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ABOUT FERPA



FERPA governs the privacy of information contained in student records.

There were no federal laws enacted prior to 1974 that specifically addressed the privacy of student records. As a result, some schools would release information indiscriminately while others would refuse to release information to anyone including the student. Senator William Buckley is credited with authoring the Family Educational Rights and Privacy Act that is also referred to as the "Buckley Amendment" or simply as FERPA in 1974. The contents are currently available in the Congressional Federal Record (CFR) Part 99 of Title 34 (34 CFR 99). The regulations address the records of elementary, secondary and post-secondary students but this course will only address FERPA as it pertains to post-secondary students.

The foundation of FERPA is that a student, upon notification, is given the right to inspect and review his or her own records while, generally, everyone other than the student is prohibited from access to student information. A student may permit disclosure of his or her education record as described in the Act.

The Act recognizes that some exceptions to the basic foundation are necessary for legal reasons or for reasons of efficiency. Therefore, accrediting agencies, courts, financial aid administrators, safety officials and employees of the school with a legitimate educational interest, may be given access to student records when appropriate processes are followed. Additional exceptions are described later.

FERPA was written to address privacy issues of student information. The University also complies with numerous privacy laws, state and federal, pertaining to employment, grants and contracts, the Sunshine Act and law enforcement proceedings. This course only addresses the privacy issues of student records and only at the postsecondary level.

Question: What information must an institution make available to the student for review?

Answer: Any and all information maintained by the institution or agency must be made available except the following:

- financial information submitted by the parent or parents of the student
- confidential letters of recommendation dated prior to January 1, 1975, provided they were collected under established policies of confidentiality and used only for the purpose for which they were collected
- confidential letters of recommendation dated after January 1, 1975 regarding admission, application for employment, job placement or receipt of honors provided the student has waived his or her right to inspect and review the letter
- records containing information about more than one student (however, the institution must permit access to that portion of the record which pertains to the inquiring student)
- records that are kept in the sole possession of the maker, are used only as a personal memory aid and are not accessible or revealed to any other person except a temporary substitute for the maker of the record
- records that are created by a law enforcement unit, created for a law enforcement purpose, or maintained by the law enforcement unit
- records related to employment, which are not conditioned upon attendance or enrollment
- medical records
- post-attendance or alumni records



THE AIMS OF FERPA



Since this federal law deals specifically with student records, it affords students certain rights of privacy:

1. Students must be permitted to inspect and review their own education records.
2. Students have some control over the disclosure of information from their educational records.
3. Students may seek to amend their educational records when they determine the record is inaccurate.
4. Students have the right to file a complaint with the Family Policy Compliance Office in Washington, which handles FERPA complaints.

Procedures must be developed by the institution or agency to permit current and former students to inspect and review their educational records within 45 days after they request to do so. An institution may not destroy any records pertaining to a student after the student has requested a review of his or her records until such time as the review has been completed.

Question: How must an institution make information from the educational record available to students?

Answer: FERPA requires that an institution make available the information for review. It does not require that an institution make photocopies of the information except when not doing so would effectively prevent the student from inspecting and reviewing the records. Such could be the case when geographic distance is a limiting factor. However, it is not advisable to provide the student with the original outside of the institution. Copies are an acceptable means of fulfilling the request. Students may also be asked to come to campus to inspect the record.

Students have the right to an explanation and interpretation of the record by an official of the institution that is familiar with the record; such as in the Registrar's Office or the student's department.

It is also important to know that institutions must annually notify students currently in attendance of their rights under FERPA and by any means by which this can be read. Currently, the University of Missouri provides the information in the [Schedule of Courses](#). It can also be found online. For more information, refer to the **External Links** area of this tutorial.



GENERAL DEFINITIONS



It is very important to understand the definitions commonly used in reference to FERPA issues; here are the major ones.

1. **Student** - includes any individual for whom an educational institution maintains education records. The term does not include an individual who has not been in attendance at the institution. An individual who is or has been enrolled in one component unit of an institution, who applies for admission to a second unit, has no right to inspect the records accumulated by the second unit until enrolled therein.

2. **Eligible student** - refers to a student who has reached the age of 18 or is attending an institution of postsecondary education. Since these guidelines are specifically for postsecondary institutions, "student" as used in this document is presumed always to refer to an eligible student. In elementary and secondary schools, parents have additional rights not covered in this course. In postsecondary institutions, the rights accorded to and the consent required of the eligible student replaces the parental rights and consent of elementary and secondary schools.

