrar	Permanent	(AACRAO)	
Grade book data	Instructor of record (If instructor leaves the university; department takes over records)	Four years	Best practice recommended by Registrar because grade issues tend to surface during graduation check.	
Final exams and all other grade work which effected the course grade	Instructor of record (If instructor leaves the university; department takes over records)	One year		

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Type of Record	Official Repository	Retention Period	Legal Requirement or best practice (Source)	Archive or longer retention recommendation
Foreign student enrollment (F-1 and M-1 visas)	OIS (?)	During enrollment plus one year (AACRAO says five years after graduation)	(NACUA)	
Foreign exchange visitors (J-1 visa)	OIS (?)	Three years	(NACUA)	
Student Disciplinary Records		Seven years	(NACUA)	
CAMPUS CRIME				
Data on criminal offenses on campus	Dept. of Public Safety	Three years from date data was available	(NACUA)	
FINANCIAL AND BUSINESS RECORDS				
Bank reconciliation Disbursement cancelled checks, bank reconciliations, JVs, files with balance	Student Account Services	Indefinitely	Best practice	
Bursar unclaimed property records	Student Account Services	Indefinitely	Best practice	
Bursar student microfiche/CDS	Student Account Services	Permanently	Best practice	
Bursar adjustment requests	Student Account Services	7 years	Best practice	
Bursar accounting records	Student Account Services	3 years	Best practice	
Bursar system access requests	Student Account Services	One year	Best practice	
Collections Promissory notes, credit applications, correspondence with students, internal memos, collegian agencies correspondence, bankruptcy notices, returned checks, Buckley waiver forms, files with zero balance	Student Account Services	Indefinitely	Best practice	
Fee assessment forms and tuition and fee charges	Student Account Services	Five years after graduation or date of last attendance	(AACRAO)	
Student Loans Promissory notes, correspondence with borrower, agency assignments information, student correspondence	Student Account Services	Indefinitely		
Student Loan Payment Plan information	Student Account Services	Five years	Best practice	

Payroll and Business Services record retention guidelines represent current practice as reported by those offices. Registration and Attendance/Academic Progress Records are from American Association of Collegiate Registrars and Admissions Officers (AACRAO) record retention guide. The Research Records guidelines are from a discussion draft developed by outside counsel for the Office of Compliance and represent the minimum retention periods established by federal research regulations. *The Blue text lists federal requirements from [Record-Keeping and Reporting Requirements for Independent and Public Colleges and Universities](#), National Association of College and University Attorneys (NACUA), 1998. Red text is recommended by same report.*

45. Q: is it a FERPA violation to use a student's full name in the subject line?

A. See Attachment A

46. Q: If the student id is different than the SSN, can it be placed in an email subject line?

A. See Attachment A

47. Q: If FERPA data is sent to a student via e-mail using encrypted transit (ssl) but not encrypted content, Do we need to be concerned if the student has his/her school e-mail account forward to a service such as Hotmail?

A. See Attachment A

48. Q: Where in FERPA does it say you can not put a SSN in subject line on an email?

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A. FERPA does not expressly prohibit using a Social Security Number in the subject line of an e-mail; however, there is an implicit prohibition that arises out of FERPA's insistence that a student's Social Security Number cannot be directory information.

How does that apply to e-mail subject lines? Most of us do not hide Mailbox content lists when students, staff, or others visit our offices. The subject lines are easily or can be said to be readily available to individuals near by. If a subject line contains a Social Security Number, then a violation of FERPA has occurred, however unintentional.

The same goes for Student ID Numbers.

[CAR]

49. Q: Can you address the FERPA implications for the use of FACEBOOK on campus?

A. The service known as Facebook, or College Facebook (www.collegefacebook.com), is a social network used to connect people in college throughout the nation. (According to the website, there is a high school version as well.) Users are required to create individual accounts with Facebook and opt in to their services. Further, Facebook is neither owned nor operated by an individual institution.

Although the Facebook databank may contain information about students, it is not maintained by the education institution. Under the definition of education records in FERPA (Section 99.3), the Facebook databank does not constitute education records. Consequently, there are no FERPA implications whatsoever.

[CAR]

50. Q: How long must we keep backup media concerning a copies of grades or test materials?

A. See #44.

51. Q: Are records of non-course related interactions/relationships considered educational records (e.g., computer support ticket, cable TV service order)?

A. The definition of education records in Section 99.3 of the FERPA regulations does not tie the records to course-related data. As long as the record directly relates to a student and is maintained by the education institution, it is an education record.

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Please note that there are numerous non-course-related education records maintained by institutions. Financial, housing, social and sports activities, library, and other records are maintained by various segments of the institution and are education records when they directly relate to students.

