



Union College

FERPA* – Basics for Faculty

**Family Education Rights & Privacy Act*

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FERPA

General Rule – FERPA prohibits you from disclosing “**education records**” (not limited to academic records) to anyone other than the student to whom the record pertains unless you have the student’s consent in writing or the law provides an exception for disclosure.

FERPA

- What does FERPA restrict?
- Permissible disclosure without student's written consent. Key exceptions:
 - School official with a legitimate education interest
more information on later slides
 - Parental disclosure – dependent student exception
more information on later slides
 - Directory information
 - Health and safety emergency
- Safeguarding obligations

FERPA Policies to Review

Policies and Documents to Review:

- **Annual FERPA Disclosure Policy and Statement** – *(attached)*
- **Data Classification and Handling Policy** – *found in Faculty Manual*
- **Record Retention Policy** (retention and destruction of records including Education Records) – *available upon request*
- **NACUA: FERPA FAQs** – *(attached)*

FERPA Privacy Rights

FERPA affords students certain **privacy rights** regarding their education records. These rights are summarized below:

- The **Right to Inspect and Review** their “Education Record”
- The **Right to Amend** their “Education Records”
- The **Right to Consent or Control Disclosure** of their “Education Records” to others
- The **Right to File a Complaint** with U.S. Dep’t of Education re: alleged failure by Union to comply with FERPA requirements

FERPA Restriction

What does FERPA restrict?

FERPA limits the disclosure of information from student “education records,” a term that the law defines quite broadly and that is not limited to “academic” records.

FERPA Restriction

“**Education records**” include virtually all records maintained by an educational institution, in any format, that are “**directly related**” to one or more of its past or present students. A records is “**directly related**” to a student if it is “**personally identifiable**” to the student, and a record is “**personally identifiable**” to a student not only if it expressly identifies the student on its face but also if the student’s identity could be deduced from the demographic, descriptive, or other information the record contains, either alone or in combination with other publicly available information. Thus, “**education records**” **include not only** registrar’s office records, transcripts, papers, exams, and the like, **but also non-academic** student information database systems, class schedules, financial aid records, financial account records, disability accommodation records, disciplinary records, and **even “unofficial”** files, photographs, email messages, hand scrawled Post-It notes, and records **that are publicly available** elsewhere **or that the student him/herself has publicly disclosed**.

FERPA Disclosure Exceptions

Key statutory exceptions permitting disclosure without student consent:

1. To **other school officials** with a legitimate educational interest or need to know
 - Who is a “school official”?*
 - What is a “legitimate educational interest”?*

Answers to the two questions ...

FERPA Disclosure Exceptions

- a. A “**school official**” is:
 - A person employed by the College as an administrator, supervisor, athletic coach, or support staff
 - A student serving on Honor Code Board
- b. A “**legitimate educational interest**” is:
 - Related to performing a task specified in his/her position or contract agreement
 - Related to performing a task related to a student’s education

Legitimate educational interest cont’d ...

9

FERPA Disclosure Exceptions

Legitimate educational interest

- It is permissible to ask the Administrator requesting student information to **articulate his/her “legitimate educational interest”**
 - For example, why the Administrator needs the record

Legitimate educational interest cont’d ...

10

FERPA Disclosure Exceptions

Legitimate educational interest cont'd

- When in doubt whether disclosure is permitted, **ask the Registrar**
- **Do not disclose** information you have received to anyone without the student's written permission; you may use information only for the purpose it was disclosed

FERPA Disclosure Exceptions

Key statutory exceptions permitting disclosure without student consent:

2. To **Parents**

—Disclosure to parents of a student who is considered their dependent for Federal Tax purposes.

See next slide for some Practical Tips!

FERPA Disclosure Exceptions

Parental Disclosure - Practical Tips:

- Check the student's status first
- Confirm that person(s) requesting disclosure really is/are parent(s)
- It is discretionary – seek advice Dean Wunderlich
- Grades – Student's written consent is required before releasing grades

FERPA Safeguarding Obligations

Union is obligated to use “best practices” to protect the **privacy of education records**.

Data Classification & Handling Procedures

- Contains tables of sensitive student data elements a/k/a “**Education Records**”
- Classifies **risk categories of sensitive student data**
- Instructs on **handling procedures based on risk category**
- Objective – **good faith compliance** to prevent unauthorized persons having access to Education Records

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Family Education Rights & Privacy Act (FERPA)

Union College complies fully with the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. Under FERPA, students have, with certain limited exceptions, the right to inspect and review their education records and to request the amendment of their records to ensure that they are not inaccurate, misleading, or otherwise in violation of the students' privacy or other rights.

