

# TRAINING FACULTY, STAFF AND STUDENTS ON FERPA

ADAPTED FROM AACRAO  
FEDERAL COMPLIANCE  
COMMITTEE  
FOR  
EAST STROUDSBURG  
UNIVERSITY

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# FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

“A Federal Law designed to protect the privacy of **education records**, to establish the right of students to inspect and review their **education records**, and to provide guidelines for the correction of inaccurate and misleading data through informal and formal hearings.”



# FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

This Act is enforced by the  
**Family Policy Compliance Office**,  
U.S. Department of Education,  
Washington, D.C.



# KEY TERMS

- Education Record
- Personally Identifiable
- Directory Information
- School Official



# KEY CONCEPTS

- Required annual notification
- Written permission required for disclosure of student education record
- The exceptions to written permission of student
- Students' right to access their records
- The “musts” and “mays” in FERPA
- Parents/parental disclosure
- Legitimate Educational Interest



# THE ESSENCE OF THE ACT

- College students must be permitted to inspect their own **education records**.
- **School officials** may not disclose **personally identifiable information** about students nor permit inspection of their records without written permission unless such action is covered by certain exceptions permitted by the *Act*.



# WHAT IS AN “EDUCATION RECORD?”

- Any record, with certain exceptions, maintained by an institution that is directly related to a student or students. This record can contain a student’s name(s) or information from which an individual student can be personally (individually) identified.
- These records includes: files, documents, student papers and materials in whatever medium (handwriting, print, tapes, disks, film, microfilm, microfiche) which contain information directly related to students and from which students can be personally (individually) identified.



# “PERSONALLY IDENTIFIABLE”

**Personally Identifiable** means data or information which includes:

1. The name of the student, the student's parent, or other family members;
2. The student's campus or home address;
3. A personal identifier (such as a social security number or student number);
4. A list of personal characteristics or other information which would make the student's identity known with “reasonable certainty.”



# GRADES POSTED ON BULLETIN BOARD OUTSIDE OF INSTRUCTOR'S OFFICE

Instructor Summary - Fall 1999 - December 15, 1999				
GradeBook - Unregistered Copy				
MKT 227 Fall 99				
A = 90.0 B = 80.0 C = 70.0 D = 60.0				
	RgAvg%		ExtCr %	Grade
	100.00		5.6	
2949	93.8		201	A
4532	84.5		4.2	B
5599	83.1		0.7	B
1197	71		0.7	B
7463	72.6		0.7	C
6115	66.2		5.6	C
7692	66.9		4.2	C
2342	68.1		1.4	D
1543	62.9		0.7	D
5748	61.8		0.7	D

**FERPA**  
**VIOLATION!!**



# GRADES POSTED ON BULLETIN BOARD OUTSIDE OF INSTRUCTOR'S OFFICE

- According to the Family Policy Compliance Office, it is no longer acceptable to publicly post students grades (or binders/portfolios/outcomes of student work) using any portion of a student's SSN or student ID
- If an instructor wants to post grades in any public way, he or she should use some code which is known only to the instructor and each individual student. For example, each student could have a random number assigned at the beginning of the term. The alphabetical order of the list must be rearranged so that students cannot be personally identified.



# WHAT IS NOT AN EDUCATION RECORD?

- “Sole Possession” notes
- Law enforcement unit records
- Records maintained exclusively for individuals in their capacity as employees
  - Records of individuals who are employed as a result of their status as students (work study) are education records.
- Medical & Treatment records
- Alumni records



# “SOLE POSSESSION NOTES”

Are made by one person as an individual observation or recollection, are kept in the possession of the maker, and are only shared with a temporary substitute.

- This term has always been narrowly defined.
- Notes taken in conjunction with any other person are not sole possession notes (advisor’s notes, interview notes).
- Sharing these notes with another person, or placing them in an area where they can be viewed by others makes them “education records” and subject to FERPA.
- Emails can never be sole possession.
- Best advice: If you don’t want it reviewed, don’t write it down.



