

FERPA AT "39"

An Overview of the Family Educational Rights and Privacy Act of 1974, as amended

Larry S. Friedman, Registrar
Neumann University
lfriedma@neumann.edu

April 8, 2013
Session ID 2360

What is FERPA?

- Originally proposed by Sen. James Buckley as part of a bill extending the Elementary and Secondary Education Act of 1965
- Can be viewed as a type of civil rights legislation designed to protect the privacy of education records and to limit the transferability of those records without consent.

What FERPA is NOT...

- FERPA does not create a Federal right to privacy for students' education records; FERPA only protects the **"personally identifiable information"** that is contained in those education records.
- FERPA is not a version of the Federal Freedom of Information Act made applicable to education records, since no right of public access is created.

What is FERPA All About?

- Provides guarantees to parents and students regarding the access and confidentiality (privacy) of education records from K-12 through postsecondary education.
 - Right to access*
 - Right to challenge contents and seek to have records amended
 - Right to have some control over disclosure of “**personally identifiable information**”
- *When a student turns 18 years of age, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student.

*Session ID xxxx

*4

ellucian
LIVE

Who Must Comply with FERPA?

- **Any educational institution** (“school or other entity that provides educational services and is attended by students”) or **educational agency** (an “entity that administers schools directly linked to it”) **that receives funds under any program that is administered by the U.S. Secretary of Education.**

*Session ID xxxx

*5

ellucian
LIVE

What does FERPA Require for Postsecondary Institutions to be in Compliance?

- Annual notice [section 99.7 of the regulation] to students which must take a form that is “reasonably likely” to notify students.
- Protect students’ rights to inspect/review their education records.
- Protect students’ rights to request to amend their education record.

*Session ID xxxx

*6

ellucian
LIVE

What does FERPA Require to be in Compliance? [cont.]

- Protect students' rights to limit disclosure of their "personally identifiable information".
- Ensure that third parties do not re-disclose "personally identifiable information".
- Keep records of requests for and disclosure of student records.

Key Question: How to Define a Student

- **Institutionally Defined:** may start with applicants, admits, or matriculants who are actually attending as of the first day of the term. At Neumann, the definition begins with applicant status.
- Applies to all full-time and part-time students, continuing education students, students who audit a course, distance education and online students, as well as any high school student for whom a record is maintained while the student is in attendance at Neumann University.
- FERPA, however, does not apply to the records of applicants who have been denied acceptance or, if accepted, do not attend.

Acquisition of FERPA Rights....

- Students (both current and former and regardless of age) acquire all FERPA rights at the time they become a "student". (NOTE: Parents lose all right of access to education records of students at post secondary institutions, unless certain conditions are met). Students also retain FERPA rights until their death.*

[*After a student's death, the institution would use its own discretion in determining under what circumstances information should be disclosed to survivors or other third parties.]

What FERPA Rights Are Given to Students?

- Right to inspect/review their education record.
- Right to request to amend their education record.
- Right to limit disclosure of “**personally identifiable information**” that would identify the student or make the student easily traceable [normatively classified as *Directory Information*]
- Right to file a complaint with the Department of Education re: an alleged failure of the institution to comply with FERPA.

*Session ID xxxx

*10



How are students and parents informed of their rights under FERPA?

- Through the annual University catalogs, student handbooks, Neumann University’s Website, and Registrar’s Website...
- By a student’s signing the Neumann University *Student Information Release* form...
- Through Orientation Weekend information sessions...

*Session ID xxxx

*11



How are faculty and staff informed of FERPA regulations?

- Through the annual University catalogs...
- Through faculty orientation sessions...
- Through University Mgmt. Team meetings...
- By the dissemination of a *FERPA Guideline Summary Card*...
- Through the *Academic Administration Policy Handbook*..

*Session ID xxxx

*12



What Is An Education Record???

All records identifying and directly related to students that are:

- Maintained by the institution “in any format or medium”, including handwritten, print, tape, film, microfilm and fiche, or any other form of electronic data storage [including e-mail correspondences].
- In support of [and document] a student’s request for accommodation under ADA Guidelines.
- Maintained by an educational agency or by a party acting for the agency or institution.

*Session ID xxxx

*13

ellucian
LIVE

What Is NOT An Education Record???

