

## FERPA OVERVIEW

*The Family Educational Rights and Privacy Act protects personally identifiable information in students' education records from unauthorized disclosure.*

### What is protected information?

Under FERPA, institutions may not disclose personally identifiable information (PII) contained in education records without the student's written consent except under certain conditions (see below). FERPA's privacy protections apply to undocumented students in the same way as other domestic students.

### What is an education record?

Education records are those records that contain information directly related to a student **and** which are maintained by an institution or a party acting for the institution.

*\*Education records are **not** sole possession records (meaning not shared with anyone else), law enforcement unit records, employment records, medical records, or post-attendance records.*

### What is personally identifiable information?

Data or information that could be used to identify a specific student, which includes, but is not limited to a student's or other family member's name, Social Security Number or student number, address, or other indirect identifiers (e.g. a student's date of birth, place of birth, and mother's maiden name).

### Who must comply?

FERPA applies to all educational agencies and institutions that receive funding under most programs administered by the Secretary of Education (e.g. direct grants to the institution, student financial aid, etc.).

*\*Almost all postsecondary institutions, both public and private, generally receive such funding.*

### What are the penalties for non-compliance?

The Education Department may issue a notice to cease the non-compliance and could ultimately withhold federal funds from the institution or terminate eligibility to receive funds.

### Conflict with state laws?

FERPA supersedes any state laws that attempt to require schools to release FERPA-protected information.

### Permitted Disclosure Exemptions

Institutions may disclose records without a student's written consent if certain requirements are met, but it is not required to do so. Some examples of the exceptions include:

- "School officials" with a "legitimate educational interest."
- Disclosure to another institution where the student is transferring.
- Disclosure to DOE, state/local education authorities.
- Disclosure in connection with the receipt of financial aid.
- Disclosure to state/local officials per legislative requirements.
- Disclosure to organizations conducting studies to improve instruction.
- Disclosure to accrediting organizations.
- Disclosure to parents of dependent students (IRS definition).
- To comply with a judicial order or lawfully issued subpoena (e.g. disciplinary records related to campus crime reports, campus mental health records in recent Title IX sex assault cases, see also FERPA vs. HIPAA note to the right).
- Disclosure for a health/safety emergency.
- Disclosure of directory information, provided the student has not requested "no release."
- Military recruiters who request "Student Recruiting Information" (Solomon Amendment).
- The Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) for purpose of complying with a request from ICE relative to the institution's participation in SEVIS. *\*this pertains to international students on F-1 visas and does not apply to undocumented/DACA/DED/TPS recipients.*

### Directory Information

Institutions may disclose designated "directory information" under FERPA.

Directory information may include: name, address, telephone number, major field of study, dates of attendance, current enrollment status, class standing, degrees and awards received.

Directory information cannot include: race/ethnicity/nationality, gender, SSN, grades, country of citizenship, religion, or student ID number (except in very specific circumstances).

### FERPA vs. HIPAA

When students seek medical treatment, including mental health care, on campus, those records are exempt from the definition of education records so long as they are only shared with other treatment providers. Such records are subject to HIPAA. However, once these records are shared with any party other than another treatment provider, they become education records by definition and subject to FERPA.