Requests to inspect or review education records should be addressed to the Registrar, Dean of Students, or other record custodian and will be honored within 45 days. Any student questioning the accuracy of any records may state his or her objection in writing to the appropriate record custodian, who will notify the student of his or her decision within 45 days of receiving the objection. If the decision is in agreement with the student's request, the appropriate records will be amended. If the decision is not in agreement with the student's request, the College will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing. Students alleging failure to comply with FERPA also have the right to file complaints with the U.S. Department of Education under its regulations (see 34 C.F. R. Part 99). The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue SW
Washington, D.C. 20202-4605

FERPA further requires, again with certain limited exceptions, that the student's consent must be obtained before disclosing any personally identifiable information in the student's education records. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests, as determined by the administrator responsible for the file. A "school official" includes: anyone employed by the College in an administrative, supervisory, academic or research, or support staff position (including law enforcement, unit personnel, health staff and athletic coaches); any person, company or service provider acting on behalf of the College (such as an attorney, auditor or collection agent); a member of the Board of Trustees or other governance or advisory body; and a student serving on an official committee (such as a disciplinary or grievance committee) or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official is: performing a task that is specified in his or her position description or contract agreement; or, performing a task related to a student's education. Other exceptions which permit disclosure without consent are: To authorized representatives of the U.S. Comptroller General, the U.S. Attorney General, the U.S. Secretary of Education, or State Educational authorities in connection with an audit or evaluation; in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the financial aid, or enforce the terms and conditions of the aid; , to organizations conducting studies for, or on behalf of, the College, in order to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction; to accrediting organizations if the information is necessary to carry out accrediting functions; to persons in compliance with a judicial order; and to persons in an emergency in order to protect the health or safety of students or other persons. Additionally, exceptions permit disclosure: (i) to comply with a judicial order or lawfully issued subpoena, (ii) upon request, to officials of another educational institution where the student seeks or intends to enroll, (iii) to appropriate officials in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, (iv) to the general public, the final results of a disciplinary proceeding if Union determines the student is an alleged perpetrator of a crime of violence or sexual offense and has committed a violation of Union's rules or policies with respect to the allegations, (v) to a victim, about an alleged perpetrator of a crime of violence or sexual offense (the disclosure may only include the final results of the disciplinary proceeding with respect to that alleged crime or office), (vi) if the disclosure concerns sex offenders and other individuals required to register under Section 17010 of the Violent Crime Control and Law Enforcement Act of 1994, (viii) of the decision of an alleged perpetrator of a

crime of violence to withdraw from the College while conduct charges are pending and declining to complete the disciplinary process.

All students are required to declare their tax status at the commencement of each academic year by signing a statement. College administrators may, at their discretion, disclose to the parents of a student who is claimed as a dependent as defined by federal tax laws, without obtaining the student's consent, information about the student. Another exception permits disclosure without consent to parents and guardians in cases of violation of institutional policies governing the use or possession of alcohol or a controlled substance if the student is under the age of 21 and if the College determines that there has been a violation with respect to such use or possession.

The College considers the following to be directory information: name, address (campus, home, e-mail), telephone numbers, date and place of birth, academic fields of study, dates of attendance, enrollment status, photographs, participation in recognized activities and sports, degrees and awards, weight and height of athletic team members, most previous educational agency or institution attended, or other similar information. The College may publicize or respond to requests for such information at its discretion. However, the use of these records for commercial or political purposes is prohibited unless approved by the Vice President for Academic Affairs.

As previously advised, all requests made on or before August 15th of this year, will make it possible to be excluded from the College's campus directory. In addition, currently enrolled students may also request that directory information be withheld from disclosure by making a request, in writing, to the Dean of Students Office on or before the 5th day of the Fall Term. The College assumes that failure on the part of the student to specifically request the withholding of any directory information indicates approval of disclosure. Request for non-disclosure will be honored by the institution for only one academic year; therefore, authorization to withhold directory information must be filed annually.

08/01/2017

FERPA FAQs

The following FAQs is adopted from materials prepared by the National Association of College and University Attorneys (NACUA) and is intended to provide basic information about FERPA.

Question: What does FERPA restrict?

Answer: FERPA limits the disclosure of information from student “education records,” a term that the law defines quite broadly and that is not limited to “academic” records.

