

FERPA

Family Educational Rights & Privacy Act

Federal Requirements for Security of College Student Data

The Office of Legal Affairs

Presented by: *Venus D. Boston, Assistant University Legal Counsel*

WINSTON-SALEM STATE UNIVERSITY



WSSU

What is FERPA?



- The **Family Educational Rights and Privacy Act** (FERPA) applies to **ALL** public schools, colleges and universities receiving federal funding.
- It protects a **Student's Privacy**, preventing the release of student's educational records without the **STUDENT's Consent**.
- Establishes the **Students** rights.

**EDUCATIONAL RECORDS BELONG TO
THE STUDENT:
*STUDENTS HAVE RIGHTS UNLESS THEY GIVE THEM UP***

Rights Under FERPA

Students have the right to:

To *INSPECT* education records;

To *PREVENT DISCLOSURE* of education records;

To *SEEK AMENDMENT* to education records if believed to be **inaccurate** or **misleading**;

To *BE NOTIFIED* of privacy rights under FERPA;

AND to *FILE A COMPLAINT* with the U.S. Department of Education concerning an alleged failure by the University to comply with FERPA.

What is Protected Under FERPA?

- Education Records, *directly related to a student* AND *maintained* by *Winston-Salem State University*:
 - These records are maintained in whatever format or medium, or by an agent/party acting for the University; and containing information **personally identifiable to the student**.
 - **Examples:**
 - Class rosters, grade reports, student schedule, transcripts, most disciplinary records, student's name, student's parent(s), family members of student, student's campus address, student's home address, student's social security number (**ANYTHING THAT WOULD MAKE THE STUDENT'S IDENTITY EASILY IDENTIFIABLE.**)

Ask Yourself?

- Is this a record maintained by Winston-Salem State University? **If yes, it's possibly an Education Record.**
- Is there anything in this record directly related to the student AND can identify the student? **If yes, it's more than likely an Education Record under FERPA?**
- Can it be excluded from all of the categories of records that are **NOT** education records? **If yes, it's an Education Record under FERPA. If no, it's not an Education Record under FERPA.**

"To Release OR NOT to RELEASE, that is the question?"

What is a Legitimate Educational Interest?

- A legitimate educational interest includes:
 - If a **University Official needs to review** an education record in order to **fulfill his/her official responsibility**.
 - This includes such purposes as:
 - performing appropriate tasks **specified in her/his job description or by contract agreement**
 - performing a task **related to a student's education**
 - performing a task **related to the discipline of a student**
 - providing **services for the student or the student's family, such as health care, counseling, job placement, or financial aid.**

What is NOT a Legitimate Educational Interest?

- Legitimate educational interest **DOES NOT** convey inherent rights to any and all student information.
 - The law distinguishes between educational interest and personal or private interest.
 - Educational records **ARE NOT** to be accessed or used for **personal reasons** and **DOES NOT** constitute authority to disclose information to a third party **without the student's written permission**.

What is NOT Protected Under FERPA?

- **Records in sole possession** of the maker (e.g. personal memory aid).
 - Records/ Notes **made by an individual**, as an **individual recollection** (of the maker) and are notes maintained in the possession of the individual and shared with a temporary substitute.
- **Law enforcement records** created and maintained by the public safety office for law enforcement or public safety purposes.
NOTE: Once the record is shared with another school official it becomes subject to FERPA.
 - Campus Police Records
- **Employment records** (except where the employment is based on student status – e.g. work-study, wages, graduate teaching assistants).
- **Medical/psychological treatment records** from a health or counseling center. (**Doctor-patient privilege records**)
- **Alumni records** which are created after the student graduates or leaves the institution.
- **Peer -Graded Papers** *before* they are collected and recorded by the Faculty.

“To Release OR NOT to RELEASE, that is the question?”

What can you share? **Directory Information**

“Information contained in an education record of a student that *would not generally be considered harmful or an invasion of privacy* if disclosed.” (FERPA Regulations, Code of Federal Regulations, Title 34, Part 99.3)

- **INFORMATION that is NOT included in the FERPA CONFIDENTIALITY REQUIREMENTS**
 - **For practice, if a school system discloses this type of information, it is recommended that PUBLIC NOTICE of the FERPA POLICY be given and explain what is included in the information.**
- Directory information includes: school email address, school of enrollment and enrollment status, dates and periods of attendance at WSSU, degree(s) awarded and date(s) of conferral, honors, participation in sport activities, weight and height measurements of student athletes, student’s major or minor, and photographs.

When is Prior Consent NOT Required to Disclose Information?

- **When it goes to:**
 - Student who gave consent
 - To school officials with an legitimate educational interests
 - To schools in which a student has the intent to enroll or seeks to enroll
 - To federal, state, and local authorities conducting an audit, evaluation, or enforcement of education programs
 - A party, such as the Department of Veteran's Affairs or an employer, providing financial aid to the student
 - To organizations conducting studies on behalf of educational institutions
 - To accrediting organizations
 - To comply with a judicial order or subpoena
- In a health or safety emergency
- For directory information (**unless the student has requested a privacy hold**)
- A court if the student has initiated a legal action against the student or the institution has initiated a student has commenced a legal action against the court
- **Results** of a disciplinary hearing to an alleged victim of a crime of violence
- **Results** of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies
- To a **parent** of a student under the age of 21 if the institution determines the student has committed a violation of its drug or alcohol rules or policies

What Happens if Protected Information Under FERPA is Released?

- **FAILURE TO COMPLY:**
 - The institution will be given the opportunity to make corrections, which will bring the institution into compliance.
 - The **Dept. of Education's Family Policy Compliance Office**, which reviews and investigates FERPA violations and complaints will establish a **reasonable period of time** for the institution to comply.
 - If, after this reasonable period an institution has not complied and compliance cannot be met, the **Secretary of Education may prohibit federal funding made available to Winston-Salem State University under his administrative control** (financial aid, education grants, etc.).

