

FERPA
A Primer on the Family Educational Rights and Privacy Act

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FERPA, the Family Educational Rights and Privacy Act, also known as the Buckley Amendment, is a federal law protecting the right of students to review their records and prevent their records from being disclosed to third parties.

- ▶ “Educational Records” – defined very broadly and include almost any record directly related to a student that is maintained by an institution. This definition includes current and former students.

- ▶ Exceptions include: Notes which are in the sole possession of instructional or administrative personnel; law enforcement records maintained by the law enforcement unit; employment records for students who also work at an institution; health records protected by other federal law.

The original purpose of the Buckley Amendment was to prevent institutions from maintaining secret files on students. If a student requests to see his or her educational records, those records must be provided to the student. A student also has the right to request corrections to his or her records if the records contain information that is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.. If the request is denied, the student has a right to a hearing. If after the hearing the request is denied, the student has the right to place a statement in the file explaining why he or she believes that the information is inaccurate, misleading or in violations of the student’s privacy rights.

“Directory information” – an institution may define certain types of information as directory information. This information may be disclosed without the student’s permission, but *a student may notify the institution that such information is not to be disclosed*. The University of Mississippi defines the following information as directory information: name, home and local address, published telephone listing, e-mail address, date of birth, photograph, school or college classification, dates of attendance, awards, degrees, honors, date of graduation, the most recent educational institution attended; participation in officially recognized activities and sports, fraternity/sorority affiliation and educational societies. Vital statistics, such as height and weight are also included for members of athletic teams.

BITG TAKEAWAY: Educational records may not be disclosed without the student’s written consent. This means that records may not be disclosed to third parties, including parents, guardians or spouses, without the written consent of the student.

There are some exceptions (call the Office of General Counsel, 915-7014, when in doubt):

- ▶ Institutional employees who have a legitimate educational interest in the information may access relevant records. Ask this question: Does this person need this information to do his or her job?

This provision includes contractors doing a job that employees might otherwise do. BUT, the institution must have a contract with the other party that requires them to abide by FERPA.

- ▶ There is a health and safety exception. It is only on a “need to know” basis.

- ▶ Directory information may be disclosed, but you must let students know what the institution considers directory information, and give the student the opportunity to “opt out”.

- ▶ When we have a good-faith belief that there is a health or safety emergency, we may disclose student records and information relevant to that emergency to anyone we reasonably believe can help deal with that emergency.

- ▶ When a student applies for financial aid, the relevant records may be provided to anyone with a legitimate interest.

- ▶ When a student applies to another institution, it can be assumed that the student is authorizing the provision of records to that institution.

- ▶ Certain government officials may have access to records. Notify the Office of General Counsel if you have a question!

- ▶ Records may be provided in response to a valid subpoena (but in some cases the student must be notified first and given an opportunity to quash the subpoena). Notify the Office of General Counsel if you receive a subpoena!

- ▶ The University may choose to disclose records to parents when the parent provides a current tax return indicating that the student is being supported financially by the parent. We try to avoid this situation by encouraging parents and students to discuss the student’s need to sign a waiver.

- ▶ Facts or events that are not based on a document or record are not educational records. For example, if a University employee becomes aware that a student has been hospitalized or has had an accident, that

knowledge, by itself, is not an educational record. Behavior observed by a University employee is not an educational record if that employee is asked.

Other things to know:

- **You must keep a record of disclosures: to whom the disclosure was made and what was disclosed. This information must be provided to a student upon request.**
- Law enforcement records do not have to be disclosed unless they are housed in a different office on campus.
- Students don't have the right to inspect their parents' financial information if housed on campus (for instance, in financial aid).
- If faculty write letters of recommendation, the student is entitled to view those letters unless the student waived the right to inspect those letters.
- There are exceptions for disclosing information to the victim of sexual offenses or of violent crimes.
- Institutions can inform parents when their underage student has been found in violations of a drug or alcohol policy.
- There is a limited exception concerning students who may have information about a terrorist act.
- The punishment for violating FERPA: a total loss of federal funding. This has NEVER happened to an institution.