[CAR]

52. Q: Web cameras in lab areas violate FERPA?

A. Possibly; A security camera in a lab area is not necessarily a FERPA violation. However, can student information on displays be read? Is the information personally identifiable, e.g. does it have name, ID, SSN, etc.? If so, it may be a FERPA violation.

53. Q: Portal, please define system of record?

A. In our presentation I mentioned portals and that they may very often stream information from several systems of record (SOR), and questioned whether or not FERPA compliance was taking place at the gates of the SOR or at the portal. Systems of record (SOR) can typically be the student record system, the payroll/personnel system, the alumni database, etc.

54. Q: Are we in violation of FERPA if a cleaning service comes into our office after hours and there may be unsecured student records (i.e. files not locked up in cabinets)?

A. Leaving forms and records unsecured on desks or in other public areas and leaving computer systems open and unattended at desks and work stations create the potential for the unintentional disclosure of information from student records. You never know who will walk by and browse folders or computer screens. You never know who is within listening range of a cafeteria table or courtyard bench and may eavesdrop on conversations. All of these situations raise the potential for an unintentional violation of FERPA.

And while we may speak of the intentional or unintentional violation of FERPA, the penalty under the regulations is the same. A violation is a violation, whether intentional or not.

[CAR]

55. Q: Are Student Employee's work records and any other information tied to employee subject to FERPA?

A. Section 99.3 declares that “records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records.”

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The statement is made in the section where exceptions to education records are identified. Employment records are an exception to education records, except in this one case. That is, if a student is employed in a position where being a student is a condition of such employment, then those employment records are education records. These kinds of positions include student workers, work study students, and teaching assistants.

[CAR]

56. Q: If textbook company provides technology for on-line grading, who is responsible for FERPA compliance?

A. You and your agents are responsible for compliance with FERPA.

If you are contracting the services of an external vendor with whom you will exchange non-directory information, you must advise the vendor that the information with which they will be working is protected by FERPA and cannot be further disclosed. Such advice should be written into your contractual agreement, primarily to protect the institution. It is the institution; after all, that is disclosing non-directory information without the prior, written consent of the students. In addition, you should disclose to your students that particular services are provided by an external vendor and that information exchanged with that vendor is still protected by FERPA.

Many of our institutions include such disclosures in the text of their Annual Notifications. As a precedent, and if applicable, look at the manner in which your institution discloses to its students how it has contracted the services of the National Student Clearinghouse to facilitate verifications with financial aid and other lending entities.

[CAR]

57. Q: what should be done if a signature of consent is not similar to that on record?

A. If you have any reason to doubt the authenticity of a request for the disclosure of non-directory information, do not comply with the request until you have verified the validity of the request. Contact the student yourself to ensure that the request is authentic and record your actions on the actual request form or letter.

10/26/05 – 10:45 am Called student to verify request. (My initial.)

In the absence of current contact information, ask the requesting party to provide photocopies of picture identification as proof of identity.

[CAR]

58. Q: How is a student's class schedule protected by FERPA? i.e. campus security, local police, parents, guardians, other family members, employers

A. A student's class schedule, or study list, is not in the list of items that FERPA recommends for designating directory information. As such, it is non-directory information and requires the prior, written consent of the student in order to release that information.

In those situations where the health and safety of the student or others around the student may be compromised, FERPA permits an exception and allows you to release relevant, non-directory information to campus security, local police, and other safety officials. It is up to you as the custodian of records to determine whether there is, in fact, a valid need to know information before releasing any records.

[CAR]

59. Q: how can the local police have access to the class schedule, if needed?

A. As mentioned in my response to your previous question, local police may be given access to a class schedule if you determine that a health and safety emergency exists. In most cases, you may wish to insist that local police collaborate with your campus police or security office whenever a non-emergency situation brings external law enforcement personnel to your campus.

The other method by which local police may gain access to a student's class schedule is by a court-ordered subpoena.

[CAR]

60. Q: At times, we will get letter notifications from our state's department of law enforcement for current students. Should these letters become a part of the student's file?

A. What is the purpose and content of these "letter notifications" and what is your practice on documents that constitute your student records?

First, what is the purpose of these notifications? Do they have relevance to your students' academic career or to safety concerns on campus? If there are safety concerns involved, you may wish to refer these notifications to your campus police or security office. If maintained in campus police or security office files, these notifications may be considered law enforcement records and, therefore, an exemption to education records under FERPA (Section 99.3).

