FERPA
Understanding and Complying

Prepared by the Office of the Registrar
What is FERPA?

• The Family Educational Rights and Privacy Act of 1974 affords students certain rights concerning their student educational records.

• Also known as the Buckley Amendment
Family Education Rights and Privacy Act of 1974

• A federal law designed to:
  • protect the privacy of educational records
  • establish the right of students to inspect and review their educational records
  • provide guidelines for the corrections of inaccurate and misleading data
How FERPA Relates to You

• UTHSC acknowledges and understands the importance of protecting the confidentiality of student information while remaining in full compliance with FERPA.

• As an official (faculty, staff, student) of UTHSC, who may have responsibilities for providing assistance to, or authorization for, other officials to access student information, you should be aware of existing laws and regulations regarding release of such information.
Why Comply with FERPA?

• It’s federal law.

• Failure to comply could result in the withholding of federal funds, including student financial aid.

• Lawsuits caused by violations can cost UTHSC a lot of time and money.
Who is Protected under FERPA?

• Current and former students of a post-secondary institution

• At UTHSC this means students that have been admitted, students who are currently registered in at least one course, students in residence, continuing education students, students auditing only, and distance education students.

• FERPA rights continue after the student leaves the institution and are only terminated upon the death of the student.
Who is Not Protected under FERPA?

- FERPA does not protect applicants who are denied admission or accepted applicants that have never attended UTHSC.
Information that Might Need to BeHandled in a Secure Way

- Any personally identifiable piece of information, other than strictly directory information. For example:
  - Registration forms
  - Transcripts
  - Grades
  - Student schedules
  - Class assignments
  - Class rosters
  - Any paper/computer screen with the student’s SSN on it
Students Rights to Educational Records

• A student is someone who attends or may have attended UTHSC.
• Students are entitled to access and challenge the content of their educational record.
• Students have a right to expect that information (including computerized records) in their educational record will be kept confidential. For example:
  • Grades
  • Enrollment Records
  • Schedules
  • Class Lists
  • Student ID number
  • Student payroll and employment information
Students Rights to Educational Records

• To file a complaint with the U.S. Department of Education if they feel their rights are being violated.

• To suppress disclosure of directory information.
Parent Rights to Educational Records

• Parents may obtain directory information.

• Parents may obtain non-directory information by obtaining a signed consent from their child.
What are Educational Records?

• All records that directly relate to a student and are maintained by UTHSC.

• These records can be in any form: handwritten, print, type, film, electronic, microfiche, etc.
What is not an Educational Record?

• Personal notes held by a school official that are not accessible or released to other personnel.

• Law enforcement records maintained solely for law enforcement purposes and revealed only to law enforcement agencies.

• Medical records created by a health care professional used only for the medical/health treatment of the student.
What is not an Educational Record?

• Employment records of those whose employment is not contingent upon being a student
  • Records created as a result of being a student (work study, graduate assistant, etc) are education records
• Alumni records created after student has left UTHSC.
What Information can be Released?

- Directory information
- Information that the student has given written consent to release
- Information needed by UTHSC officials who have a legitimate educational interest
- Information needed by certain government agencies
What is Directory Information?

• Information that can be released without the student’s written consent.

• Directory Information at UTHSC includes:
  • Name
  • Permanent address
  • E-mail address
  • Telephone listing
  • Date of birth
  • Full or part-time status
  • College, major, degrees and dates awarded
  • Dates of attendance
  • Participation in recognized activities and sports
Directory Information Does Not Include

- Student ID numbers
- Social security numbers
- Grades
- GPAs
- Student schedules
- Academic standing
- Academic histories
Exceptions that Permit Release of Information Without Student’s Consent

• School officials with legitimate educational interests
  • A school has a legitimate educational interest if the official needs to review an educational record in order to fulfill his or her professional responsibilities for UTHSC.
  • A school official is a person employed by UTHSC in an administrative, supervisory, academic or support staff position including law enforcement
Increasing Technology and **FERPA**

- Technology has dramatically changed the way we process records.
- Electronic data will eventually replace most paper documents.
- The same principals of confidentiality must also be applied to electronic data.
Helpful Hints

• When in doubt – don’t give it out!

• Refer requests for that student to the Office of the Registrar.

• Information about a student can be released with a signed consent from the student

• Confidential information on a computer screen should be treated with the same confidentiality as a paper copy. Never leave this information viewable on an unattended computer. Also password information should remain secured, never share your password.
• Cover or put away papers that contain confidential information if you are going to step away from your desk

• When disposing of records, any records containing a SSN, student ID number, or grades should be shredded

• Post grades by code number known only to the instructor and student

• List grades randomly, not in alphabetical order
What is HIPAA?