“Education records” include virtually all records maintained by an educational institution, in any format, that are “directly related” to one or more of its past or present students. A record is “directly related” to a student if it is “personally identifiable” to the student. A record is “personally identifiable” to a student if it expressly identifies the student on its face by name, address, ID number, or other such common identifier. A record is also personally identifiable if it includes “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” – in other words, if it contains enough demographic or other information that it points to a single student. For example, a disciplinary record about an unnamed male student likely would not, without more, be personally identifiable, but a disciplinary record about an unnamed male sophomore political science major who lives in Smith Hall, plays on the soccer team, and is a resident of Wyoming likely would “name” the particular student. A record may also be “personally identifiable” because of commonly known information external to the record. For example, a request to provide information about all university sanctions imposed for cheating in the past five years might include a large enough number of instances not to identify any of the students. On the other hand, a request to provide information about sanctions imposed against student athletes for cheating in the past two weeks, at a time when a well-known student athlete suddenly is not playing or practicing with the team, would be a request seeking personally identifiable information in that context because it could be used to confirm or deny rumors regarding the reason for the student’s absence.

Despite the name “education records,” there is no requirement that a record be “educational” or “academic” in nature to qualify. Moreover, the definition of “education records” does not give institutions any discretion to determine for themselves what is or isn’t an “education record” or to “treat” certain records as non-education records, even though they meet the statutory definition. Thus, “education records” include not only registrar’s office records, transcripts, papers, exams and the like, but also non-academic student information database systems, class schedules, financial aid records, financial account records, disability accommodation records, disciplinary records, and even “unofficial” files, photographs, e-mail messages, hand-scrawled Post-it notes, and records that are publicly available elsewhere or that the student herself has publicly disclosed.

Question: When may information from education records be disclosed?

Answer: In general, information derived from a student’s education records may be disclosed only if: (1) it is “directory information;” (2) the student has consented to the disclosure; or (3) the law provides an exception that permits disclosure without the student’s consent.

Question: What is “directory information”?

Answer: FERPA allows institutions to designate certain classes of information as “directory information” that may be released to anyone without a student’s consent. Directory information may (but is not required to) include such items as the student’s name, address (local, permanent, and e-mail), telephone number (local and permanent), photograph, dates of attendance at the institution, major, degrees and awards received, participation in officially recognized activities and sports, and date and place of birth, as well as other information “that would not generally be considered harmful or an invasion of privacy if disclosed.” A student’s social security number or any student identification number that could be used by itself, without a password, PIN, or other authenticating factor, to access educational records may not be designated as directory information. An institution that wishes to make directory information available must first give its students an opportunity to “opt out” and block the release of their own directory information, usually by making a formal request to the institution’s registrar’s office. Even if a student has chosen to block the release of directory information, the institution may nevertheless continue to disclose that student’s directory information under any other exception that may be applicable or with the student’s case-by-case consent.

Question: May information from student education records be shared with others on campus?

Answer: Yes. Under one of FERPA’s many exceptions to the general prohibition against disclosure, campus personnel are free to share information from student education records with other “school officials” who have “legitimate educational interests” in the information. Each institution must define for itself who qualifies as a “school official” and what is a “legitimate educational interest” and give annual notice of its definitions to its students. These definitions can be quite broad – “school officials” need not be limited to “officers,” or even to employees, and “legitimate educational interests” (much like “education records”) need not be limited either to “academic” interests or to instances that are beneficial to the student. The Family Policy Compliance Office (“FPCO”), the office within the U.S. Department of Education charged with overseeing and enforcing FERPA, offers the following model definitions:

A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted as its agent to provide a service instead of using University employees or officials (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the University.

At institutions that follow these or similar models, an employee concerned that a student's statements or behavior evidence a potential threat could – and should – share relevant information with the dean of students, the judicial affairs office, the campus counseling center, the campus law enforcement unit, or other appropriate “school officials” whose job it is to deal with such issues.

Question: May information from a student's education records be disclosed to protect health or safety?

Answer: Yes. FERPA permits the disclosure of information from student education records “to appropriate parties, including parents..., in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.” For example, if a student sends an e-mail to his resident assistant saying that he has just been diagnosed with a highly contagious disease such as measles, the institution could alert the student's roommate, and perhaps others with whom the student has come in close contact, to urge them to seek appropriate testing and medical care. Safety concerns warranting disclosure could include a student's statements about suicide, unusually erratic and angry behaviors, or similar conduct that others would reasonably see as posing a risk of serious harm.