# “SOLE POSSESSION NOTES”

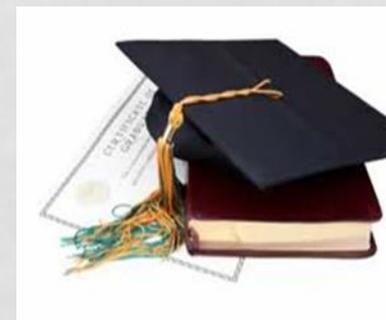
**Story #1**--At an institution in the Midwest, the Affirmative Action Officer (subsequently referred to as the AAO) was investigating a complaint filed by a student with the State's Department of Human Rights. The student alleged that she had been sexually harassed by a faculty member. In the investigation, the AAO interviewed all students who may have observed the alleged incident. The AAO interviewed each student individually and privately, and while interviewing, wrote notes of each student's observation and recollection. The AAO did not ask each student to review the notes for accuracy and did not share the notes with anyone. The interview notes were maintained in the AAO's office in a locked cabinet. No other person had access to the notes. The AAO did review the notes when preparing a response to the State Department of Human Resources, but did not disclose the notes themselves to anyone. Several years later, the student who had made the accusation of sexual harassment discovered that the notes existed and asked to see them since, under FERPA she said; a student has the right to examine education records. The AAO was advised by legal counsel that the notes were “sole possession” records, and thus were not education records and not subject to review by the student. The student then filed a complaint with the Family Policy Compliance Office, claiming that her “right to access” under FERPA had been denied.



# “SOLE POSSESSION NOTES”

## Story #1—

Was her “right to access” improperly denied? The Family Policy Compliance Office determined that since the notes had been “...prepared with the assistance or participation of others, such as the students interviewed...”, the notes are education records and the student must be provided access to these records under FERPA. Therefore, the notes in question are not sole possession notes. The notes were redacted to protect the privacy of the students who had been interviewed and the notes were provided to the complainant (student).



# WHAT IS AN **EDUCATION RECORD** ? (SUMMARY)

If you have a record that is:

- Maintained by your institution
- Personally identifiable to a student (directly related to a student and from which a student can be identified)
- Not one of the excluded categories of records...

...then, you have an education record  
and

**It is subject to FERPA**



# REQUIREMENTS FOR COMPLIANCE

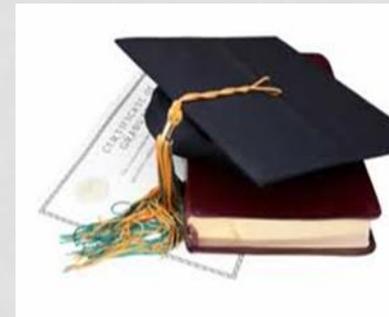
What we must do...

- Provide **annual notification** to students of their FERPA Rights
- Provide students **access** to their education records



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to:
  1. Inspect and review their education records
  2. Request an amendment to their education records
  3. A hearing if the request for an amendment is unsatisfactory
  4. Request that the institution not disclose directory information items about them
  5. File a complaint with the U.S. Department of Education



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to know:
  6. 1) that **school officials** within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered **school officials** and 3) what **legitimate educational interest** will entitle school officials to have access to in education records



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to:
  7. Know which information the institution has designated as public or **directory information**.



# REQUIREMENTS FOR COMPLIANCE

## Directory Information

- The institution **must** notify students of what information the institution has designated as **directory information**.
- The Family Policy Compliance Office has recommended that this notification be part of the institution's annual FERPA notification to students.



# REQUIREMENTS FOR COMPLIANCE

## Directory Information

- Information not normally considered a violation of a person's privacy
- Students must be notified of the items of **directory information**
- Students must be given the opportunity to request that directory information not be released using the FERPA Restriction form. This right of non-disclosure applies to directory information only.



# WHAT DIRECTORY INFORMATION **INCLUDES** AT ESU?

**Directory Information includes the following student information:**

- Student's name
- Official ESU e-mail address
- Degree sought and time
- Major/Minor; Fields of study
- Degrees and awards received
- Dates of attendance
- Participation in officially recognized activities and sports
- Physical factors (height/weight of student athletes )
- Most recent educational institution attended
- Fraternity and/or sorority



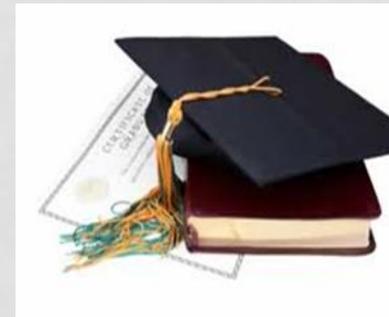
# WHAT DIRECTORY INFORMATION **NEVER INCLUDES** AT ESU?