- Health Insurance Portability and Accountability Act of 1996
- Established within the Clinton administration’s health care reform policy
- It requires organizations exchanging transactions for health care to follow national implementation guidelines
5 Titles of HIPAA

- Title I of HIPAA protects health insurance coverage for workers and their families when they change or lose their jobs.
- Title II of HIPAA, known as the Administrative Simplification (AS) provisions, requires the establishment of national standards for electronic health care transactions. It helps people keep their information private.
- The Administration Simplification provisions also address the security and privacy of health data.
5 Titles of HIPAA

• Title III, Tax—related health provisions, standardizes the amount you can save per person in a pre-tax medical savings account

• Title IV, Application and enforcement of group health plan requirements, broadened information on insurance reform provisions and provide detailed explanations

• Title V, Revenue offsets, are regulations on how employers can deduct company-owned life insurance premiums for income tax purposes
Who should Comply with HIPAA?

- Health and life insurers
- Employers who provide health insurance
- Anyone who uses health care or health insurance
- Public health authorities
- Billing agencies
- Health service organizations
FERPA vs. HIPAA

• FERPA has a different focus than HIPAA
• HIPAA protects all medical information gained in the course of treatment
• FERPA applies only to information in student records
Test yourself on FERPA. See how you would handle various scenarios.
Scenario #1

You have a student whom you are concerned about because of a bit of a characterological issue. The student is argumentative and usually goes his own way. The faculty have discussed these concerns over the years the student has been in the program, and these issues were of concern to fellow students. The student has been making As or Bs in all his courses. The student is currently participating in an internship program.

What information can you share with the internship about this student?
Scenario #1 Answer

**With Consent:** Any records indicated in the consent

**Without Consent:**
- Personal observations are not covered by FERPA
  - FERPA governs only the disclosure of educational records, or information taken from those records.
  - Even if some of these concerns had been entered in the record, FERPA does not stop those who observed from sharing their observations.
- The student’s grades are part of his educational record.
  - Disclosure of the grades, even if the transcript is not disclosed, is likely to be considered information taken from the education record, either because the faculty member was responsible for creating the record (creating the grade), or because it came from the official record.
Scenario #1 Answer Cont.

What type of internship arrangement is it?

– Another educational institution:
  • Educational records necessary for carrying out the educational responsibilities of the program, disclosure allowed to officials with legitimate educational interest.

– A hospital or other non-educational institution:
  • Is there an information sharing agreement?
  • If the institution contracts with UTHSC to provide educational services, disclosure allowed to officials with legitimate educational interests.
Scenario #2

You get a phone call from someone identifying himself as a student, asking about his grades.

Can you give out that information?
Scenario #2 Answer

No. You should not give out grades over the telephone because you cannot be sure it is the student.
Scenario #3

You receive an e-mail message from a reputable employer asking for names and addresses for students with a GPA of 3.0 or better. They have good job information to offer.

Can you help students get jobs by giving out that information?
Scenario #3 Answer

No. GPA or any part thereof is confidential information. Refer this person to the Office of the Registrar.
Scenario #4

You have a student who has signed a UTHSC record release form that authorizes disclosure of information. However, you are concerned that the student will sue you for libel if you disclose that the student is somewhat aggressive, not open to feedback, and judgmental.

Is it permissible to contact the internship with this information? What if the internship has contacted you and asked for information about the training goals for this student?
Scenario #4 Answer

- FERPA protection:
  - The student has signed a consent form authorizing disclosure of records related to “academic and professional qualifications, performance, and character, in whatever form maintained.” This seems certainly adequate to cover any records related to the concerns.
  - Even without consent, much of this information could be disclosed without involving educational records.
Scenario #4 Answer Cont.

• Other legal liability
  – To the extent you reach out to the program to make an affirmative effort to share your concerns about the student, there is some argument that you are deliberately attempting to defame the student or interfere with his/her career.
  – The fact that the information provided is truthful is also a defense to a defamation claim.
  – The consent form provides some protection, in that it authorizes disclosure, but it does not waive the right to legal action for intentional defamation or libel.
  – To the extent the internship is asking you for information, you have a much better argument against any claim of intentional interference with the student’s future prospects.
Scenario #5

You receive a subpoena in the mail. It appears to be a legal, court ordered subpoena.

Should you supply the student information?
Scenario #5 Answer

No. Subpoenas for student information require the immediate attention of the Office of Registrar. Please contact the Office of the Registrar.
Scenario #6

You get a frantic phone call from an individual who says he is a student's (husband/brother/father) and must get in touch with her immediately because of a family emergency.

Can you tell him where and when her next class is today?
Scenario #6 Answer

No. For the safety of the student, you cannot tell another person where a student is at any time. (It could be a stalker!) If this situation arises contact the Office of the Registrar.
Scenario #7

Is it wrong for professors to leave personally identifiable exams or papers in a box for students to pick up?
Scenario #7 Answer

Yes. This is a violation of the privacy rule because it is inappropriate for students to have access to other students' information. You cannot leave personally identifiable materials in a public place.
The parent of one of your graduate students is concerned about the student’s behavior and lack of communication with the parents. You have noticed that the student has changed over the last semester. He is dressing much more slovenly, appears to be unwashed on certain days, and seems depressed. His grades are slipping.

Can you disclose this information to the parent? Must you disclose to the parent?
Can you disclose?