Remember that *ex parte* orders, issued under the USA Patriot Act, involve the covert investigation of student backgrounds and activities. These orders, signed by the US Attorney General or that official's deputy, stipulate that the student being investigated is not to be notified. The USA Patriot Act further stipulates that *ex parte* orders are not to be maintained by institutions in files of any kind. For more information about the USA Patriot Act, check out the

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section in “The FERPA Transition: Helping Parents Adjust to Higher Education Records Laws,” available from LRP Publications (www.lrp.com).

Your campus should also have policies and procedures regarding its student files—what is to be retained and for how long records are to be retained. These policies and procedures would provide some guidance regarding the documents you mention.

I’m afraid I can’t offer anything more without further information about these “notification letters.” You may wish to consult your records management experts and your campus counsel for further guidance.

[CAR]

61. Q: What software other than EDI is being used to exchange electronic documents?

A. There are at least four different methods of electronically exchanging electronic documents that I am aware of, and this excludes such things as FAX, simple email, etc. EDI (electronic data interchange) allows institutions to exchange record information in a standardized format from their computer to the receiving computer, or interim data base. This means that no one physically handles any of the student record information, it’s exchanged from machine to machine. XML (extensible markup language) operates the same way, standardized format, computer to computer, but uses a different and somewhat more common language. Information on sending academic record information via EDI and XML is available at the AACRAO website (American Associate of Collegiate Registrars and Admission Officers) www.aacrao.org, and at PESC (Postsecondary Education Standards Council) www.pesc.org. There is also a secure PDF software application for sending electronic transcripts that has recently been released by GeoTrust. There is also vendor application software that extracts information from a student records data base, assembles it into an image file, then emails it.

62. Q: What are the FERPA implications for releasing educational records for military purposes?

A. What do mean by “military purposes?” If you are referring to the recruiting activities of the armed forces, see my response to Question No. 25. If you are referring to investigations under the USA Patriot Act, see my response to Question No. 61.

63. Q: Does USC have written policies about FERPA that could be sent to participants via email?

A. All of USC’s policies, information, forms, tutorial all reside on our FERPA website:

64. Q: How can universities comply with GAO (Gov. Acctg. Office) wet signature requirements for work study student time sheets when they have implemented FERPA - compliant e-sign?

A. This is a little out of my area but I think the fact that the Department of Education accepts the exchange of FAFSA information using electronic signatures could serve as precedence. Also, in the Department of Education's 2004 "ruling" it was stated:

"Based on our review of standards acceptable to other areas of the Federal Government, including OMB circulars and Federal Student Aid (FSA) guidance for electronic student loan transactions, as well as standards established by laws such as the Electronic Signatures in Global and National Commerce Act (E-Sign) and GPEA, we believe these modified regulations will more easily permit schools to adapt to changing standards in the areas of electronic signatures and documents.

Changes: We have revised these regulations to be consistent with other Federal Government standards for ``electronic signatures.''

Comments: Several commenters support the use of the FSA standards for electronic signatures in electronic student loan transactions (FSA Standards) as a ``safe harbor'' provision for acceptance of electronic signatures in FERPA.

65. Q: What is the appropriate means for confirming a students identity via the phone, in-person, and through email in order to comply with FERPA?

A. Whatever makes you feel comfortable and assured that you are, in fact, communicating with the student whose records are being discussed. FERPA makes no stipulations in its regulations, although it does place the responsibility for verifying identify on the education official disclosing information.

In person, institutions generally require presentation of a Student ID Card or other picture ID. In other media, you can use multiple questions to verify the identity of the inquirer, using data that is already in your possession—Social Security Number, birth date, birth place, next-of-kin information, etc.

[CAR]

67. Q: When does a parent have rights re: tax dependency?

A. According to the basic guarantees of FERPA (Section 99.7), the parents of students in postsecondary institutions do not have any rights. FERPA, however, permits institutions to make

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exceptions on a case by case basis. One of those exceptions is in the situation where the parents of a dependent student seek access to student records. See my response to Question No. 37.

[CAR]

68. Q: Does OASIS sys update guest privi each year?

A. No. Guest access remains in effect six years from the time the student grants access, or until they revoke the access. This time limit was a very pointed directive from our President.

69. Q: Are there exceptions to FERPA as it relates to financial aid administrators (i.e., the ability to use social security number)?

A. In addition to FERPA, financial aid information is governed by federal and state financial regulations as well as by other legislation that regulates the privacy and use of Social Security Numbers. FERPA cannot make exceptions regarding the use of Social Security Numbers where other legislation has already imposed restrictions and guidelines on practice.