YOU CAN LOSE FEDERAL FUNDING!!

If I'm a Faculty Member, what information should I be concerned about releasing under FERPA?

- Any **Educational Record** in your possession and anything with **Personally Identifiable Information** about the Students
- Any RECORD that permits inspection of the Student's record **without his or her permission:**
 - **Posting grades with the student's name, social security number, student identification number or any other identifiable means, without written consent.**
 - **Numeric student identifiers** (these are considered personally identifiable information)
 - **Graded papers, tests and quizzes:** present to the student **ONLY** to prevent a FERPA violation

As a School Official Remember...

- When it comes to any **work** or **correspondences** with students, officials must maintain a level of confidentiality.
- School Officials must ensure **ALL WORK**, even on an online basis should be generic in nature and not PERSONALLY IDENTIFY the student.

NOTE:

- Most records at **ANY** Institution ARE student records, SO TREAT EVERYTHING like it is protected UNDER FERPA
- Generally speaking, If there is **NO WRITTEN CONSENT** then **YOU SHOULD NOT RELEASE the RECORD**

Is Your Use of Social Media FERPA Compliant?

- Although College Students frequently use social media— and freely post sensitive personal information — **Faculty/Staff at universities** must **be careful about how they use social media in classrooms.**
- Because use of digital media for student communications and interactions **isn't specifically covered by FERPA**, **Instructors/Professors** must be extra careful to ensure that they don't violate FERPA rules related to student records and privacy.

General Guidance for Social Media

In relation to FERPA compliance and social media, there are two things to always keep in mind:

1. When using **Twitter, Facebook, or other social platforms**, **never** reveal information about students that might indicate their **grades, course enrollments, class schedules**, and so on. Doing so could be noted as a FERPA violation if called out by the student.
2. Realize **what is** and **is not** subject to "inspect and review" regarding our actions with others and students. *Any document or communication (digital or not) that is considered an educational record for purposes of FERPA is subject to the "inspect and review" privilege by the student.*

If you play by these rules, you should be safe and in compliance.

Don't Lose the Spontaneity of Social Media

Social media is all about being in the moment, having real-time interactions, and sharing with others.

If your classroom rules are **too restrictive**, you can't naturally and fully take advantage of what social media has to offer. Still, it is important to be initially cautious and make sure you get to know your students before you begin engaging with them on social media to any great extent.

6 rules for classroom Social Media Engagement

1. From day one, tell students exactly how you will be using social media in the classroom.
2. Offer options such as using an alias for students concerned about privacy (this might be difficult if you are teaching a Social Media and Communications class).
3. Be careful not to reveal personal data about students or openly correct them or make them feel awkward on social platforms.
4. Have students send any "friend" or contact requests.
5. Never initiate a one-on-one social conversation.
6. If a student begins a social dialogue with you, it really cannot be classified as an educational record, but you still must be careful about how you respond.

FERPA and SOCIAL MEDIA

At this point, there are no clear-cut FERPA rules regarding the use of digital media and social sites for student communications and interactions. In general, however, your best bet is to be open with your students, hear their concerns, and use care when interacting with them socially.

FROM YOUR LEGAL COUNSEL'S PERSPECTIVE:

BE CAREFUL ABOUT YOUR POST

PAY ATTENTION TO THE FERPA RULES and PERSONAL IDENTIFIABLE INFORMATION

AND DO NOT COST US to LOSE OUR FEDERAL FUNDING

PLAY IT SAFE

BE CAREFUL WHEN HANDLING STUDENT INFORMATION

WINSTON-SALEM STATE UNIVERSITY

What Must an Institution do to be in Compliance with FERPA?

Students must be provided access to their educational records.

- Students have a right to inspect and review **within 45 days** of the request to inspect.
 - **However, there are EXCEPTIONS:**
 - *Parental financial information*
 - *Confidential letters* and recommendations to which the student has *waived* his/her right of inspection
 - *Education records containing information about more than one student*
 - If this occurs: WSSU must only permit access to that part of the record which pertains on to the inquiring student.
- **BE CAREFUL ABOUT GIVING OUT ANY INFORMATION, WHICH BELONGS TO THE STUDENT!!!!**

NO CONSENT, NO RELEASE

UNLESS there's a University Official with a Legitimate Educational Interest OR Exception

Scenarios/ Questions

FERPA at WSSU

The Office of the Registrar is responsible for reporting information to third parties from the official student academic record.

Feel Free to Contact: **Sharon Stoddard**, University Registrar with additional questions

Email: stoddardst@wssu.edu

Telephone: (336) 750-3339

Address: Thompson Center 202

This presentation can be found on the Legal Affairs website under:

Legal Training Resources and Policies and Procedures

WSSUs FERPA Policy can be found on the Legal Affairs website under:

Chapter 200

Authoritative Sources

- [The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.](#)
- 34 C.F.R. Part 99
- [Family Policy Compliance Office \(FPCO\) | FERPA](#)
- [Family Policy Compliance Office \(FPCO\) | About FPCO](#)
- [FERPA Presentation for Elementary/Secondary School Officials \(FPCO\)](#)
- [WSSU Policy on the Release of Student Information & Educational Records](#)
- [Auburn University at Montgomery: FERPA Scenarios for Faculty and Staff](#)
- Jackie Wernz, "Are Emails, Texts, Tweets, and Other Digital Communications Student Records Under FERPA and State Law?" Education Law Insights, JDSupra Business Advisor, February 20, 2013.
- [Is Your Use of Social Media FERPA Compliant?](#)