This exception does not authorize “knee-jerk” or (in most cases) “broadcast” disclosures, but an institution need not be absolutely certain that there is an imminent crisis before invoking the exception. Rather, it is enough that, based on the totality of circumstances and on the basis of the facts that are available at the time, there is a rational basis for concluding that there is a threat to health or safety. As long as an institution can meet this relatively minimal threshold, “the Department will not substitute its judgment for that of the...institution in evaluating the circumstances and making its determination.”]

The institution has the same good faith discretion to determine to whom disclosure should be made. In general, and when reasonably possible, the initial disclosure should be made to professionals trained to evaluate and handle such emergencies, such as campus mental health or law enforcement personnel, who can then determine whether further and broader disclosures are appropriate. Depending on the particular circumstances, disclosure under this exception may be made to law enforcement, parents, threat assessment teams or professionals, individuals who may have information necessary to determine the extent of a potential threat (such as friends, roommates, and prior schools attended), and potential victims and their families. If the concerns are of a more urgent nature, school officials should immediately contact campus or local police. FERPA permits each of these communications.

An institution that makes a disclosure on the basis of this exception must keep a record of the nature of the perceived threat and the parties to whom the disclosure was made.

Question: When may a college or university disclose information from a student's education records to the student's parent or legal guardian?

Answer: Once a student is in attendance at a postsecondary institution, all rights provided by FERPA rest with the student, even if the student is younger than 18 years old. Education record information may therefore be disclosed to the parent of a college or university student only with the student's consent or in instances in which one of the exceptions to FERPA permits disclosure.

In addition to the other exceptions discussed in this Note, two such exceptions specifically address communications to parents.

First, FERPA permits (but does not require) disclosures of any or all education record information to a student's parents if the student is their dependent for federal tax purposes. To rely on this exception, the institution must verify the student's dependent status, normally either by asking the student for confirmation or by asking the parents for a copy of the relevant portion of their most recent tax return.

Second, an institution may (but again is not required to) provide information to a parent or legal guardian regarding any violation of law or of an institutional rule or policy governing the use or possession of alcohol or a controlled substance, if the institution has determined that the student committed a disciplinary violation with respect to such use or possession and the student is under the age of 21 at the time of both the violation and the disclosure.

These exceptions, like the other FERPA exceptions, are independent of each other. Thus, an institution may notify parents about a 19-year-old student's underage drinking violations even if the student is not their tax dependent, and may likewise notify the parents of a 22-year-old student's drug violations if the student is their tax dependent. Similarly, the situation need not rise to the level of a health or safety emergency in order for either of these exceptions to apply.

Question: What about disclosing information from the student discipline process, either to others on campus or to other institutions?

Answer: FERPA expressly permits institutions to include in a student's education records appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the community. Such information may be disclosed to any "school officials" who have "legitimate educational interests" in the behavior of the student, and it also may be disclosed as appropriate under the health and safety emergency exception. FERPA also expressly provides that, for purposes of the health and safety emergency exception, the "appropriate parties" to whom disclosure may be made include teachers and officials at other institutions who have legitimate educational interests in the behavior of the student.

In a separate (and again independent) exception, FERPA further permits institutions to disclose to anyone the final results of a disciplinary proceeding conducted against a student who is an alleged perpetrator of a crime of violence or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's own rules or policies with respect to such crime or offense. Yet another exception permits institutions to disclose the final results of such a proceeding to the victim regardless of whether the alleged perpetrator was found to be in violation of the institution's rules or policies. For purposes of these two exceptions, "final results" is limited to the name of the student who is an alleged perpetrator of a crime of violence, the violation found to have been committed, and any sanction imposed against the student by the institution.

Question: Are there other circumstances in which a college or university may disclose information from student education records to another institution without the student's consent?

Answer: In addition to the exceptions discussed above, FERPA expressly permits (but does not require) the disclosure of information from a student's education records to officials of other institutions at which the student seeks or intends to enroll or where the student is already enrolled, so long as the disclosure is related to the student's enrollment or transfer. To take advantage of this exception, the institution must either inform its students generally, in its annual FERPA notice, of its practice of doing so, or make a reasonable attempt to notify the individual student that it has done so. In either case, upon request, the institution also must provide the student with a copy of the disclosed records and give the student an opportunity for a hearing to challenge the content of the disclosed records.

Question: Can a college or university get information such as disciplinary or mental health records from a student's high school records?