[CAR]

70. Q: If police show up with a warrant to arrest someone what are we required to tell them?

A. What are your campus' policies and procedures in this regard?

Generally, you want to suggest that police act in collaboration with your campus police, security officers, and other offices designated to facilitate relations with the local police—the Dean of Students, Student Affairs Office, or the like. These campus entities should have a procedure in place to cooperate with the police in such a way that is in compliance with FERPA and will not disrupt the academic activities of your campus.

If you are on your own, ask to see the arrest warrant. If possible, involve your campus counsel. You should express your concerns for the safety of other students and the potential for disruption to classroom and other academic activities. Law enforcement officers are trained to deal with these kinds of concerns. You may be asked to summon the student to a particular office or to cooperate in a manner that will address your concerns and still achieve the purposes of the police.

[CAR]

71. Q: Are there any regulations on websites such as Facebook.com, RINGO.com, etc which collects personal information and stores on web? Should we warn students??

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A. This is a discussion you may wish to have with your campus counsel, who would be in a better position to address local concerns in light of national web services.

The social networking services of websites such as Facebook, or College Facebook (www.collegefacebook.com), and Ringo (www.ringo.com) are intended to connect people in colleges throughout the nation. Users are required to create individual accounts and opt in to specific services. Like other web service providers, Facebook and Ringo provide subscribers with disclosures—Terms of Service—that detail how the service is to be used.

Unless you feel that there are any inherent dangers explicit to your college community, no “warning” seems necessary. At most, you might advise students who register with Facebook, Ringo, or any other service, for that matter, to become familiar with the provider’s Terms of Service. Encourage students to think beyond the service being provided and consider any implications of their participation in a service and the impacts on their own privacy when personal information is made available to the public without limitation. Even though information seems to be restricted to use by the subscribers of a particular service, you can never be assured that your information will remain within that specific group.

[CAR]

72. Q: What duties do student workers have in the Registrar's Office at USC?

A. At USC, student workers perform a variety of duties, depending upon where they work. Duties can range from processing transcripts and verifications, updating addresses, to phone duties, filing and providing general information at our service window. Student workers are given one half of an access login. Their supervisor completes the other half of their login when they need system access. This insures that student workers will not access the system when they are not fulfilling official duties. In addition to system training and FERPA training, these students must complete one on one training with our Quality Assurance Officer to insure that they understand their obligations to security and confidentiality and the consequences for failure to adhere to them. All steps require a student to sign an oath.

73. Q: If a student has placed a FERPA restriction on all of their records, can information be shared with the student over the phone or must they submit a release? How do we know it's the student?

A. Your second posit is really the crux of your question.

FERPA does not tell you that you cannot speak with a student by phone, even a student with a FERPA restriction. As the education official, you must make a good faith determination regarding the identity of any caller and be able to substantiate your reasons for acting as you do.

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If you are certain that you are talking with the student in question, there should be nothing to prevent any type of communication.

Most institutions do not want to risk disclosing information, especially FERPA-restricted information, over the phone. If a FERPA restriction is in place on a particular record, insist that the student present herself in person with picture identification. If this is not possible, have the student send you—by paper mail or by FAX—a release for the disclosure of the information sought. You may even ask that the release be accompanied by photocopies of appropriate picture identification.

Some institutions insist that if any information is to be released by phone or otherwise, the FERPA restriction should be removed. This involves a written request from the student, accompanied by photocopies of appropriate picture identification.

[CAR]

74. Q: How long are we entitled to hold on to student change of major forms? And if so, why?

A. FERPA says nothing about records retention, except that records for which inspection and review have been requested cannot be destroyed until that opportunity is provided. The American Association of Collegiate Registrars & Admissions Officers (AACRAO) has compiled a Records Retention Guide, formalizing recommendations for higher education institutions on the retention of specific records. Check out the AACRAO Publications link at the AACRAO website, www.aacrao.org.

In determining records retention policies, ask yourself what need exists for maintaining a particular form or document. Student access systems on the web regularly allow students to verify the information institutions are keeping about them, including whether forms and other transactions were processed accurately.

At UCLA, we made students responsible for the accuracy of their own student records. Most forms, such as a change of major form, an address change form, and certain petitions had a records retention period of only one term. If a student disputed anything after the records retention period of a particular form, it was the student's responsibility to provide documentation in support of the student's position or as evidence of erroneous recordkeeping.

The 1-term retention policy was inspired from financial regulations that give consumers 60 days to notify banks, credit cards, and other financial services providers of errors on statements and services.

[CAR]

75. Q: Who created your OASIS program? Internal or External. Is it part of your Student Management Software similar to something like Banner

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A. Our OASIS programs (On Line Academic Records System), student/guest/advisor are all developed in house. Nearly all of our systems were developed in house, with the exception of the usual “off the shelf” software such as Blackboard, etc. The OASIS programs are managed jointly by the Registrar’s office and the Student Information Systems (SIS) group.

