

Family Educational Rights and Privacy Act (FERPA)

Policy on Confidentiality of Records

THE CAPSTONE OF HIGHER EDUCATION





What is FERPA?

- Family Educational Rights and Privacy Act
- Grants students certain rights concerning their educational record
 1. Access (inspect and **review** education record)
 2. Amend (seek to **amend** incorrect record)
 3. Confidentiality (**control over disclosure** of record)





Definition of Education Records

Records, files, documents, and other materials which:

- Contain information directly related to a student
- Are maintained by an educational agency or institution





Education Records **DO NOT** Include

- “Sole possession records” created by a school official for his or her own use and not accessible to any person except a temporary substitute
- Medical/psychological records used solely in connection with treating the student



Education Records

DO NOT Include

- Regular Employment records
 - but student employment records are
- UA Police Department records maintained solely for law enforcement officials
- Alumni records containing information about a student no longer in attendance and not relating to the person as a student



Primary Rights for Students

1. Review – their own education records
2. Seek to Amend – their own education records
3. Limit Disclosure – of their own education records to 3rd parties



Right to Review

- Must make request **in writing**
- Assemble data and make available for viewing within 45 days
- Review must take place in the presence of a University official
- Does **NOT** mean student can make a copy of their exam, letters in their file, etc.



No Right to Review

- Financial information submitted by parents
- Records with information about more than one student
 - University must first redact information about other student
- Confidential letters and statements of recommendation if the student has waived his/her right to review



Right to Seek to Amend

- Students can challenge and seek to amend the contents of their education records which they consider to be
 - Inaccurate
 - Misleading
 - In violation of their privacy or other rights



Right to Seek to Amend

- Students cannot question the appropriateness of a grade
 - Students only have a right to amend if the grade given by the instructor is not correctly recorded.





Right to Limit Disclosure

General Rule:

Obtain *written* consent from students *before* disclosing any personally identifiable information from their education records to a third party.





Duty to Notify Not to Re-disclose

Example:

“The attached information has been forwarded to you at the request of the student with the understanding that it will not be released to other parties. The Family Educational Rights and Privacy Act of 1974 as amended, prohibits release of this information without the student’s written consent. Please return this material to us if you are unable to comply with this condition of release.”

This notification rule does not apply to directory information of information released pursuant to a subpoena or court order.





Consent **NOT** Necessary for:

1. Directory information—UNLESS the student has placed a directory hold on their records

Directory information at UA includes:

- Name
- Address (local & permanent)
- Email address
- Telephone number
- Major Field of Study
- Dates of attendance
- Participation in officially-recognized activities and sports
- Weight/height of members of athletic teams
- Degrees and awards received
- The most recent previous educational institution attended by the student



Consent **NOT** Necessary for:

2. School officials with legitimate educational interest

- Including faculty, administration, clerical and professional employees, and others who need student record information for the effective functioning of their office or position


CAUTION: Disclosure to an instructor with a legitimate educational interest does NOT authorize disclosure of that information to a third party



Rights of Students VS Rights of Parents

- Initially, parents are presumed to hold these rights
- When a student becomes 18 or attends university, the student becomes the “holder” of FERPA rights and privileges
- Parents of dependent students do not acquire “holder” status under FERPA
- FERPA does not **require** disclosure to parents of a **dependent** student, but merely **permits** it without the student’s consent **IF** the student is proven to be a dependent





Six Instances When Records May Be Released to Parents

1. Student was claimed as a dependent on most recent Federal Income Tax form
 - Releasing records to parents without PROOF of dependency is a violation of FERPA
 - UA can have student verify if he/she has been claimed by parent(s) as a dependent
 - If discrepancy exists, parent(s) can then be asked to send copy of tax form



Six Instances When Records May Be Released to Parents


2. Student provides written consent

– Adequate written consent must:

- Specify the precise records to be released
- Specify the purpose of the disclosure
- Precisely identify to whom the disclosure may be made
- Be signed and dated by the student

Consent by ***financially independent*** student to one parent is not consent to the other parent.






Six Instances When Records May Be Released to Parents

3. Student violates University drug and alcohol policies

- May disclose information regarding the violation of any federal, state, or local law, or any rule or policy of the institution governing the use or possession of alcohol or a controlled substance, IF:
 - The student is under the age of 21 (20 or younger) **AND**
 - The University determines the student has committed a disciplinary violation with respect to such use or possession





Six Instances When Records May Be Released to Parents

4. Student disciplined for crime of violence or non-forcible sex offense

The ONLY information the University may reveal is:

- The name of the student being disciplined
- A description of the violation committed
- Any sanction imposed by the University
- The names of any other students, (victims, witnesses) **BUT ONLY** if the other students consent in writing to the release of their names.

Disclosure should clarify that the student has been sanctioned through the disciplinary system, and not charged with or found guilty of any criminal offense.



Six Instances When Records May Be Released to Parents

5. University receives a subpoena

- Must be lawfully issued and served pursuant to state and federal rules of civil procedure
- UA must notify the student prior to release of the records to allow the student to take steps to quash the subpoena or obtain a protective order




Six Instances When Records May Be Released to Parents

5. University receives a subpoena (con't)

- Can only release records described in the subpoena (a request for academic transcripts does not authorize the release of financial aid records)
- No need to notify if issued by a federal grand jury or law enforcement agency and the subpoena clearly instructs the University “to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena”





Six Instances When Records May Be Released to Parents

6. Disclosure to parents (or others) is necessary to protect the health or safety of the student or other individuals

– Factors that must be considered before releasing non-directory information in a crisis or emergency situation include:

- The severity of the threat to those involved
- The need for the information
- The time required to deal with the emergency
- The ability of the parties to whom the information is given to deal with the emergency





Parents vs Students Rights

What if only one parent declares the student as a dependent due to divorce, separation, or custody issues?

BOTH PARENTS STILL GET ACCESS!

The law (and UA policy) permits disclosure to the other parent unless there is a court order, state statute, or legally binding document stating otherwise.





Proxy

Proxy access allows students to grant access to portions of their student record.

- Student creates a proxy user account in myBama
- Student determines which access is granted
- Student grants access for a specified period of time

Proxy access DOES NOT replace the need for a FERPA release and DOES NOT allow university personnel to discuss or release non-directory information.





FERPA Release

Students are able to sign an electronic FERPA release through their myBama account. A FERPA release **MUST** be on file before university personnel can discuss and/or release non-directory data relating to the student's educational record.





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