

What you should know about
**Legal Issues Relating
to Higher Education**



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Disclaimers....

- This presentation is designed to give a BRIEF overview of FERPA as it relates to the academic records of students & Georgia “Sunshine” laws.
- Any questions regarding specific matters should be referred to the appropriate administrators on your campus. The USG Office of Legal Affairs can be consulted when necessary.
- *I am not an attorney, but have some legal training and many years of experience in these areas of Higher Education law.*



What is FERPA and for what purpose does it exist?

The Family Educational Rights and Privacy Act (FERPA) of 1974, as Amended, is a federal law.

The purpose of this law is to afford students certain rights pertaining to their educational records.



Does FERPA apply to applicants?

FERPA does not apply to applicants who are denied admission or to those applicants who were accepted but did not attend.



Does FERPA apply to all students?

YES! FERPA applies to all students who attend post-secondary institutions.



Briefly, what does FERPA guarantee?

- **FERPA gives students the right to inspect and review their own records**
- **to request amendments to their record**
- **to have some control over the release of personally identifiable information from their records**



Who is responsible for seeing that FERPA is upheld?

- **Generally speaking, all employees who have access to records are responsible for guarding the confidentiality of student records (including all academic records such as tests, papers, etc.).**
- **Specifically, requests for access to records, requests for amendment of records, and complaints regarding any violation of FERPA are typically filed with the institution's Registrar.**



What is meant by “Disclosure” of Information?

- **Permitting access to or the release of personally identifiable information to any party. This includes any communication by oral, written, electronic or any other means.**
- **Schools are not allowed to disclose information (other than “Directory Information”) without the student’s written consent except under very limited conditions.**



How are students made aware of FERPA?

- Students are notified annually regarding their FERPA rights through various methods as determined by each institution.
- *Notification at most institutions is done minimally through the catalog and the website.*



What is Directory Information?

"Directory Information" is information not generally considered harmful or an invasion of privacy if disclosed. This may include (but does not have to):

- Name, address, e-mail address and telephone listing**
- Enrollment Status/Level (graduate or undergraduate)**
- Field of study (major)**
- Dates of attendance, degrees and dates awarded**
- Date and place of birth**
- Participation in recognized activities, sports, honors**
- "Directory Information" cannot include student identification numbers or social security numbers.**



Can a student prohibit release of “Directory Information”?

- **Yes. Students who wish to discuss the prohibition of release of "Directory Information" should contact the Registrar's Office.**
- **Students can also request that their record be marked as “Confidential” to prohibit release except under limited circumstances (but be aware of the pros and cons of such requests).**



Are parents exempt from FERPA restrictions?

- **No.** Parents do not have the right to access records of students over the age of 18 at the post-secondary level. Not even if they are paying all tuition...except in these three cases:
 1. **They have the written consent of the student.**
 2. **In response to a subpoena (the student must be notified that records were released).**
 3. **They can prove that they claimed the student as a dependent on their most recent Federal Income Tax form (institutions can establish specific procedures to address this case).**



Can Information Be Released if a Student's Record is Marked "Confidential"?

- * Yes, if you have one of the following:**
 - 1. Student's Written Request**
 - 2. Subpoena**
 - 3. Copy of Federal Tax Form Claiming the Student as a Dependent**

HOWEVER, no information should be released without one of the items listed above!



What should be done when there is confusion about releasing information?

- **When in doubt, saying nothing is the best option**
- **Don't play the "Guessing Game"**
- **It is far better to NOT release information than to release information incorrectly**
 - **Assume a student is "independent" until proven "dependent."**



1998 Amendment & Parental Notification

- *In 1998, Congress amended FERPA to allow institutions to notify parents upon determining that dependent students under 21 have violated the school's alcohol policy. This typically concerns residential and often private schools.*
- Amendment **DOES NOT REQUIRE** notification but gives the school the choice. *Some states forbid notification (like CA, OR) and one state requires notification (VA).*
- **School policy serves as the guide.** If school DOES choose to notify this amendment ONLY applies to adjudicated alcohol violations for dependent students under 21 and does not allow any other notification about grades, etc.



What do you think?

An author requests academic information on Jimmy Carter. Since all of President Carter's records are already a matter of public record, can you release the information?

No, FERPA rights continue even after a student is no longer enrolled.

FERPA rights DO end upon the death of a student.



OK, What About...

A student asks to see his records. You notice that he has a hold for parking fines. Can you make him pay the fine before viewing his record?

*No, students have the right to view their record even if they owe money. Can he have a copy of his transcript?
No, the institution is not required to release a copy if the student owes money.*



One More Example

**The Baptist Student Union affiliated with your institution asks for a list of all new international students and their country of origin so that they can invite them to a dinner during the holidays.
OK?**

Although the thought is a nice one, country of origin is not considered “Directory Information.” The BSU affiliates are not considered to be “school officials” and should be treated like any outside party.