Identified exceptions are:

- Law Enforcement records created/maintained by law enforcement unit for that purpose.
- Records in the “sole possession of the maker” (e.g., private advising notes).
- Medical/psychological treatment records from a health/counseling center re: care of student while in attendance.
- Alumni [post-attendance] records. (Further clarified by recent FERPA amended changes.)
- Employment records (other than work-study).

*Session ID xxxx

*14

ellucian
LIVE

Key Definition: Who are School Officials???

- Individuals or Groups providing a necessary service for or on behalf of the institution [that is, faculty, staff, administration, coaches, Board of Trustees, Clearinghouse, legal counsel, etc.- any individuals providing such services]
- Under FERPA, school officials have no inherent rights re: access of education records; any access to student education records is based upon a “need to know” in order to carry out their responsibilities.
- School officials are equally responsible for following FERPA regulations; they may not re-disclose student education records unless in accordance with FERPA guidelines

*Session ID xxxx

*15

ellucian
LIVE

Guidelines for School Officials RE: Release/Access to Education Records

- Students must be allowed access to their education records by making an official request in writing to the Registrar and setting an appointment to do so.
 - Appropriate identification safeguards must be in place, such as the last four digits of SSN, birth date, and photo driver's license.
 - “Access” does not require a copy of the education record; unless without providing a copy, the student is denied access, such as with Microfilm/fiche. [Copies of transcripts from other institutions are never provided to the student.]

*Session ID xxxx

*16



Release/Access to Education Records [cont.]

- Education records cannot generally be released to third parties without the student's written and signed approval.
- There are, however, exceptions.....

*Session ID xxxx

*17



Release/Access to Education Records [cont.]

- **Exceptions** include:
 - Release to other school officials with a demonstrated “need to know”
 - Lawfully issued subpoenas [after FERPA guidelines for notification are followed and documented.]**
- **Immediate release of information is not required. FERPA allows up to 45 days for student notification; Neumann's time-frame is 7 business days. All FERPA guidelines must be met before any information can be released.

*Session ID xxxx

*18



Release/Access to Education Records [cont.]

- “Directory Information”, unless “Directory Hold” is in place
- Authorized representatives of specified government agencies in connection with an audit or evaluation of federal or state supported education programs
- Any designated individual who is affiliated with any agency that provides financial aid to the student
- Agents acting on behalf of the University.

*Session ID xxxx

*19



Release/Access to Education Records [cont.]

- Organizations conducting studies on behalf of the University
- Accrediting organizations for accrediting purposes
- Anyone who requests the final results of a disciplinary hearing against an alleged perpetrator of a crime of violence or sex offense. (**Foley Amendment**)

*Session ID xxxx

*20



Release/Access to Education Records [cont.]

- Military recruiters who request “Student Recruiting Information” [in compliance with the *Solomon Amendment*]. This information includes name, address, telephone number(s), age (or year of birth), class level, major, degrees received, and most recent educational institution attended.
- The Internal Revenue Service for purposes of complying with the *Taxpayer Relief Act of 1997*.

*Session ID xxxx

*21



Release/Access to Education Records [cont.]

- Authorized representatives of the Department of Veteran Affairs.
- Parents/legal guardians (if child is under 21) when the child is found to have violated the alcohol and/or drug policy of the institution. (Warner Amendment)

*Session ID xxxx

*22



Guidelines for School Officials RE: Release/Access to Education Records

(IN CASES OF CAMPUS-WIDE DECLARED HEALTH AND/OR SAFETY EMERGENCY)

- According to FERPA guidelines, as summarized in the AACRAO FERPA Guide [2006], page 17, and as published in 99.36 of the Family Education Rights and Privacy Act Regulations:
- *“An educational agency or institution may disclose personally identifiable [i.e. Non-Directory] information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.”*

*Session ID xxxx

*23



Guidelines for School Officials RE: Release/Access to Education Records

(IN CASES OF CAMPUS-WIDE DECLARED HEALTH AND/OR SAFETY EMERGENCY...cont.)

- These Guidelines stress that this section of the Act “shall be strictly construed” [defined as “in the moment”, i.e., the emergency must be immediate and imminent].
- [This section was modified in December, 2008 and will be discussed later in this presentation.]

*Session ID xxxx

*24



Directory Information: What is it???