3. **Attendance** - includes but is not limited to a) attendance in person or by correspondence study (program) and b) the period during which a person is working under a work-study (cooperative) program.

4. **Parent** - includes a parent, a guardian, or an individual acting as a student's parent in the absence of a parent or a guardian.

5. **Record** - means any information or data recorded in any medium (e.g., handwriting, print, tapes, film, microfilm, microfiche and any form of electronic data storage).

6. **Education Records** - means those records directly related to a student and maintained by the institution or by a party acting for the institution. The term "education records" does not include the following: **a)** records of instructional, supervisory, administrative, and certain educational personnel which are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute who performs on a temporary basis the duties of the individual who made the records; **b)** records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement; **c)** records relating to individuals who are employed by the institution, which are made and maintained in the normal course of business, relate exclusively to individuals in their capacity as employees, and are not available for use for any other purpose; **d)** records relating to a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional, acting in his/her professional capacity and are used solely in connection with the provision of treatment to the student and not disclosed to anyone other than the individuals providing such treatment except to a physician or other appropriate professional of the student's choice; and **e)** records of an institution which contain only information relating to a person after that person is no longer a student at the institution (e.g., information gathered on the accomplishments of an alumni).

7. **Personally Identifiable** - means data or information which include **a)** the name of the student, the student's parent, or other family members; **b)** the student's address; **c)** a personal identifier such as social security number or student number; **d)** a list of personal

characteristics, or other information which would make the student's identity easily traceable.

8. Directory Information - information as defined by the institution, which would not generally be considered harmful to the student or an invasion of privacy if disclosed. It may include, but is not limited to, such student information as the student's name, address, telephone number, date and place of birth, major fields of study, participation in officially recognized activities and sports, dates of attendance, degrees and awards received, most recent educational institution attended, and other similar

9. Educational Institution (or Agency) - generally means any public or private agency or institution that receives funds from any federal program under the administrative responsibility of the Secretary of Education. The term refers to the institution as a whole, including all of its components (e.g., schools or departments in a university).

10. Disclosure - is defined as permitting access to or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein to any party, orally, in writing, by electronic means, or by any other means.

11. Legitimate Educational Interest - A school official is determined to have legitimate educational interest if the information requested is necessary for that official to **(a)** perform appropriate tasks that are specific in his or her position or by a contract agreement; **(b)** perform a task related to a student's education; **(c)** perform a task related to the discipline of a student; **(d)** provide a service or benefit related to the student or student's family, such as health care, counseling, job placement or financial aid.

NOTE: Although a person may be designated a "school official," as in the case of faculty or staff, he or she does not have inherent rights to any and all education record information. The school official must demonstrate to the records keeper a legitimate educational interest. The determination is made on a case-by-case basis.

 **TO WHOM DOES FERPA APPLY?**

All students in attendance and former students.

All educational institutions and agencies that receive funds under any program administered by the US Secretary of Education.

All records directly related to a student that are maintained by an educational institution, an educational agency or by a party acting for the institution or agency *except*:

- Sole possession records
- Law enforcement records
- Employment records
- Medical records
- Post-attendance records

Question: Who oversees FERPA?

Answer: Responsibility for administering the Act has been assigned to the Family Policy Compliance Office within the Dept. of Education. This office reviews and investigates complaints and attempts to bring about compliance. The penalty for non-compliance with federal regulations may result in withdrawal of Education funds from the institution.

Question: When does a student gain the right to access his or her educational record?

Answer: FERPA permits institutions to define "enrolled" and thus grants rights only to enrolled students. At the University of Missouri-Columbia, an enrolled student is one who has registered for classes. A student who is admitted or denied admission does not have any FERPA rights until or unless the student enrolls. FERPA rights remain available to a student following initial enrollment until such time as the student is deceased. FERPA does NOT apply to deceased students although an institution may make policy decisions about records disclosure regarding deceased students. Contact the MU Office of the University Registrar, 127 Jesse Hall, if you have questions regarding the record of a deceased student.

Each institution must establish a written policy and procedures on how the institution complies with FERPA. This statement must be provided to any student upon request and to other interested parties. This institutional document will describe institutional policies and procedures in areas of access, release, and challenge of educational records. Students will be informed annually of their rights including the titles and addresses of the officials responsible for those records. Annual notification may be by individual notification or by publication in college catalogs, schedules or by student newspapers. Institutions must give annual public notice of the categories of identifiable information which the institution has designated as public or directory information and must outline specific procedures to inform students how to withhold Directory Information.