76. Q: If I keep private records on a student for my use only would they be considered part of the education record and would I have to make them available to the student?

A. Your private records are sole possession records, created by you for your own use. Sole possession records are an exception to education records under FERPA (section 99.3). Students do not have the right to inspect and review your records.

Remember that private means private, for your use only. Once those records are shared with other education officials, they become education records, to which students have FERPA rights.

[CAR]

77. Q: How does FERPA address the sharing of information like addresses with office of alumni relations, development office, and other departments on a university campus?

A. FERPA does not address disclosure to specific offices on campus other than to remind recordkeepers that legitimate educational interest or a need to know information must be determined in each and every instance of a request for information by other education officials. See my response to Question No. 6.

Most registrars’ offices proactively designate the information that will be shared with alumni and development offices. This information is usually an extract from directory information, so no prior, written consent would be required anyway.

Name
Address
Telephone Number
E-Mail Address
Dates of Attendance
Major field of study
Degrees and awards received
Participation in officially recognized sports and activities

When information is shared with alumni and development offices, directory and FERPA restrictions are respected, so that the information on students with such restrictions is not forwarded to those offices.

78. Q: Cliff, earlier you indicated that students who are in high school and also taking college level class are FERPA eligible as students only enrolled in college. What about the eligible parent aspect of the

A. Look's like we missed part of your question here.

Parents have FERPA rights in the secondary school setting. High school officials may communicate with parents because in the K-12 system, parents have *all* of the FERPA rights. In the postsecondary environment, however, FERPA assigns those rights to the student, regardless of the student's age. The definition of student in Section 99.3 comprehensively assigns FERPA rights to all postsecondary students to eliminate the need for higher education officials to determine which students have rights and which do not.

See my response to Question No. 97.

[CAR]

79. Q: Where/how would a student file a complaint with the US D of Education regarding a believed violation?

A. A student files a complaint with the Family Policy Compliance Office (FPCO), a division of the US Department of Education, when he or she feels that FERPA rights have been violated. Complaints must be filed in writing to the following address, which should also be provided in your Annual Notification to students.

Family Policy Compliance Office
US Department of Education
400 Maryland Avenue SW
Washington, DC 20202-4605

Students, parents, and other parties may be referred to the FPCO at the address above or to the public telephone number, (202) 260-3887.

[CAR]

80. Q: is there a standard example of a non-disclaimer to use for email?

A. I'm not aware of a standard non-disclaimer for email use. (I'm assuming you're referring to the tag that appears at the end of someone's email.). My disclaimer is a distillation of those of several of my colleagues. It is:

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The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

81. Q: Federal Financial Aid is confirmed by the student's SSN in our SIS+ (Banner) system through an electronic data exchange. Is this a FERPA violation?

A. No, the use of SSN for this purpose is permitted. However, you are required to maintain and transmit the SSN in a secure manner.

82. Q: Are we violating FERPA by accepting payments for a student's registration from a third party in person (the third party is required to know the student's id # and the amount of the charges).

A. No. That third party supplies you with the Student ID number and amount of the charges. This means that the student would have self-disclosed the Student ID number to that third party. As long as you do not provide non-directory information without a prior, written consent, you are in compliance with FERPA.

[CAR]

83. Q: Can professors e-mail grades to students?

A. See Attachment A

84. Q: What type of collection information (re: delinquent accounts) can be sent via email?

A. See Attachment A

85. Q: Can we keep credit bureau reports that include SSN in the student's file?

A. FERPA does not prescribe what documents should be kept in a student file. This is a decision that the institution makes and codifies in its policies and procedures.

Since the student file is essentially composed of non-directory information records, there is no reason that a credit report could not be maintained in the file. The student can request his own copy of his credit report direct from the credit bureau. As long as you keep the credit bureau report in the student file, that document must be made available for inspection and review should the student request to see his file.

[CAR]

86. Q: Must we keep copies of outgoing correspondence and returned mail in the student's file? Can that mail be opened?

A. There is nothing in FERPA that requires you to do so. Returned mail, opened or not, should be maintained if your business need requires it. Returned mail is helpful in certain situations, such as in a subpoena file, where you may be asked to demonstrate a good faith effort to contact the student.

You may wish to direct this question to your records management expert at your campus.

[CAR]

87. Q: Please elaborate on the "don't respond to requests via email".

A. I certainly respond to requests via email, but I will not respond to an email from an unsolicited request from a student to provide any protected/personally identifiable information. I will respond to a faculty member or a staff member if I'm reasonably sure of their identity, especially if I have established a working relationship with that person. There are exceptions and if I feel one is warranted for a student, I will respond to the student, not with a "Reply" function, but with a new message sent to student address that I find in the university directory. This helps to reduce the possibility of a "spoofed" email exchange. Also, technically, a student's request for record information must be submitted with a written signature or its equivalent, the electronic signature.