- **Directory Information:** Education records that FERPA regulations have determined to be “neutral” or not necessarily harmful or an invasion of privacy if released to third parties outside the institution.
 - In order to release “Directory Information”, institutions must specify what their Directory Information includes.
 - Institutions with specified Directory Information ARE NOT required to release that information but may do so arbitrarily. [An example of the “MAY” vs. “MUST” rule...]

*Session ID xxxx

*25



Directory Information [cont.]

- Students have the right to withhold the release of Directory Information to third parties outside the institution; such “Directory Holds” are recorded in DATATEL.
- Directory Holds do not pertain to school officials having access to student education records.

*Session ID xxxx

*26



Directory Information [cont.]

The following is considered “Directory Information” at Neumann University and may be made available to the general public without student written permission, **unless** the student notifies the Office of the Registrar in person or in writing during the first ten [10] days of the semester/term to withhold such information.

- ✓ **Category I:** Name, dates of attendance, classification, major/degree program
- ✓ **Category II:** Previous institution(s) attended, awards, honors, degree(s) conferred, including dates
- ✓ **Category III:** Past and present participation in officially recognized activities.

*Session ID xxxx

*27



Recent Changes to FERPA Before December, 2008

- **SEVIS [Student and Exchange Visitor Information System]**

FERPA does not prohibit the disclosure of information to the Immigration and Customs Enforcement [ICE] Agency or to the Department of Homeland Security [DHS]

*Session ID xxxx

*28



Recent Changes to FERPA [cont.]

- **Electronic Signatures**

The Final Rule that amended section 99.30 of FERPA permits a school to accept an electronic signature as consent to disclose education records to third party under specified conditions. The requestor's identity **must be authenticated** as the source of the electronic consent [last four digits of SSN and DOB].

*Session ID xxxx

*29



Recent Changes to FERPA [cont.]

- **Electronic Signatures [cont.]**
- The electronic consent **must also indicate** the person's approval of the information contained in the education record as well as any restrictions to the release of said information.

*Session ID xxxx

*30



ADDITIONAL AMENDMENTS

- The following changes to FERPA were initially issued on March 24, 2008 and were approved by Congress in December, 2008.
- Specific changes to safety rules emerged and were in response to the April, 2007 massacre at Virginia Tech.

*Session ID xxxx

*31

ellucian
LIVE

ADDITIONAL AMENDMENTS [cont.]

- **Use of ID's as Directory Information:** This change allows institutions to list students' network user ID's as **Directory Information**, so long as the IDs, alone, does not enable access to individual student education records. [Many institutions still oppose this change for fear that this change would create a means for targeted hacking attacks of students' education records.]
- User ID's are not viewed by FERPA as personally invasive, unlike personal student ID's which are FERPA protected.

*Session ID xxxx

*32

ellucian
LIVE

ADDITIONAL AMENDMENTS [cont.]

- **Alumni Records [Part I]:** Records concerning an individual graduate after he/she is no longer enrolled and which are not directly related to his/her attendance as a student **are not considered "education records" under FERPA.**
- **Alumni Records [Part II]:** Institutions must still suppress Directory Information of alumni who opted out of Directory Information when they were students, unless they withdraw their request in writing to the Registrar.

*Session ID xxxx

*33

ellucian
LIVE

ADDITIONAL AMENDMENTS [cont.]

- **School Officials:** The definition of school officials **has been expanded** to include contractors, consultants, volunteers, and other outside parties to whom the institution has outsourced services.

[Expanded definition of “school officials” **requires institutional training** re: FERPA regulations, particularly with regard to legitimate educational interest, redisclosure issues, and the issuance of subpoenas.]

*Session ID xxxx

*34



ADDITIONAL AMENDMENTS [cont.]

- **Education Records Access:**

- Part I: Institutions must use “reasonable methods” [such as locked cabinets, ITR controlled log-ins, designated levels of security access] to ensure that “school officials” are given access only to those records for which they have a legitimate “need to know”.

- Part II: Institutions must use “reasonable methods” to identify and authenticate the identity of parties before disclosing any information.

*Session ID xxxx

*35



ADDITIONAL AMENDMENTS [cont.]

- **Parental Disclosure:** This amendment expands Section 99.5 re: the disclosures to parents that may occur **without student consent**, e.g., if the student is a declared dependent on a parent’s tax return, a health/safety emergency, a violation of an institution’s rule/policy governing the use of alcohol/drugs if the student is under 21 (Warner Amendment), or if there is a court order or subpoena.