Question: How about the rights of students to inspect and review their own records?

Answer: Students and former students have rights to inspect and review their education records. Procedures must be developed to permit students to inspect and review education records within a maximum of 45 days after they request to do so. The right of inspection and review includes the right to an explanation and interpretation of the record and the right to a copy of the record when failure to provide a copy of the record would effectively prevent the student from inspecting and reviewing the record. A copy may be refused, but only if, in doing so, the institution does not limit the student's right to inspect and review that record. It

is not advisable to give students' original records to remove from the institution.

Question: What about the rights of students to challenge the contents of educational records?

Answer: The Act and regulations do not provide details about required grievance and hearing mechanisms to be employed, but institutions should have clear channels of appeal that are stated in the written institutional policy, involve disinterested parties and take the following provisions of the regulations into account:

1. Institutions must provide students with an opportunity to challenge and amend the contents of their education records which the students consider to be inaccurate, misleading or otherwise in violation of their privacy or other rights.
2. Officials who receive challenge requests must decide within a reasonable period of time whether corrective action consistent with the student's request will be taken. The student must be notified of the decision. If the decision is in agreement with the student's request, the appropriate record(s) must be amended.
3. A student who is not provided full relief sought by his or her challenge must be informed by the appropriate official of the decision and his or her right to a formal hearing on the matter. *It is advised that MU staff and faculty contact General Counsel should such a situation arise.*
4. A student's request for a formal hearing should be in writing within a reasonable period of time after receiving the requests. The appropriate official must inform students of the date, place and time of the hearing reasonably in advance of the hearing.
5. The student must be afforded a full and fair opportunity to present evidence relevant to the issue raised. The student may be assisted by or represented at the hearing by one or more persons of his or her choice, including an attorney, at the student's expense.
6. The hearing may be conducted by any individual, including an official of the institution, provided such person does not have a direct interest in the outcome of the hearing.
7. Institutional decisions must be communicated to the student in writing, must be based solely on the evidence presented at the hearing(s) and must include a summary of the evidence and the reasons for the decision. The decision should be delivered to all parties concerned who have a legitimate educational interest. If the decision is in favor of the student, the institution must amend the record and inform the student of the amendment in writing.
8. If a hearing decision is not in favor of the student, the appropriate official must inform the student that he or she has the opportunity to place within the education record a statement commenting on the information in the record or a statement setting forth any reason for disagreeing with the decision. The statement placed by the student shall be maintained as part of the education record so long as the record is held by the institution. When the student's education record is disclosed to an authorized party, it must include the statement filed by the student.

FERPA was not intended to provide a process used to question the substantive judgements which are correctly recorded.

Question: What about the limitations on the rights to inspect and review records?

Answer: Limitations exist on students' rights to inspect and review their education records. Institutions are not required to permit students to inspect and review financial information

submitted by parents, confidential letters and recommendations if the student waived his or her right to inspect them, and records which contain information on more than one student, except that the institution must permit access to the portion that pertains to the inquiring student.

Question: How about the destruction of student records?

Answer: FERPA contains only one reference to the destruction of student records. Once a student makes a request to inspect and review their education record, such student's records cannot be destroyed until after the opportunity for inspection and review have been provided. The explanations that are added to a student's record upon denial of a student's challenge and a record of disclosures or requests for disclosure may not be destroyed unless the record to which they pertain is destroyed. For further advice on records management, see the University of Missouri Records Retention Guide: (<http://www.system.missouri.edu/archives/man-p3.html>)



RELEASING INFORMATION



A SIGNED WRITTEN RELEASE is required in order to disclose student information to a third party (**see the actual form in the Course Documents section**). The signed written release shall comply with the following provisions:

- Specify the records to be released
- State the purpose of the disclosure
- Identify the party or class of parties to whom disclosure may be made.
- Be signed and dated by the student

The University requires a student to provide as much of the following as possible when requesting release:

- Student identifying information such as name, social security number or student number, previous names under which the student may have attended the University, date of birth or other helpful identifying information
- Contact information to include address, telephone number, email address or other helpful contact information
- Approximate dates of attendance at the University

Question: What can I release?

Answer: Directory information may be shared, unless a student has asked that it not be. We currently flag students on CICS screen USSISR19 who do not want any of their information released to the public. If you encounter this flag, say, "I'm sorry, but I have no information to release on that individual." Do NOT say anything that would indicate that this person is an MU student.

