

## FERPA OVERVIEW

FERPA is the Family Educational Rights and Privacy Act of 1974. The Family Policy Compliance Office in the Department of Education administers the law and issues regulations for and interpretations of FERPA.

FERPA compliance is important because:

- Failure to comply can lead to a loss of federal funding;
- Student privacy is important, and we have an ethical obligation to protect it;
- Public scrutiny of privacy practices and handling of sensitive information is high.

FERPA provides *students* the right to:

- Inspect and review education records;
- Seek amendment of education records;
- Control the disclosure of education records.

UC policy also governs disclosure of information from student records. See <http://studentlife.ucsf.edu/13000-policies-applying-disclosure-information-student-records>. UC policy generally follows FERPA and provides definitions specific to UC.

UCSF provides an annual disclosure to students, as FERPA requires. The FERPA disclosure is available at <http://registrar.ucsf.edu/student-records/disclosure>.

In the postsecondary environment at UC, the FERPA rights belong to students. Parents and spouses of students have no right of access to information in students' education records.

FERPA governs students, not applicants. Disclosure of information about applicants is governed by the California Information Practices Act (IPA). Generally, no information about applicants can be disclosed to the public.

FERPA governs *education records*. Education records are records that:

- a. Contain information that is directly related to the student; and
- b. Are maintained by an educational agency or institution or by a party acting for the agency or institution

A *record* is any information maintained in any way, including, but not limited to:

- Handwriting
- Video or audio tape
- Computer media
- Film
- Print
- Microfilm and microfiche

Some records are specifically excluded from the definition of education records:

- a. Law enforcement records;
- b. Treatment records (medical and psychological treatment records of students are excluded from the definition of “education records” if they are made, maintained, and used only in connection with treatment of the student and disclosed only to individuals providing the treatment);
- c. Employment records;
- d. Alumni records (records created or received after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student);
- e. Sole-possession records (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);
- f. Grades on peer-graded papers before they are collected and recorded by a teacher.

## **RIGHT TO REVIEW EDUCATION RECORDS**

UCSF *must* provide students access to their education records.

FERPA requires universities to provide access within 45 days.

In general, FERPA does not require the university to provide copies. Exception: If circumstances effectively prevent a student from exercising the right to inspect and review the student’s education records, the educational institution shall provide a copy or make other arrangements to allow the student to inspect and review the records.

UCSF *may* charge students a fee for copies of their education records (but not for the retrieval).

The university cannot destroy an education record that is the subject of a student’s request for access.

Students do not have a right of access under FERPA to parents' financial information or to confidential letters of recommendation for which students have specifically waived access rights.

## **RIGHT TO SEEK AMENDMENT OF EDUCATION RECORDS**

If a student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.

If the university declines to amend the records, the student has a right to include a statement. The statement is maintained for the life of the related records, and it must be disclosed with the related records.

The right to seek amendment of education records does not allow students to dispute evaluations, such as grades.

## **RIGHT TO CONTROL DISCLOSURE OF EDUCATION RECORDS**

Except as discussed below, no *personally identifiable information* from education records can be disclosed to a third party without the signed and dated consent of the student. The student's consent must specify *which records* may be disclosed, *to whom* the records may be disclosed, and the *purpose* of the disclosure. Electronic signatures are permissible, but detailed requirements exist.

Personally identifiable information includes, but is not limited to:

- Student's name;
- Parent's name;
- Address of the student or student's family;
- A personal identifier, such as SSN or student ID number;
- Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty
- Information requested by a person whom the educational institution believes knows the identity of the student to whom the education record relates.

Educational institutions must use reasonable methods to identify and authenticate the identity of students and school officials to whom the institution discloses personally identifiable information from education records. The use of widely available information to authenticate identity, such as the recipient's name, date of

birth, SSN, or student ID number, is not considered reasonable under the regulations.

### **Exception for Directory Information**

*Directory information* is information that would not generally be considered to be harmful or an invasion of privacy if disclosed. FERPA provides a list of information that may be considered directory information, but UC policy allows only a subset to be considered directory information. UC campuses can further restrict the types of information that are considered directory information. At UCSF, the following types of information are directory information:

- Name;
- Local and permanent mailing address;
- Telephone numbers;
- E-mail addresses;
- Date and place of birth;
- Previous school attended;
- Dates of attendance;
- Degrees and honors received;
- Major field of study;
- Number of course units in which students are enrolled;
- Participation in officially recognized activities
- Photograph

A student has the option under FERPA to request that no directory information about a student be disclosed to the public. When a student makes this election, we cannot even acknowledge the student's existence. If a person asks us for information about this student, the correct response is, "I have no information about a student by that name." This election is often referred to as a "complete FERPA block."

To avoid presenting students with an all-or-nothing choice for disclosure of directory information, at UCSF we allow students to set individual release preferences for certain types of directory information. Students can set disclosure preferences for local address, local telephone number, permanent address, permanent telephone number, primary (UCSF) e-mail address, and secondary e-mail address.

FERPA does not require us to disclose directory information; FERPA simply says that we *may* disclose it. UCSF does not publish a directory of students. Refer requests from the general public for information about students to the Office of the Registrar. We usually ask people why they are requesting the information, and we may disclose it. Requests are uncommon.

The global address list in the Exchange e-mail system functions as a directory of student e-mail addresses. However, if students elect not to allow release of their primary e-mail address, they will not appear in the global address list.

The opt-out option does not allow a student to prevent an educational institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled. This rule applies in physical and electronic classrooms.

### **Exception for Legitimate Educational Interest**

Personally identifiable information, including information that is not directory information, may be disclosed without the student's prior consent to school officials who have a *legitimate educational interest* in the information. In our daily work at UCSF, this important term may be the single most important policy in FERPA. An overly broad interpretation jeopardizes students' privacy. A narrow interpretation impedes the work of people who need the information.

UCSF campus officials are deemed to have legitimate educational interest when information from a student's record is necessary for the official to:

- Perform a task or determination that is an employment responsibility or a properly assigned subject matter for the official;
- Perform a task that is related specifically to the official's participation in the student's education;
- Perform a task that is related specifically to the discipline of the student;
- Provide a service or benefit relating to the student or student's family, such as health care, counseling, job placement or financial aid.

The university must use "reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests."

### **Exception for Financial Aid Records**

Personally identifiable information, including information that is not directory information, may be disclosed without the student's prior consent if the disclosure is in connection with financial aid for which the student has applied or that the student has received, if the information is necessary for such purposes as to:

- a. Determine eligibility for the aid;
- b. Determine the amount of the aid;
- c. Determine the conditions for the aid; or
- d. Enforce the terms and conditions of the aid.

### **Exception for Health and Safety Emergency**

Personally identifiable information, including information that is not directory information, may be disclosed without the student's prior consent to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Record-keeping requirements exist for some disclosures under this exception. Post-Virginia Tech: If the educational agency has a rational basis for determining that an articulable and significant threat exists, the Department of Education will not substitute its judgment in evaluating the circumstances and the disclosure determination.

### **Exception for Judicial Order or Lawfully Issued Subpoena**

Personally identifiable information, including information that is not directory information, may be disclosed without the student's prior consent in response to a judicial order or lawfully issued subpoena. We must notify the student prior to disclosing the information to provide the student time to seek a protective order *unless* disclosure is in compliance with (1) a federal grand jury subpoena, and the court has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed, or (2) any other subpoena for law enforcement, and the court or other issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed. Record-keeping requirements exist for some disclosures under this exception.

Other exceptions exist. Contact the registrar if unusual disclosure requests arise.