88. Q: Can we release information to a students parent, if the student is a dependant on the parents tax return?

A. See the response to Question No. 37.

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89. Q: If a student gives permission to communicate via e-mail, can you use this medium to communicate with the student without violating FERPA?

A. See Attachment A

90. Q: If a student requests to be contacted only via email, how can we confirm that the student has made the request?

A. See Attachment A

91. Q: Do we need to give out info on a particular student to federal agencies (eg. FBI, ICE)? If so, what kind of records need to be supplied?

A. Generally, you should treat all third parties the same, requiring a prior, written consent for the release of non-directory information, unless excepted by FERPA (Section 99.31) and its subsequent amendments (the Solomon Amendment, the USA Patriot Act, etc.).

If a federal agency is investigating a particular student and requesting non-directory information, you may demand that the request be submitted through the appropriate channels—a subpoena, an *ex parte* order, or a court order. All federal agencies should be familiar with what constitutes the appropriate channels. Requests that are put in writing should specify the type of information requested. Unless you are bound by law to comply with the request, as in the case of a subpoena, you must make a determination based on the need to know for the situation presented.

Remember that FERPA permits disclosure of relevant non-directory to the appropriate parties in a health and safety emergency (section 99.31). A health and safety emergency is defined as a situation in which a threat is determined to exist to the safety of the student or to others around or in the vicinity of the student.

When in doubt, especially when dealing with federal investigators, consult your campus counsel.
[CAR]

92. Q: Is the institution obligated to provide information from a student record in response to a police inquiry?

A. See the response to Question No. 91.

93. Q: If a student is hired by your institution are his HR records considered student information and subject to FERPA?

A. See the response to Question No. 5.

INQUIRIES SUBMITTED AFTER THE WEBINAR

94. [Edited from the original communication.]

The problem that I am addressing is as follows: “Administration, faculty, and the information technology (IT) administration and staff at colleges and universities are unaware of the legal ramifications of FERPA violations.” This is why I decided to attend this conference. I too find the topic of legislation and IT very interesting. I teach at a very small college and when I started my research and asked what kind of FERPA training program we have I was told, “FERPA, we don’t have a FERPA training program.” Our IT department has been given no guidance with respect to FERPA. This in my opinion is very scary! ☺ While you both come from large universities my thought process is that if my small school is in this boat then there must be others out there as well.

Do you have any feedback or advice you could offer with respect to the problem under consideration?

A. I'm afraid your experience is not uncommon in higher education. While we all agree that FERPA training is important, few institutions have the resources or the expertise to put together and offer their own FERPA training programs.

Fortunately, national associations like the American Association of Collegiate Registrars & Admissions Officers (AACRAO, aacrao.org), the Council on Law in Higher Education (CLHE, clhe.org), and even the US Department of Education (ed.gov) have strategies in place to assist higher education institutions with FERPA training. AACRAO has hosted workshops throughout the country featuring LeRoy Rooker, Director of the Family Policy Compliance Office (FPCO). And AACRAO's "FERPA Guide" offers suggestions for implementing FERPA training.

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In 2000, I developed "Managing the Privacy of Student Records," a workshop to introduce faculty and staff to the basics of FERPA. The workshop was so successful at UCLA that I was invited to offer it at other institutions. In 2002, LRP Publications (www.lrp.com) commissioned me to write a textbook for the workshop and also published my Leader's Guide to help facilitators conduct the workshop at their own campuses. What I tried to do with "Managing the Privacy of Student Records" was develop a workshop that could be presented on any campus utilizing the textbook. I wanted to make it easy for campuses to get their own FERPA training initiatives going.

There is always so much more we can do with FERPA training, but the important thing is getting started on our campuses. With these tools as a beginning, campuses can make an effective start at FERPA training.

[CAR]

95. [Edited from the original communication.]

Representatives from our campus Admissions and Records Office have asked that we transmit the following questions for your response:

- (1) What comprises directory information?
- (2) What rights can parents be granted by the university?
- (3) For conditionally admitted students, we permit emails from professors containing student name, ID #, course and final grades to clear conditional holds. Is this a violation of FERPA?

A.

- (1) What comprises directory information?

Directory information (Section 99.3 of the regulations) is defined as information that is not considered harmful or an invasion of privacy if released. Institutions must define what constitutes directory information for them. Directory information may include data such as the following.