- [NOTE: The institution is responsible for determining and codifying when such disclosures can occur (**the MAY vs. MUST rule**).

*Session ID xxxx

*36



ADDITIONAL AMENDMENTS [cont.]

This expansion of Section 99.5 permits [but does not require] schools, according to LeRoy Rooker, former Director of the Family Policy and Compliance Office, "...to disclose education records without consent to parents...." **At Neumann, the student's completion of the *Student Information Release* form addresses both the issue of parental access to a child's education record and the student's right of privacy.**

*Session ID xxxx

*37



ADDITIONAL AMENDMENTS [cont.]

➤ **De-Identify Procedures:** This amendment to 99.31 requires institutions to redact personally identifiable information if a body of information is shared with a student that also contains personally identifiable information about another student.

*Session ID xxxx

*38



ADDITIONAL AMENDMENTS [cont.]

➤ **Compliance with Ex Parte Court Orders:** This amendment incorporates requirements imposed by the USA Patriot Act that allows disclosure of education records without notice to comply with an *ex parte* court order obtained by the Attorney General in certain investigations or suspected acts of terrorism. [An *ex parte* order is defined as "...an order issued by a court of competent jurisdiction without notice to an adverse party." (AACRAO FERPA Guide, Appendix H, page 1)]

*Session ID xxxx

*39



ADDITIONAL AMENDMENTS [cont.]

➤ **Health and Safety Emergencies:**

This clarification eliminates the “strictly construed” phrase and reaffirms that institutions **will not be second-guessed** if they make reasonable determinations of either a health and/or safety crisis.

*Session ID xxxx

*40



ADDITIONAL AMENDMENTS [cont.]

➤ **Health and Safety Emergencies [cont.]:**

“If, based on the information available at the time of the determination, there is a rational basis for the determination, the [Education] department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.” **In other words**, there is no risk of civil liability under FERPA for a good faith mistake.

*Session ID xxxx

*41



ADDITIONAL AMENDMENTS [cont.]

➤ **Health and Safety Emergencies [cont.]:**

Maxwell v. Willis, No. 11-09-00275-CV [Tex.Ct.App. 05/06/10: A school official who warns students about a situation that could effect their safety may “assert the defense of official immunity against civil lawsuits seeking to recover damages...” if that school official becomes the subject of civil litigation.

*Session ID xxxx

*42



ADDITIONAL AMENDMENTS [cont.]

➤ **Health and Safety Emergencies [cont.]:**

There is, however, a Recordkeeping Requirement attached to this amendment: If a school makes a disclosure under this new amendment, it must record “the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and the parties to whom the agency or institution disclosed the information.”

*Session ID xxxx

*43



ADDITIONAL AMENDMENTS [cont.]

➤ **Opting Out:**

Students attending either an on-campus, distance learning, or online class **cannot opt out of “Directory Information”**. According to LeRoy Rooker, former Director of the FPCO, **students do not have the right** “to be anonymous in class, or to impede routine classroom communication and interactions.”

*Session ID xxxx

*44



ADDITIONAL AMENDMENTS [cont.]

- **Social Security and ID Numbers:** When disclosing “Directory Information” or releasing other personally identifiable information, either alone or with other data, a **student’s SSN or personal ID# cannot be used.**
- **Disclosure of Records:** The definition of “disclosure” is **expanded** so that an institution would be permitted to return a questionable transcript or letter of recommendation for verification of information in those documents.

*Session ID xxxx

*45



ADDITIONAL AMENDMENTS [cont.]

AUTHENTICATION OF IDENTITY..

- This amendment requires that “**reasonable methods**” be used “...to identify and authenticate the identity of parents, students, school officials, and any other parties to whom they disclose education records...”

[The amended regulation responds to developing technologies and the need for more complex methods of authentication, particularly for electronic records. The old regulations did not specifically address this issue with this level of detail.]



*Session ID xxxxx

*46

ADDITIONAL AMENDMENTS [cont.]

Hence, the list of personal identifiers [known only by the user] is expanded in FERPA to include such items as date/place of birth, PINs, biometric indicators, or personal security questions [mother’s maiden name]. This amendment is known as the “**connect the dots**” **provision** that “...would allow a reasonable person in the school or its community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”



*Session ID xxxxx

*47

ADDITIONAL AMENDMENTS [cont.]