- Race
- Gender
- Social Security Number (or part of an SSN)
- Grades
- GPA
- Country of citizenship
- Religion
- *Date of Birth*
- *Student ID Number (or part of the ID#)*



# DIRECTORY INFORMATION

- It is important to remember that **directory information** be defined as such.
- If a data element isn't defined as **directory information** by ESU **it isn't directory information** and can only be released if the student's written permission is obtained or the release meets the requirements under one of the exceptions to student's written permission found in FERPA.



# DIRECTORY INFORMATION

- Student ID Numbers (SIN's)
  - The 2009 regulations made it clear that SIN's cannot be **directory information** unless they are being used as electronic personal identifiers (e.g. as a user name), and
  - If used to access data systems, they must be used in conjunction with a secondary authentication factor, such as a secret password or PIN.



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to know:
  6. 1) that **school officials** within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered school officials and 3) what “legitimate educational interests” will entitle school officials to have access to education records.



# “SCHOOL OFFICIALS”

A **school official** can be a person:

1. Employed by the college in an administrative, supervisory, academic, research, or support staff position (including law enforcement and health staff personnel),
2. Elected to the Council of Trustees,
3. Or a company employed by or under contract to the college to perform a specific task, such as, an agent, an attorney, an auditor, or an outsourced service provider.
4. Serving as a student representative on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their right to know:
  6. 1) that school officials within the institution may obtain information from education records without obtaining prior written consent, 2) the criteria for determining who will be considered school officials and 3) what **legitimate educational interest** will entitle school officials to have access to education records.



# “LEGITIMATE EDUCATIONAL INTEREST”

## Story #2

“Dear Ms. Registrar:

I am writing concerning the release of information about my educational record to my ex-husband, Robert, the Director of Financial Aid at ABC University. I refer to the unofficial grade transcript that I gave to you during our meeting last week. I was separated from him in December, 2007 and divorced from him in October, 2008. We are currently involved in a court decision concerning custody of our two children. In his answers to interrogatories filed with my attorney on February 11, 2009, my ex-husband wrote that he would submit the “educational record” of me as evidence at the trial. My attorney said that he didn't know how my ex-husband would be able to supply the court with a copy of my transcript, since that information is protected. On March 3, his lawyer gave my lawyer several documents he intended to use as exhibits in court, including my grade transcript. The hearing date was March 4. At the hearing, his attorney did not submit my transcript itself, but he submitted a sheet showing a set of bar graphs representing my academic progress at your University as opposed to his progress at Yale and Harvard. This sheet had been prepared by his new wife, a faculty member in the Statistics Department. In his testimony, my ex-husband also referred to my grades since the divorce, and to the fact that I had completed the required number of hours for an M.A., but had not yet completed my thesis. My ex-husband has obtained my unofficial transcript to further his case against me as a custodial parent. I am angry that he has gotten this personal information about me, and has shared it with his lawyer, my lawyer, his wife, and perhaps other people as well. I am proud of my academic record, but it is my record to disclose...”



# “LEGITIMATE EDUCATIONAL INTEREST”

## Story #2

We, of course, would agree that this is a violation of a student's FERPA rights. It is also an example of a school official (the ex-husband) obtaining an education record without a legitimate educational interest. This was a serious violation of FERPA that could have had serious legal implications for the university. The lesson to be learned is that there needs to be a continuous attempt to inform all school officials, new and old, on their FERPA responsibilities. FERPA is an Act that involves any employee who comes in contact with education records at any institution.



# REQUIREMENTS FOR COMPLIANCE

- Provide annual notification to students of their FERPA Rights
- Provide students' access to their education records



# REQUIREMENTS FOR COMPLIANCE

- Provide students with access to their education records

They have the right to:

- 1) Inspect and review within 45 days of the request to inspect.