Name
Address
Telephone Number
E-Mail Address
Major field of study
Dates of attendance
Enrollment status
Degrees and awards received

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Date and place of birth
Most recent previous school attended
Photographs
Participation in officially recognized activities and sports
Height and weight of athletes

Institutions are forbidden to designate Student ID Number, Social Security Number, Race, Ethnicity, Nationality, or Gender as directory information.

Remember that as long as you declare what you consider directory information in your Annual Notification, the prior, written consent of the student is not required for you to release this information--so long as the student has not restricted the release of that information.

(2) What rights can parents be granted by the university?

Section 99.5 of the regulations specifically states that "When a student becomes an eligible student, the rights accorded to, and consent required of parents...transfer from the parent to the student." And Section 99.3 defined the eligible student as the individual who had reached the age of 18 or who attends a postsecondary institution.

Thus, parents have no rights under FERPA. There are exceptions that FERPA cites and allows institutions to make in certain instances. The parents of dependent students, for example, may have access to the dependent student's records, defined in Section 99.31(a)(8). But if the institution is making a practice of allowing access to the parents of dependent students, this policy should be disclosed in the Annual Notification.

Recent amendments to FERPA allow the institution to notify parents when a determination has been made regarding a violation of certain laws or institutional policy. The Foley Amendment, Section 99.39, allows institutions to disclose the final results of disciplinary proceedings concerning crimes of violence and nonforcible sex offenses. The Warren Amendment, Section 99.31(15), allows institutions to notify the parents of an individual under the age of 21 when determination has been made of a violation of federal, state, or local law or institutional policy governing the use or possession of alcohol or other controlled substance.

As you can see, the "rights" of parents are essentially defined by institutional policy, taking into account guidelines, but not requirements, that FERPA offers.

(3) For conditionally admitted students, we permit emails from professors containing student name, ID #, course and final grades to clear conditional holds. Is this a violation of FERPA?

As Bob indicated in our webinar today, e-mail is not a secure medium for the transmission of non-directory or confidential information.

At Antioch University, we use a closed e-mail system known as FirstClass. Our technical people are assured that e-mail sent within the system—that is, from one FirstClass e-mail account to another—is encrypted and secure. Staff are, nevertheless, discouraged from posting confidential

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information in the Subject Line of an e-mail. E-mail that involves transmission outside the system—such as to an AOL, yahoo, or other vendor system, is not secure and should never be used for the transmission of confidential information.

As our technology expert, Bob can probably add more to this discussion about e-mail.

[CAR]

96. [Edited from the original communication.]

First of all, I'd be really interested in getting my hands on the publication you mentioned about helping parents understand FERPA. Where can we get that?

The Librarian here asked if the books a student has checked out are part of their education record. Are they?

A. "The FERPA Transition: Helping Parents Adjust to Higher Education Records Laws" was written to help administrators deal with parents and FERPA. As the writing progressed, however, it became evident that we needed to provide campus administrators with assistance in dealing with parents and other entities regarding a host of federal regulations. The book deals with FERPA, but also includes sections on the Solomon Amendment, the Clery Act, the Foley and Warren Amendments, and the USA Patriot Act. The texts of these legislative documents are also provided in the appendix of the book. Look for the book under the Higher Education books section of the LRP Publications Catalog, <http://www.lrp.com/>.

Library records, because they are maintained by the education institution and directly relate to students are, indeed, education records. In the past, however, they have not been viewed as organized records that identify particular students. As library systems have become more automated and sophisticated, their character has changed and are now considered a critical record of interest to federal investigators acting under the USA Patriot Act.

[CAR]

97. [Edited from the original communication.]

Is this correct: If a high school student is 17 years old and attends College Classes, a parent does not have right to their information. The 17 year old going to College has the same right as an 18 year old to College under

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FERPA. If parents want information pertaining to their 17 year old they must contact the High Schools.

We have always been told if a student is under 18, the parents had full rights.

A. Section 99.3 of the FERPA regulations defines an eligible student as an individual who has reached the age of 18 OR who attends a postsecondary institution. If a college student is under the age of 18, that student is still guaranteed FERPA rights because he is attending a postsecondary institution.

The suggestion of referring parents of college students back to the high school only applies to high school students who may be enrolled in a college program through their high school. At the high school, the parents have rights of access to their children's records. Parents would have rights to access any records shared by the college with the high school. But parents could only access such information through the high school because they have no rights in the postsecondary setting.

It is important to note that this example applies only to situations where the student is a student of both the high school and the college. It should not be inferred that parents can go through a high school to access their child's college information. If the college has no relationship with the high school, the high school is a third party and access to student information requires the prior, written consent of the student.

[CAR]

98. [Edited from the original communication.]