- FERPA prohibits sharing of educational records
- Personal observations are not educational records
  - The grooming behavior noticed here may be shared without violating FERPA
- FERPA does prohibit sharing of grades, which are a part of the official education record.
  - Observations may still be shared however. For example, noting that the student seems unable to concentrate in class, or less responsive, would indicate problems with classroom behavior without sharing grades.
Scenario #8 Answer Cont.

Can you disclose?
• If the institution reasonably believes that there is a health or safety emergency involving the student, the institution may share educational records with the student’s parents and seek their assistance, regardless of the student’s age or whether the student is a tax dependent. If you have a rational basis for thinking that there is imminent harm possible for the student or others, and there is information in the record that will help to address this risk, that information may be shared.

Must you disclose?
• FERPA does not require disclosure.
• Just because you can disclose does not mean that you have to disclose.
An unauthorized person retrieves information from a computer screen that was left unattended.

Under FERPA, is the institution responsible?
Scenario #9 Answer

Yes. Information left on a computer screen should be treated the same as printed reports. The medium in which the information is held is unimportant. No information should be left accessible or unattended, including computer displays.
Scenario #10

Professor X wants to know the GPA of Student Y and says he is entitled to it because he is a school official and needs it to complete his official academic responsibilities.

Do you give it to him without further question?
Scenario #10 Answer

No. If Professor X is the student's advisor or the chair of the department in which the student is majoring, he can have this information (but he probably already has access to it himself.) However, all faculty members still have to have a legitimate educational need to know a student's information. For example, if Professor X wants to know the student's GPA because he is trying to decide on how he should grade the student, this is not a legitimate educational need to know.
Scenario #11

A newspaper reporter calls to ask for a student's major and dates of attendance.

Is it OK to give it out as long as the student has not requested directory information confidentiality?
Scenario #11 Answer

If you answered Yes, you would not be in violation of FERPA. However, even though FERPA allows for release of directory information without prior written consent of the student, the reporter should be referred to the Office of the Registrar in order to comply with university policy.
An employer asks you if you can verify that a student has received a degree.

The student has no confidentiality hold, so should you do it?
If you answered Yes, you would not be in violation of FERPA. However, even though FERPA allows for release of directory information without prior written consent of the student, the registrar's office is the only office that should be verifying student degrees.
You have an intern who seems fed up with his graduate program. He has said nothing specific but has expressed his disappointment that his advisor is rarely available and does not return phone messages or emails. He has made statements to his fellow interns that some housekeeping needs to be done and he is just the person to do it. His fellow interns have told you that they know he owns a gun, because he is an avid hunter. You know he plans to go visit his home program this week, and other interns have told you that he thinks this would be a good time to get the needed “cleanup” started. You have tried to talk to him about his concerns and plans, but he has refused to discuss it with you. In discussing the situation with other supervisors, one of them mentions that her supervision notes show that he has been making such claims throughout the year in their discussions, but they seem to be getting more frequent.

Are you allowed to disclose this information to the graduate program?
Scenario #13 Answer

• Are educational records being shared?
  – Most of this scenario presents no obvious need to share the student’s educational records.
  – Concerns about the student’s behavior are based on personal observations and comments by classmates.
  – FERPA does not restrict sharing of this type of information.

• Some education records may be implicated:
  – The supervision notes on the student are probably education records, and the observation about the escalating behavior is taken directly form those notes. Thus they are FERPA protected.
Scenario #13 Answer Cont.

- FERPA has an exception for emergency situations
  - Narrowly tailored disclosure without consent to appropriate persons is permitted in situations with imminent danger to students or others. A rational basis will support disclosure.

- FERPA exception for another educational institution
  - The home program is another educational institution, at which the student is still enrolled. Disclosure is permitted to those with a legitimate educational interest.
Your daughter attends school at UTHSC. She needs her transcript sent to a company so she can get a job. There is a deadline, and your daughter does not have time to take care of it herself.

Can you make the request on her behalf?
Scenario #14 Answer

No. Student academic records can only be released with written permission directly from the student.
Scenario #15

Your student has a medical condition that affects her energy level. She has provided you with documentation from her doctor explaining her absences from class and need for extra time on exams.

Are you allowed to disclose this information to the internship program to which the student is applying?
Scenario #15 Answer

• Are you a “covered entity” under HIPAA?
  – Unless you are transmitting protected health information (PHI) electronically for insurance or billing purposes, probably not.

• HIPAA excludes educational records
  – Even if you were a HIPAA covered entity, these are educational records, not HIPAA protected records

• Educational records:
  – These records are part of your file on the student
  – As such they are educational records covered by FERPA.
  – Under FERPA, disclosure to another institution to which the student is applying is allowed, assuming a legitimate educational interest.
Scenario #15 Answer Cont.

• ADA concerns
  – Nothing in this scenario shows a legitimate educationa reason why the records need to be shared as part of the application
  – While the records may be allowed to be shared under concerns about attempts to interfere with the student’s application, and possible discrimination on the part of the program if it refuses to admit her.
For Additional Information

• United States Department of Education, Family Policy Compliance Office:

• UTHSC Registrar’s website:
  http://www.utmem.edu/admiss/registrar.html

• UTHSC Office of the Registrar
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