The University may release information **without** a student's signed written release in the following circumstances(*exceptions*):

1. Authorized representatives of the following for audit or evaluation of federal or state supported programs, or for enforcement of or compliance with legal requirements that relate to those programs (Comptroller General, Secretary of the Department of Education, state educational authorities).
2. State and local officials to whom disclosure is specifically required by state statute adopted prior to November 19, 1974.
3. Veterans Administration officials.
4. Other school officials within the institution determined by the institution to have a legitimate educational interest.
5. Officials of other institutions in which a student seeks or intends to enroll on the condition that the issuing institution makes a reasonable attempt to inform the student of the disclosure unless the student initiates the transfer, or the written policy of the institution includes a notice that the institution forwards education records to other institutions that have requested the records in which the student seeks or intends to enroll.
6. Persons or organizations providing financial aid to students, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

7. Organizations conducting studies for, or on behalf of educational agencies or institutions to develop, validate and administer predictive tests, to administer student aid programs, or to improve instruction.

8. Accrediting organizations carrying out their accrediting functions.

9. Parents of a student who have established that the student's status as a dependent according to Internal Revenue Code of 1954, Section 152. Generally this is done by presenting a copy of the most recent tax form showing the student as a dependent.

10. Persons in compliance with a judicial order or a lawfully issued subpoena, provided that the institution makes a reasonable attempt to notify the student in advance of compliance. The institution is not required to notify the student if the subpoena is for a law enforcement purpose and if it orders the institution not to disclose the existence or contents of the subpoena. MU faculty and staff who receive a subpoena are to contact General Counsel immediately and fax a copy to the office prior to complying. Legal counsel will verify that it has been legally served, etc. and advise on the appropriate response.

11. Persons in an emergency, if the knowledge of information, in fact, is necessary to protect the health or safety of students or other persons.

12. An alleged victim of any crime of violence or the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime.

13. Directory information provided the institution informs the students which information is considered directory information, gives the students the opportunity to refuse disclosures of information for any or all categories of directory information and that the students be given a reasonable period of time in which to state such refusals in writing. At MU students may restrict Directory Information at any time by providing a written request to the Office of the University Registrar, 130 Jesse Hall. To prevent it being published in the telephone directory, written notice must be provided to the Office of the University Registrar--Registration Department., 130 Jesse Hall, by the 15th calendar day of the full semester.

14. Directory information on a former student provided that the former student did not elect to restrict directory information release at his or her last opportunity as an enrolled student.



KNOW THE DIFFERENCE



What is Directory Information?

Directory information would not generally be considered harmful or an invasion of privacy if released. At MU, the following is considered directory information:

- Name
- Address
- Telephone listing
- E-mail address
- Date and place of birth
- Major field of study
- Dates of attendance
- Student Level
- Degrees and awards received
- Weight and height of members of athletic teams
- Enrollment status in any past or present semester (i.e. full/part time)
- The most recent education agency or institution attended.
- Participation in officially recognized activities and sports

Reminder: If directory information has been restricted, then NO information will be released.

What is "Personally Identifiable Information?"

This is information that might invade privacy, cause harm or make the student's identity traceable if disclosed.

Examples:

- Name
- Name of parents or family members
- A personal identifier, such as social security number or a student number.
- List of personal characteristics that would make a student's identity traceable.
- Address (however it can be listed as directory information.)

What you must NOT release?

- Social security number
- Student number
- Race/ethnicity/nationality
- Gender
- Grades
- Other personally identifiable information without written consent or when covered by an exception.



SPECIAL "NOTES" FOR FACULTY



Some helpful tips:

- If you plan to photograph students and use them later in presentations, obtain a signed release at the beginning of the term.
- If you plan to share examples of student work with other faculty members, members of subsequent classes, etc., obtain a signed release at the beginning of the term.
- If you plan to have students share work on-line, obtain a signed written release.
- If you plan to write a letter of recommendation that involves a personal identifier e.g. a GPA, grades etc, the writer is required to obtain a signed release from the student. The student also has a right, unless waived, to read the letter since such a letter becomes part of the student record.