I attended your presentation "Creating a FERPA Friendly Campus" yesterday. I did have a couple of questions that are more specific to site facilities.

Here are my questions:

1) When advising students person-to-person, does this have to occur in a place that is private such as an office or can an advisor work with students openly in a cubicle? I work with SSS students in a cubicle and I just wanted to see if this is ethical or if I am in violation of FERPA.

2) We have a printer that everyone in our area uses. The information that is left on top of the printer are students' transcripts, financial aid award

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information and other confidential education reports. Is this ethical to have students' confidential material left face up on a printer in our office area or would this be considered a violation of FERPA?

A. Question 1: Advising, like many other student services, is an activity that demands reasonable precautions to ensure privacy. That means that we should give some attention to the ambiance of our student windows and other areas used for student services. Cubicles and other open areas may not appear private, but as long as care is taken to ensure that the head of the line is far enough way from a service window to give some measure of privacy, you should be OK. Same for cubicles and other areas used for advising activities. As long as reasonable precautions are taken to ensure privacy, you should be OK.

While FERPA does not say anything specific, the implications in regard to protecting student information do create ethical expectations that impact the design of our student services areas. Procedures that govern the use of space may be all that is necessary to ensure sufficient privacy is guaranteed.

Question 2: Supervisors need to ensure that staff are sufficiently trained to guard against the unintentional disclosure of student information. Leaving confidential documents where others may view them is certainly not responsible practice and may be a violation of FERPA.

The operating question here is about where the photocopy machine is located. If the copier is in a common area used only by other education officials, the risk may not be significant, although the practice of leaving transcripts and other documents unattended is definitely sloppy by all records management standards. In the common area of education officials, staff need to be aware of the confidentiality of the records in their area and cautioned against disclosing information from those documents outside the work group.

The real danger is if the photocopy machine is in an area used by students or general faculty or the public. Then, transcripts and financial aid documents left unattended are a significant FERPA violation because of the potential danger for breached confidentiality.

Sounds as if supervisors need to set some ground rules and train staff in either situation.

[CAR]

99. [Edited from the original communication.]

While discussing FERPA technology challenges, one of you mentioned concern with listing student name along with id in the subject line of an e-

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mail. Some folks here interpreted your comments to mean that neither a name nor an id should be in a subject line. Others interpreted it as the name is okay but never use the id with it. Would you clarify?

Also, we have scoured the AACRAO FERPA guide for this information. Is there another source where we can find related information?

A. See Attachment A. As you've discovered, the AACRAO FERPA guide has minimal information on email (pages 44-45, 94), none of which pertains to your particular area of interest. As I stated in the Attachment, FPCO has yet to provide direction, hence you only see practices recommended by various institutions.

100. [Edited from the original communication.]

There is one question that came after the meeting, and we need some guidance from the experts. You raised the issue of picture-taking cell phones and the challenges they present with regard to protecting educational records. Our student services building houses A&R, financial aid, EOPS, counseling, and the university transfer center. We designed some signs asking students to turn off their cell phones when entering the building and when requesting services. After posting the signs, our superintendent/president raised the question of violating students' rights to use cell phones. He has requested clarification from someone in authority on whether or not FERPA regulations outweigh the students' right to use their cell phones in specific buildings.

A. As you presented the question, it appears to be more of a civil law question than a FERPA issue. Although the civil law question is out of my area of expertise, is your policy any different from those implemented in movie theaters, restaurants, churches, etc.? As a FERPA issue, especially in the case of picture taking cell phones, my opinion is that not only do you have the right, but you have the obligation to insure that they are not in play in areas where student information is being discussed and/or displayed. (Remember my example in southern California where picture taking cell phones are banned from a number of spas/fitness centers.) You could also make a case for denial of use by audio only cell phones in your counseling areas where a cell phone might pick up a privileged conversation. Only my opinion, but I believe that you can institute this policy.

101. [Edited from the original communication.]

At our campus we wondered about asking faculty to recycle their courses in Blackboard as soon as the quarter is over. Recycling, as you probably

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know, deletes all discussion board activity and student enrollees, so our faculty are reluctant to do that. If we do let them wait, what would be a reasonable length of time for them to keep the Blackboard information without jeopardizing the security of student information?

A. The Blackboard issue is a tough nut to crack. Faculty are, as you point out, reluctant to give up materials that can be reused. As a general guide, you might use the schedule that my institution uses for such things final exams and other grade work which effected the course grade, which is one year.

However, depending upon your version of Blackboard, you should be able use "Course Copy Model" which allows the instructor to move his course materials forward, but leaves enrollees and discussion board activity behind, at which point it could be deleted.