

Training Faculty and Staff on FERPA

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FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 (FERPA)

A Federal Law also known as the Buckley
Amendment.

This act is enforced by:

Family Policy Compliance Office

U.S. Department of Education Washington, D.C.

Primary Rights of Students under FERPA

- Right to inspect records
- Right to seek to amend the record
- Right to have some control over the disclosure of information from education records

WHAT IS AN “EDUCATION RECORD?”

- Any record maintained by an institution that is directly related to a student.
- This record can contain a student’s name(s) or information from which an individual student can be personally (individually) identified.
- These records include: files, documents, and materials in whatever medium (handwriting, print, tapes, disks, film, microfilm, microfiche) which contain information directly related to students and from which students can be personally (individually) identified.

“PERSONALLY IDENTIFIABLE”

- Student’s name
- Name of student’s parent or other family members
- Address of the student or student’s family
- Personal identifier – SSN, student ID number, biometric record
- Indirect identifiers – date and place of birth, mother’s maiden name
- Information alone or in combination that is linked or linkable to a specific student that would allow a reasonable person (without personal knowledge of the circumstances) to identify the person

WHAT AN EDUCATION RECORD IS NOT!

- “Sole Possession” notes
- Law enforcement unit records
- Employment records
- Doctor-patient privilege records
- Alumni Records

“SOLE POSSESSION NOTES”

One person’s individual observation or recollection, is kept in the possession of the maker, and only shared with a temporary substitute.

- This term has always been narrowly defined.
- Notes taken in conjunction with any other person are not sole possession notes (counselor’s notes, interview notes).
- Sharing notes with another person, or when placed in an area where they can be viewed by others makes them “education records” and subject to FERPA.
- Best advice: If you don’t want it reviewed, don’t write it down.

REQUIREMENTS FOR COMPLIANCE

Provide annual notification to students of their right to know that:

- 1) **school officials** within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered **school officials** and 3) what **legitimate educational interest** will entitle school officials to have access to education records

--information the institution has designated as public or **directory information**.

Note: This notification of **directory information** is **NOT** required to be included in the annual notification.

WHAT CAN DIRECTORY INFORMATION INCLUDE?

Directory Information **may** include the following student information:

- Student's name
- ID Number
- Address
- Email address
- Telephone number
- Date/place of birth
- Major
- Fields of study
- Participation in officially recognized activities and sports
- Height/weight of athletic team members
- Dates of attendance
- Degrees and awards received
- Most recent educational institution attended
- Photographs
- Other similar information as defined by the institution that would not normally be considered an invasion of a student's privacy

WHAT CAN DIRECTORY INFORMATION **NEVER** INCLUDE?

- Race
- Gender
- Social Security Number
- Grades
- GPA
- Country of citizenship
- Religion

SJSU DIRECTORY INFORMATION

SJSU Policy (S66-20) on Disclosure of Student Directory information is more restrictive than what the law provides

- Enrollment status
- Degrees received and dates
- Data element outside directory information can only be released with written permission of student.
- Requests for addresses and telephone numbers are not honored, especially for marketing or membership solicitation purposes.

“SCHOOL OFFICIALS”

A **school official** can be a person:

- Employed by the college in an administrative, supervisory, academic, research, or support staff position (including law enforcement and health staff personnel),
- Elected to the Board of Trustees,
- Or company employed by or under contract to the college to perform a special task such as the attorney, auditor, or collection agency,
- Or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

1. Institutions shall obtain written consent from the student before disclosing any personally identifiable information from their education records. The written consent must:

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

PROCEDURES AND STRATEGIES FOR COMPLIANCE

Exceptions:

1. Students who request the information from their own records
2. Authorized representatives of the following for audit, evaluation, or enforcement of federal and state supported programs:
 - Comptroller General of the United States
 - The Secretary of the United States Department of Education
 - U.S. Attorney General (law enforcement only)
 - State educational authorities

PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

3. Institutions **may** disclose education records *without written consent* of students to the following:
 - Lawfully issued subpoena, provided that the institution first make a reasonable attempt to notify the student.
Exception: If the subpoena is issued from a federal grand jury, or for a law enforcement purpose, and orders the institution not to notify the student.
 - A court order for student initiated legal action against the institution or the institution has initiated legal action against the student.
 - Health or safety of the student or other persons

PROCEDURES AND STRATEGIES FOR COMPLIANCE

A. Disclosure of educational record information

- An alleged victim of any crime of violence of the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime
- Veterans Administration officials in response to requests related to VA programs (**Solomon Amendment**)
- Representatives of Homeland Security

THE AUTHORITATIVE SOURCE

Family Policy Compliance Office

Dale King, Director

U.S. Department of Education

400 Maryland Ave., SW

Washington, D.C. 20202-5920

202-260-3887 (phone)

202-260-9001 (fax)

<http://www.ed.gov/policy/gen/guid/fpc/index.html>

email box: ferpa911@sjsu.edu

CSU and SJSU Policies

- Coded Memo: AA-2012-13

Campus must develop data security policies, which permit only full-time faculty and professional staff advisors access to student academic records for the purposes of academic advisement

FREQUENT FERPA VIOLATIONS

- **Following are samples with categories**
- SSNs on documents that are widely seen by others, such as identification cards, badges, time cards, employee rosters, bulletin board postings, and other materials
- Having a student walk over documents with other students' personally identifiable information. For example, class rosters or memos with list of students' names, SSNs, IDs, or grades. (Must be delivered by university staff member/campus mail)

SSN & other restricted info. via e-mail

- Sending documents with SSNs on them through the mail, except on applications or forms, or when it is required by law.
- Requiring student to send his or her SSN over the Internet or via email

SSNs: Asking or Requiring

- Requiring employees to ask individuals (employees, customers, etc.) for identifiers “the SSN” when looking up records for the individual. (Use Student ID number, DOB, address)

Grades

- Disclosing student grades to the class. Linking student’s name to SSN or ID number.
- Posting of student’s grades outside the classroom with names and SSNs or ID numbers.
- Sharing of documents with students’ personally identifiable information through email or on GOOGLE Docs (This would be applicable to Level 1 data)

Grades (continue)

- Graded test papers exposed to other students. (Stack them upside down so grades don't show)
- Email grades (Enter grades in Canvas or Peoplesoft)
- Student workers enter grades for the instructor of record. (ISA/GAs only per CSU guidelines).

Discarding documents

- Recycle bins or trash: (Use campus designated shredding bins)

Family & Friends/ Institutional associates

- Discussing the progress of the student with parents without student's permission. (Complete FERPA authorization release form on Registrar's website)
- Disclosing student information to friends and relatives

Third Party

- Providing list of enrolled students for commercial, marketing, or membership solicitation purposes. (Use social media sites on SJSU to post membership eligibility requirements)
- Providing students' schedules to someone to help locate the student. (In case of emergency, UPD (University Police Department) should be contacted and they will be responsible to locate or contact the student directly)

Third Party -Continued

- Providing list of enrolled students for commercial, marketing, or membership solicitation purposes. (Use social media sites on SJSU to post membership eligibility requirements)
- Creation of web forms that requests personally identifiable information that other submitters can see.
- Sharing of student information by faculty to other faculty, staff, and students unless class is team taught by the faculty members. Applies to clinical supervision site agreements with external entities. SJSU contracts with external sites should include a provision for privacy.



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