# REQUIREMENTS FOR COMPLIANCE

## Provide students with access to their education records

- Limitations to the right to inspect (That is, student do not have the right to review the following)
  - Parental financial information
  - Confidential letters and recommendations to which the student has waived his/her right of inspection
  - Education records containing information about more than one student
    - The institution **must permit access** to that part of the record which pertains only to the inquiring student



# SPECIAL NOTE ON CONFIDENTIAL LETTERS OF RECOMMENDATION

- Some selective institutions request the applicant to indicate whether they waive, or do not waive, their right to inspect a confidential letter or recommendation prior to providing the form to the person requested to write the letter.
- Remember that the confidential letter of recommendation becomes an “education record” if maintained by the institution after the student has begun attending the institution. Therefore, if the student has not waived his/her right to review the letter, or has not been given the opportunity to waive his/her right, it is subject to review by the student.
- You may want to find out if the individuals writing the letters of recommendations are assuming that these letters are confidential when, in fact, these letters may legally be reviewed by the student after the student is attending the institution.
- Include a redisclosure notice with your letter of recommendation.  
*E.g., Please note that the aforementioned student has waived his/her rights to access/review this letter of recommendation. As such, this information should not become part of the student's education record at your institution.*



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

1. Institutions shall obtain written consent from the student before disclosing any personally identifiable information from their education records (with the exceptions as noted in sections 2 and 3 below). The written consent must:
  - a. Specify the records to be released, e.g. information regarding a current judicial case or all judicial records
  - b. State the purpose of the disclosure
  - c. Identify the party or parties to whom disclosure may be made
  - d. Be signed and dated by the student.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE AT ESU

ESU has a single consent form  
FERPA Disclosure Form

1. Access from the FERPA website:  
[www.esu.edu/ferpa](http://www.esu.edu/ferpa)
2. Students can complete the FERPA Disclosure Form on the MyESU Portal.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

2. Institutions **must** disclose education records **without written consent** of students to the following:
  - a. Students who request to see information from their own records



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - a. School Officials, as discussed earlier.
  - b. Authorized representatives of the following for audit, evaluation, or enforcement of federal and state supported programs:
    - Comptroller General of the United States
    - Secretary, U.S. Department of Education
    - U.S. Attorney General (law enforcement only)
    - State educational authorities



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

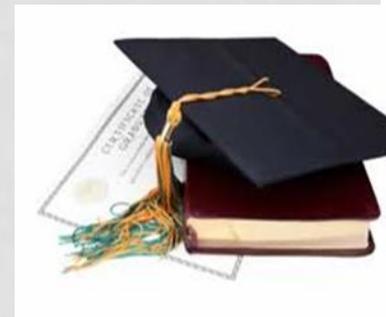
3. Institutions **may** disclose education records **without written consent** of students to the following:
  - c. Personnel within the institution determined by the institution to have a legitimate educational interest
  - d. Officials of other institutions in which the student seeks to enroll, on condition that the issuing institution makes a reasonable attempt to inform the student of the disclosure



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - e. Persons or organizations providing to the student financial aid, or determining financial aid decisions
  - f. Organizations conducting studies to develop validate, and administer predictive tests, to administer student aid programs, or to improve instruction



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - g. Accrediting organizations carrying out their accrediting functions
  - h. Parents of a student who have established that student's status as a dependent as defined by the IRS Code



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - i. Persons in compliance with a judicial order or a lawfully issued subpoena, provided that the institution first make a reasonable attempt to notify the student. **Exception:** If the subpoena is issued from a federal grand jury, or for a law enforcement purpose, and orders the institution not to notify the student.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - j. A court if the student has initiated legal action against the institution or the institution has initiated legal action against the student



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - k. Persons in an emergency, if it is determined that there is a rational basis to believe there is a significant threat to a student or other persons



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - I. An alleged victim of any crime of violence or the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of education record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - m. The public regarding the **final results** of an institutional disciplinary proceeding so long as the student has been determined to be the alleged perpetrator of a **crime of violence or non-forcible sex offense**



# WHAT DO THE “*FINAL RESULTS*” INCLUDE?

- Must include only: the name of the student, violation committed, and any sanction imposed by the institution against the student.
- The institution may not disclose the name of any other student, including a victim or witness, without prior written consent of the other student.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of education record information

3. Institutions **may** disclose education records **without written consent** of students to the following:
  - n. Parents of a student under the age of 21 regarding a violation of any law, at any level, or institutional policy or rule governing the use of alcohol or a controlled substance

Does not supersede any state law that prohibits disclosure of this information.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

4. Institutions **may** disclose information about students to their parents by any of four procedures:
  - a. By obtaining the student's written consent
  - b. By having the parents establish the student's dependency as defined by Internal Revenue Code
  - c. By exercising its disclosure option on any students under age 21 regarding a violation of an institutional rule or federal, state, or local law regarding the use of alcohol or controlled substance as long as state law permits.
  - d. In a health or safety emergency.