Answer: Yes. Colleges and universities have several options for obtaining information from a student's high school records. They can ask students to consent to the disclosure of those records. Consent by the student would permit the high school to disclose the information. In addition, the college or university may ask the high school to disclose the student's records under an applicable FERPA exception, including the exception that expressly permits the disclosure of information from a student's education records to officials of other institutions at which the student seeks or intends to enroll or where the student is already enrolled, so long as the disclosure is related to the student's enrollment or transfer. Again, the prior institution may, but is not required by FERPA to, disclose information. The requirements of this exception are discussed more fully in the preceding question. A prior institution may also rely on the current institution's determination that there is a health or safety emergency and may disclose relevant information to the current institution under that exception. State law may provide additional options for access to these records. For example, under Virginia law (Virginia Code Annotated § 23-2.1:3), colleges and universities "...may require that any student accepted to and who has committed to attend, or is attending, such institution provide, to the extent available, from the originating school a complete student record, including any mental health records held by the school. These records shall be kept confidential as required by state and federal law..." Finally, in appropriate circumstances, high school records may be obtained by a subpoena or court order.

The disclosure and protection of mental health records may also be subject to medical record privacy laws. The institution seeking these records should ensure that the records will be maintained with an appropriate level of confidentiality once received to avoid misuse of the record or stigmatization of the student. Before considering a blanket requirement for the high school mental health and disciplinary records of all accepted or attending students, the college or university should be confident that it has adequate resources for the review of all of those records, and an appropriate protocol for responding to their contents and, as appropriate, permitting the affected students to respond.

Question: What if the institution receives a court order or subpoena requesting student records?

Answer: The institution may disclose records in response to a judicial order or lawfully issued subpoena but generally must notify the student of the order or subpoena before complying. An exception to this general rule is that a federal grand jury subpoena or other subpoena issued for a law enforcement purpose may instruct the institution not to notify the student.

Question: May an employee disclose personal knowledge and impressions about a student, based on the employee's personal interactions with the student?

Answer: Yes. FERPA's disclosure restrictions apply only to information derived from student education records, not to personal knowledge derived from direct, personal experience with a student. For example, a faculty or staff member who personally observes a student engaging in erratic and threatening behavior is not prohibited by FERPA from disclosing that observation. (If at some point the employee describes the observation in a personally identifiable record, that record would be subject to FERPA protections. The employee would still be permitted to disclose the personal observation but would not be permitted to disclose the record of the observation unless one of the exceptions to FERPA applied or the student consented to the disclosure). Again, however, the employee generally should limit disclosure of such information to professionals trained to evaluate and manage it, as other privacy laws conceivably could apply and prohibit broader disclosures, depending upon the circumstances.

Question: What other laws protect student privacy?

Answer: Certain professionals on campus, such as medical and mental health care providers, may be bound by New York State confidentiality laws and by professional obligations of confidentiality that require a higher burden to be met (such as a significant threat of serious and imminent harm to a specifically foreseeable victim) before disclosure of information in their possession may be made. Even when this is the case, however, other personnel on campus (such as a faculty member, dean of students, or residential life employee) may disclose information about a student under the lower FERPA health and safety emergency standard if the circumstances warrant.

Question: What happens if I violate FERPA?

Answer: If an institution regularly violates FERPA, it runs the risk of losing its education-related federal funding. While thus far, the Family Policy Compliance Office (FPCO) has not revoked any institution's funding, it works with these institutions to get them to comply with the statute voluntarily.

FERPA does not give individuals the right to sue non-compliant institutions. But sometimes the unauthorized disclosure of private information violates other laws, such as state medical confidentiality or privacy laws, which allow individuals to sue. Faculty and employees should consult campus counsel with questions about disclosing information in student records.

In the event of an emergency or serious concern about either campus safety or an individual's welfare, FERPA permits campus personnel to consult appropriate persons, including parents, if

the information conveyed is necessary to protect the health or safety of the student or others. Any ambiguity about FERPA should be resolved in favor of disclosure, limited as necessary, to protect the safety of individuals.

Question: What should a faculty member or other college or university employee do if he or she is concerned about a student?

Answer: If the concern is that a student may engage in violent behavior, toward self or others, and the threat appears to be imminent, the employee should contact the campus police or security office immediately. If the concern is of a less urgent nature, or the employee is not quite sure what to make of a student's comments or conduct, the employee should consult with professionals on campus or associated with the institution, such as the Dean of Students, a campus counseling center, or law enforcement, who may be able to assess the potential threat, identify resources for the student, and provide information that could assist in deciding on an appropriate course of action. In consultation with appropriate campus resources, a collective decision may then be made to contact a family member, an appropriate off-campus resource, or others. FERPA would not present an obstacle to any of these disclosures. The worst response is to ignore troubling or threatening behavior. School officials should trust their instincts when a student appears to be in trouble and should consult with others on campus.

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