- **Peer-Graded Papers:** Peer-graded papers which have not yet been collected and recorded by faculty **are not** considered education records under FERPA.
- **Online Students:** Students enrolled in online courses or by any other means when they are not physically present in a classroom are still covered by FERPA.



*Session ID xxxxx

*48

ADDITIONAL AMENDMENTS [cont.]

➤ **Institution-to-Institution Disclosure:** If a student has transferred to another institution and information becomes available that would benefit the other institution, the original institution can share it as a “legitimate educational interest” without violating a student’s FERPA rights.

ADDITIONAL AMENDMENTS [cont.]

➤ **Redislosure of Information:** Institutions are now permitted to tell “victims” what happened to alleged sexual offenders at campus judicial hearings, if they wanted to know, without fear of reprisals if the “victim” re-discloses that information to other parties. **This change is in compliance with the Clery Act** that specifies “...that both the accuser and accused must be informed of the outcome of any institutional disciplinary proceeding alleging a sex offense.”

[Prior to this proposed change, victims were required not to disclose such information, since to do so would be a violation of FERPA, Section 99.33(a).

ADDITIONAL AMENDMENTS [cont.]

➤ **FPCO Investigations:** This amendment allows the FPCO to launch an investigation against an institution even without a complaint or despite a complaint being withdrawn. This change also provides for unspecified “additional penalties” if an institution is made aware of a FERPA violation and does nothing to correct it. Even with this proposed change, LeRoy Rooker, former Director of the FPCO states: “There is no intention or plan to initiate FERPA institutional compliance reviews or expand investigations beyond the current practices of the office.”

RECENT FPCO OPINIONS.....

- 09/08/09: In a letter to Senator Kay R. Hagan, the FPCO determined that an institution's graduation requirements cannot be challenged under FERPA.
- 05/12/09: A student complained to the FPCO that his FERPA rights were violated when a professor refused to change a grade on his transcript. While acknowledging that a student has the right to amend "inaccurate or misleading information", that right to amendment CANNOT BE USED to challenge grade opinions.

*Session ID xxxx

*52



RECENT FPCO OPINIONS.....

- October, 2009: **The situation:** A student requests a letter of recommendation to a third party that could include protected education record information [much like a transcript request]. NOTE that the official writing the letter has "read access" to student information.
The issue: In accordance with FERPA Section 99.30, without a student's signed and dated consent which identifies who to receive the letter and for what purpose the letter is intended, a FERPA violation will occur if protected education record information is included in the letter.

*Session ID xxxx

*53



RECENT FPCO OPINIONS.....

- **The suggested remedy:**
If there is a possibility that a student's request for a letter of recommendation will include information that is protected by FERPA, have the student put the request in writing.....or.....create an institutional request form which the student must sign. That form would acknowledge who is to receive the letter, for what purpose the letter is to be written, and that FERPA information may be included in that letter that is to be released to a third party.

*Session ID xxxx

*54



Closing Observations and Comments: WHY IS UNDERSTANDING FERPA REGULATIONS SO IMPORTANT TO THE NEUMANN COMMUNITY???

- Federal Regulations: We are required to do so...and... enforcing FERPA is the right thing to do.
- We live in an age of increased demands for all types of information, much of which must be protected.
- Decentralized access of information has resulted in an expanded definition of school officials and the resultant need to expand authentication measures.
- There are increasing concerns over student health and safety.
- Web Site: <http://www.Neumannn.edu/registrar>

*Session ID xxxx

*55



Sources.....

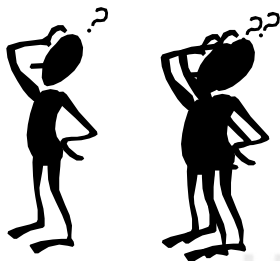
- *The Family Education Rights and Privacy Act of 1974, as amended*
- *2006 AACRAO FERPA Guide*
- *The FERPA Answer Book for Higher Education Professional*
- *Higher Education FERPA Bulletin*
- *Complying with Federal Law: A Reference Manual for University Decision Makers*
- *Legal Deskbook for Administrators of Independent Colleges and Universities*
- *Attendance at numerous FERPA sessions at AACRAO Annual Meetings since 1988.*

*Session ID xxxx

*56



QUESTIONS.....



*Session ID xxxx

*57