FERPA & SEVIS

- The Student and Exchange Visitor Information System (SEVIS) is an automated information system designed by the INS to manage data affiliated with the Student and Exchange Visitor Program (SEVP).
- The USA PATRIOT Act of 2001 established recording and reporting requirements for students holding F, J, and M visas.
- The regulations do not apply to other non-F, J, M visa foreign students, but data is tracked on those students through IPEDS.



Does SEVIS violate FERPA?

- **NO**. International students in signing their entry documents (I-20, DS-2091, etc.) provide consent for schools to comply with all INS requirements for recording and reporting.
- **BUT** – *these consents ONLY allow release of information to certain specified organizations (such as INS and Department of State) and are not a blanket release of all FERPA rights.*



Know Everything Now???

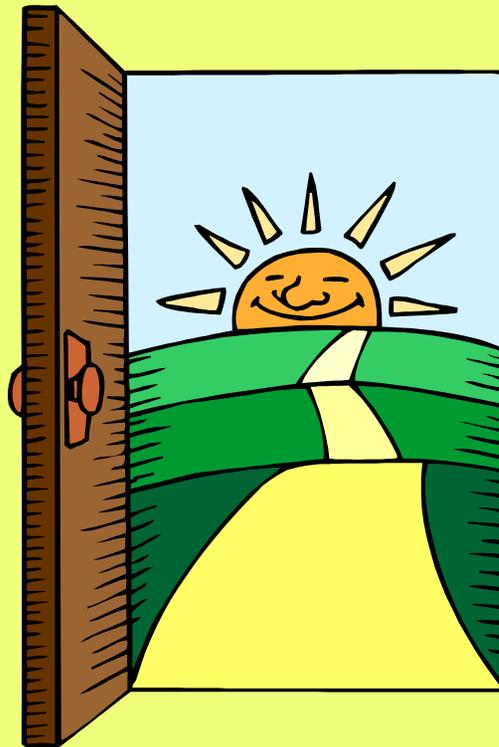
- No one can possibly know every detail of FERPA and how it is to be applied.
- For more detailed information, visit the FERPA website at:

<http://www.ed.gov/offices/OM/fpco/ferpa/index.html>



Georgia's “Sunshine Laws”

- Georgia's approach to open government and citizen participation!



“Sunshine Laws”: Open Meetings & Open Records

- Open Meetings and Open Records Laws apply to all “agencies” of the state or local government in Georgia.
- “Agency” is broadly defined to include every state department, agency, board, bureau, commission, public corporation and authority.
- Also included are county, municipal, school, city, regional and non-profit organizations receiving direct allocations of state funds, and private entities carrying out governmental functions.



What Records are Open?

- The public (*not just a Georgia citizen*) has a right to see, inspect and copy all “public records” including:
 - Documents, papers, letters, books
 - Maps, tapes, photographs
 - Computer-based or generated information (including documents housed on public computers)
 - Like materials prepared & maintained or received in the course of operation of a public office or agency.



Requesting Open Records

- Must be made to designated custodian of the desired records within the institution
- Written request is not required but advisable to eliminate disputes over request details
- A “reasonable” amount of time is allowed to process requests, but all requests must be responded to within 3 business days
- If access is denied in part or whole a written explanation must be provided.



Fees Relating to Open Records

- Public agencies may charge a reasonable fee for copying public documents up to \$.25 per page, as well as costs for search, retrieval, and other administrative tasks.
- Fees cannot be charged when only inspecting documents, nor can any attorneys fees be charge for consultation regarding record disclosure.



Penalty for Non-Compliance

- Anyone “knowingly and willingly” failing or refusing to provide timely access can be charged with a misdemeanor and up to a \$100 fine.



Open Meetings

- Georgia's Open Meeting Law requires state and local governmental bodies conduct their business so citizens can review and monitor officials working on their behalf.
- Government meetings are required to be open, and reasonable notice of all meetings must be provided.



What Meetings are Open?

- City councils & County commissions
- Regional development authorities
- Library & School boards
- Commissions or authorities established by state or local governments
- Planning commissions & Zoning boards
- Non-profit corporations operating public hospitals
- Most committees of the USG (such as those involving grievances, disciplinary matters, athletic matters, and other student-related matters not specifically related to education)
- *Some exemptions do exist, like the General Assembly*



Exceptions & Anomalies

- If a quorum of members is not present the meeting need not be open because official business cannot be conducted
- Personnel/employment issues, staff meetings, and academic matters protected under FERPA
- Meetings can be closed under certain circumstances, but legally-recognized reason for closing must be disclosed
- Recommending bodies with no decision-making authority do not necessarily have to hold open meetings, but NO meetings are required to be closed so open meetings are generally recommended.



Penalty for Non-Compliance

- Anyone “knowingly and willingly” conducting or participating in a meeting without complying with every part of the Law can be charged with a misdemeanor and up to a \$500 fine.



Want more details?

- For more information on Georgia's Sunshine Laws contact:
 - **The Georgia First Amendment Foundation**
www.gfaf.org or **404-525-3646**
 - **Attorney General of Georgia**
www.ganet.org/ago/ or **404-656-4168**