To avoid violations of FERPA, DO NOT:

- at any time use the student identification number or entire Social Security number of a student in a public posting of grades
- ever link the name of a student with that student's identification number or social security number in a public manner
- leave graded tests in a stack for students to pick where they would sort through the papers
- pass around a printed class list or roster with student names, social security or student identification numbers, or grades.
- discuss the progress of a student with anyone other than the student (and this includes parents) without the written consent of the student
- provide anybody with a list of students enrolled in your classes for any commercial/ advertising purpose
- provide anyone with student schedules or assist anyone other than university employees in finding a student on campus
- e-mail grades to students

 **FREQUENTLY ASKED QUESTIONS****What is a student educational record?**

Just about any information provided by a student to the University for use in the educational process is considered a student educational record:

- personal information
- enrollment records
- grades
- schedules

**What is "restricted directory information?"**

A student may choose to restrict the release of his or her directory information by completing a FERPA release of information form available in the Office of Student Records & Registration. If a student has requested to have their information restricted, the response to an inquiry about that student should be "There is no information available for that individual." Do not say phrases such as "This person is restricted" or "This student's information has a confidential indicator," which indicates there is, in fact, information on the individual.

**What is an "educational need to know"?**

Educational need to know, or legitimate educational interest, is when the official needs the information to:

- Perform a task related to a student's education
- Perform a task related to the discipline of a student
- Provide a service or benefit relating to the student or student's family, such as health care counseling, job placement or financial aid
- Perform appropriate tasks that are specified in his/her position description or by a contract agreement

**What is the penalty of violating FERPA and how would anyone know?**

Students may file complaints with the U.S. Department of Education. The Family Policy Compliance Office (FPCO) is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA. If a complaint is found to be valid, the institution may lose all Department of Education funds; for instance federal financial aid and grant monies. Generally this is done only if compliance cannot be secured with voluntary means.

**Once information is released, isn't it public?**

Released information is to be used only by the party receiving it and only for the purpose for which it was given. The institution should inform the receiving party that the information cannot be passed on, and University faculty and staff are not at liberty to pass on data simply because they have access to it.

**What about a parent asking how a student is doing in a class?**

Even though the person inquiring may be the student's parent, FERPA recognizes students in post-secondary education as adults, regardless of age. Therefore, you cannot give out that grade, or any other non-directory (confidential) information. MU students can after they have signed a written release, issue parental access to their current course schedule, final grades, and account balance information. See [MU's FERPA page](#) for more information.



THE SOLOMON AMENDMENT



The Solomon Amendment (1998) is a federal law authorizing institutions that receive federal funding to allow the Department of Defense:

- Entry to campus
- Access to students on campus
- Access to lists containing recruiting information on students

The Solomon Amendment identifies certain information that military recruiters may request on students aged 17 years and older, and who are registered for class(es). This information is known as *Student Recruiting Information*. This information includes only:

- Name
- Address
- Telephone number
- Age
- Class level
- Academic major
- Place of birth
- Degrees received
- Most recent educational institution attended
- E-mail address

If a student, under FERPA, restricts the release of directory information, then the University may not release such information to the military either (FERPA supersedes the Solomon Amendment.) There are additional guidelines for the release of data. The Office of the University Registrar authorizes all data release to the requesting units. Any requests should be referred to the University Registrar.



THE U.S. PATRIOT ACT



What is the U. S. Patriot Act and how does it apply to releasing student information?

- The U. S. Patriot Act refers to a law entitled, “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.”
- It outlines what information needs to be provided to assist with fighting terrorism.
- Non-directory information may be released in response to provisions outlined in the U. S. Patriot Act if a lawfully-served subpoena or court order has been presented to you. (Check with the UM General Counsel’s office prior to releasing any information even in the case of subpoena or court order.)
- It requires that a lawfully-served subpoena or court order should accompany all law enforcement requests for nonconsensual releases of non-directory information. Nonconsensual release of private student information, unless pursuant to a subpoena or court order or otherwise authorized under a separate provision of law, could expose institutions to significant legal consequences.

NOTE: Any information that you provide based upon a signed release, subpoena or court order needs to be maintained as a record. Keep a record of the date of the signed release or order, to whom it was released and for what purpose. A copy of the materials presented and the materials provided is the best record.

So, what do I do if a law enforcement official (police, FBI, etc.) contacts me for information when it is not an immediate threat to the health and safety of the student or others?

- Listen to the request and confirm that the person has proper identification as a law enforcement official. Should any one represent themselves as a private investigator, or if you have any doubts about an individual’s credentials, check with campus police.
- If it is directory information (see course documents) you may release it unless the student has restricted the information. (This is noted on USSISR 19 of the student system or can be determined by calling the Office of the University Registrar.
- If it is a request for non-directory information and the official does not have a signed release from the student authorizing the release of the information to him/her, indicate that you will need a subpoena or court order to release the information. Once you receive such a document, contact the University of Missouri General Counsel’s office.
- If the request is for information about an international student, scholar or staff member, please contact the International Center.