

# FERPA FAQ Sheet



The following FAQs are designed to elucidate the scope of the law and are based on materials prepared by the National Association of College and University Attorneys.

## **Question: What does FERPA restrict?**

*Answer:* FERPA limits the disclosure of information from student "education 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 Huntington likely would "name" the particular student.

Despite the name "education records," there is no requirement that a record be "educational" or "academic" in nature to qualify. Thus, the term includes 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 documents 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. At LIU, directory information includes each student's name; dates of attendance; enrollment status; class; major; awards; honors; degrees conferred; past and present participation in officially recognized sports and non-curricular activities, physical factors (height, weight) of athletes and previous educational institutions most recently attended.

Students may "opt out" and block the release of their own directory information, by making a formal request to the Campus 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, campus personnel are free to share information from student education records with other "school officials" who have "legitimate educational interests" in the information. 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. For example, a student of faculty member 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.

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.

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

**Answer:** Once a student is attending LIU, 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 when one of the exceptions to FERPA permits disclosure. Two exceptions specifically address communications to parents.

First, FERPA permits 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 provide information to a parent or legal guardian about 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 information about 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 result of a university disciplinary proceeding conducted against a student who is an alleged perpetrator of a crime of violence or a nonforcible sex offense. The "final result" 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: Is the disclosure of campus law enforcement unit records restricted by FERPA?**

*Answer: No.* Records that are created by the campus law enforcement unit for a law enforcement purpose are not "education records" and, at least as far as FERPA is concerned, may be shared freely with anyone the institution, in its discretion, deems appropriate. For example, FERPA would not prevent a campus law enforcement unit from disclosing to external law enforcement agencies an incident report concerning the unit's response to a student's threatening statements or behavior.

### **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. 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 should a faculty member or other 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.

## **CONCLUSION**

FERPA does not impede the sharing of student information among campus officials or appropriate third parties when there is a legitimate concern relating to campus or personal safety. In the case of an emergency or serious threat to personal safety, any ambiguity about FERPA can - and should - be resolved in favor of protecting the safety of individuals.

If you have any questions about FERPA, please contact the Office of the University Counsel at 516-299-3665.