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March 8, 2010

MEMORANDUM

TO: Council on Instructional Affairs
Council of Student Affairs

FROM: Dr. Judith Bilsky, Executive Vice Chancellor
Division of Florida Colleges 

SUBJECT: Family Educational Rights and Privacy Act (FERPA) Fact Sheet

Recently, the federal government has amended the Family Educational Rights and Privacy Act (FERPA) and the state legislature has updated Florida statutes to better align with FERPA. These changes may impact procedures on your campus. The attached FERPA fact sheet is being provided for your reference. Should you have any questions regarding this fact sheet please contact Ms. Amy Albee at (850) 245-9488 or amy.albee@fldoe.org.

JB/aac

Attachments

c: Ms. Julie Alexander, Senior Director, Instruction and Student Services
Ms. Amy Albee, Coordinator of Outreach and Access
Dr. John Hughes, Associate Vice Chancellor for Evaluation
Ms. Lynda Earls, Director, Equity and Civil Rights Compliance



Family Education Rights and Privacy Act (FERPA)
20 U.S.C. § 1232g, 34 Code of Federal Regulations Part 99
Fact Sheet

Under FERPA, postsecondary students are provided basic rights:

- The right to inspect and review the student's education records (records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution, except for sole possession records, and certain law enforcement, employment, alumni, and treatment records), and a list of to whom education records were disclosed.
- The right to seek amendment of such records. A postsecondary institution shall give an eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information is inaccurate, misleading, or in violation of the privacy rights of the student.
- The right to consent, in writing, to disclosures of personally identifiable information contained in the student's education records, except to the extent that disclosure without consent is authorized by law.
- The right to file a complaint with the U.S. Department of Education concerning alleged failures by the postsecondary institution to comply with FERPA requirements.
- The right to refuse to let the agency or institution designate any or all of types of information about the student as directory information (FERPA defines "directory information" as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Typically, "directory information" includes information such as name, address, telephone listing, date and place of birth, participation in officially recognized activities and sports, and dates of attendance).

If a student is attending a postsecondary institution - at any age - the rights under FERPA have transferred to the student. However, in a situation where a student is enrolled in both a high school and a postsecondary institution, e.g. dual enrollment, the two schools may exchange information on that student. If the student is under 18, the parents still retain the rights under FERPA at the high school and may inspect and review any records sent by the postsecondary institution to the high school.

Postsecondary institutions must provide an annual FERPA notification to students. Institutions do not have to individually notify eligible students but do have to notify them by any means that are reasonably likely to inform them of their rights. Section 99.7 of the FERPA regulations sets forth the requirements for the notification, which includes:

- Student rights under FERPA.
- Specification of the criteria the school uses to determine who is a school official and what the school considers to be a legitimate educational interest if the school discloses personally identifiable information from education records without consent to school officials with legitimate educational interests.
- Notification to students of what information, if any, has been designated as directory information. A school may disclose "directory information" to third parties without consent if it has given public notice of the types of information which it has designated as "directory information," the parent's or eligible student's right to restrict the disclosure of such information, and the period of time within which a parent or eligible student has to notify the school in writing that he or she does not want any or all of those types of information designated as "directory information."
- Model Notification may be found at <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/ps-officials.html>.

Permissible disclosures of education records generally take one of three forms — they are disclosed to the student; they are disclosed to another person or entity with the express written consent of the student; or they are disclosed to another person or entity without the prior consent of the student but only under circumstances provided by FERPA, including:

- The disclosure is of **directory information**, in absence of student “opt-out.”
- The disclosure is to a “**school official**” who has a “**legitimate educational interest.**”
- The disclosure is to **another educational institution** where the student seeks or intends to enroll, if institution has given its students notice that it will comply with such requests.
- The disclosure is to **authorized representatives of the Comptroller General or Attorney General of the U.S., the U.S. Secretary of Education, or state or local educational authorities**, under certain circumstances.
- The disclosure is in connection with **financial aid** that the student has applied for or received and is for certain purposes.
- The disclosure is to **organizations conducting studies** for or on behalf of educational agencies to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction.
- The disclosure is to **accrediting agencies** to carry out accrediting functions.
- The disclosure is to the **parent or legal guardian** of a dependent student, as defined by the Internal Revenue Code. (FERPA allows but does not require postsecondary institutions to disclose educational records to parents without written consent from the student.)
- The information is disclosed to comply with a lawfully issued **subpoena or court order.**
- The disclosure is made to appropriate parties in the event of a **health or safety emergency**, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.
- The disclosure is of the **final results of disciplinary proceedings against a student who is an alleged perpetrator of a violent crime (18 U.S.C. § 16) or non-forcible sex offense**, if the institution finds that the student committed a violation of the institution’s rules or policies.
- The disclosure is to a **victim of an alleged crime of violence or a non-forcible sex offense.**
- The disclosure is of a **violation of federal, state, or local law or of any rule or policy of the institution governing the use or possession of alcohol or controlled substances** and is made to the student’s parent or legal guardian, if the student is under the age of 21 at the time of disclosure and the institution has determined that the student committed a disciplinary violation.
- The disclosure is of information concerning **registered sex offenders** under the Violent Crime Control and Law Enforcement Act of 1994 and applicable federal guidelines.

FERPA and Florida law:

- Section (s.) 1002.225, Florida Statutes (F. S.):
 - Requires that all public postsecondary institutions comply with FERPA.
 - Mandates that if any public postsecondary institution fails to comply with FERPA, the aggrieved student may enforce rights in court by injunction. If the student prevails in court, the student may be entitled to attorney’s fees and court costs.
- s. 1006.52, F. S.:
 - Aligns the definition of education records under Florida law with the FERPA definition.
 - Exempts public postsecondary institution student and applicant education records from s. 119.07(1), F. S., the state’s public records law.

1002.225 Education records of students in public postsecondary educational institutions; penalty.--

(1) As used in this section, the term "education records" means education records as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto.

(2) All public postsecondary educational institutions shall comply with the FERPA with respect to the education records of students. A public postsecondary educational institution may charge fees for furnishing copies of education records that are requested under this section. Such fees may not exceed the actual cost incurred by the institution for producing such copies and may not include the costs of searching for or retrieving the education records.

(3) If any public postsecondary educational institution refuses to comply with this section, the aggrieved student has an immediate right to bring an action in circuit court to enforce his or her rights by injunction. Any aggrieved student who brings such action and whose rights are vindicated may be awarded attorney's fees and court costs.

History.--s. 3, ch. 2009-239.

1006.52 Education records and applicant records.--

(1) Each public postsecondary educational institution may prescribe the content and custody of records that the institution may maintain on its students and applicants for admission. A student's education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, and applicant records are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this subsection, applicant records shall be considered to be records that are:

(a) Directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution; and

(b) Maintained by a public postsecondary educational institution or by a party acting on behalf of the public postsecondary educational institution.

(2) A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual, agency, or organization, except in accordance with and as permitted by the FERPA. Education records released by public postsecondary educational institutions to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

History.--s. 322, ch. 2002-387; s. 2, ch. 2009-240