# WHAT ABOUT PARENTS?

- When a student reaches the age of 18 or begins attending a postsecondary institution regardless of age, FERPA rights transfer to the student.
- Parents may obtain directory information at the discretion of the institution.
- Parents may obtain non-directory information (grades, GPA, etc.) at the discretion of the institution **AND** after it has been determined that their child is legally their dependent.
- Parents may also obtain non-directory information by obtaining a signed consent from their child.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

5. Institutions **may** release without written consent those records identified as public or directory information for students who are currently enrolled with the following conditions:
  - a. That the institution inform the students of those categories designated as directory information
  - b. That students be given the opportunity to refuse disclosure of any or all categories
  - c. That the students be given a reasonable period of time in which to state such refusals in writing



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## A. Disclosure of educational record information

6. Institutions **may** release **without written consent** those items identified as public or directory information on any students not currently enrolled
7. Institutions **may** release **without written consent** information on any student found by a campus disciplinary body to have committed a crime of violence or non-violent sexual offense. The information that may be released is limited to the following: name, violation committed, sanction imposed by the institution.
8. Institutions are responsible for informing parties to whom personally identifiable information is released that recipients are not permitted to disclose the information to others **without written consent of the students.**



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## **B. Records of requests and disclosures**

1. All institutions are required to maintain records of requests and disclosures of education records
  - a. These records will include the names and addresses of the requestor and his/her indicated interest in the records.



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## B. Records of requests and disclosures

2. Records of requests and disclosure do not have to be kept for:
  - a. Requests from students for their own use
  - b. Disclosures in response to written requests from students
  - c. Requests made by school officials
  - d. Those specified as directory information



# PROCEDURES AND STRATEGIES FOR COMPLIANCE

## **B. Records of requests and disclosures**

3. These records of requests and disclosures are part of the student's education records and must be retained as long as the education records to which they refer are maintained by the institution.



# KEY TERMS REVISITED

- Education Record
- Personally Identifiable
- Directory Information
- School Official



# KEY CONCEPTS REVISITED

- Required annual notification
- Written permission required for disclosure of student education record
- The exceptions to written permission of student
- Students' right to access their records
- The “musts” and “mays” in FERPA
- Parents/parental disclosure
- Legitimate Educational Interest



# CRITERIA TO BE USED IN DETERMINING A LEGITIMATE EDUCATIONAL INTEREST WHEN WRITING RECOMMENDATIONS

- Was the faculty member asked by the student to provide the recommendation?
- What does the faculty contract specify regarding the duties of faculty members? Does or did the faculty member teach the student in any course?
- Does the faculty member otherwise have personal knowledge of the student's abilities?
- Did the student waive his/her right to review a copy of the recommendation letter?



# BALANCE POINTS/CHALLENGES

- The public's right to know vs. individual privacy rights
- Providing service vs. protecting access to information
- FERPA vs. state's open records laws



# FERPA INFORMATION SOURCES

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, D.C. 20202-5920  
202-260-3887 (phone)  
202-260-9001 (fax)

**[ferpa@ed.gov](mailto:ferpa@ed.gov)**

**<http://www2.ed.gov/policy/gen/guid/fpco/index.htm>**

Or

**[ferpa@aacrao.org](mailto:ferpa@aacrao.org)**



# FERPA INFORMATION SOURCES @ ESU

University Registrar  
East Stroudsburg University  
Student Enrollment Center  
Zimbar-Liljenstein Hall  
200 Prospect Street  
East Stroudsburg, PA 18301

**[registrar@esu.edu](mailto:registrar@esu.edu)**

**<http://www.esu.edu/ferpa>**

