Georgia Institute of Technology
Office of the Registrar

FEPRA Reminders

Websites, Wikis, Google, etc.
Contacts

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Specific Topics

- **FERPA**
  - What is it?
  - To whom does it apply?
  - Why do we have to comply?
  - Rights of students
  - Education records
  - Directory information
  - Websites, wikis, Google docs, etc.
  - Best practices
What is FERPA?

From the Family Policy Compliance Office (FPCO):

- The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Source: http://www.ed.gov/policy/gen/reg/ferpa/rights_pg2.html#1
What FERPA is not…

**FERPA is not:** A disease that only the University Registrar workers get.
- A law that only pertains to public institutions.
- Only applicable to offices that handle grades.
- A law that empowers parents to act on behalf of the student.

Source: University of Alabama
http://registrar.ua.edu/academics/privacy-guidelines/ferpa-fact-sheet/
# Legislative History of Major FERPA Provisions

**Laws & Guidance / General**

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), § 513 of P.L. 93-380 (The Education Amendments of 1974), was signed into law by President Ford on August 21, 1974, with an effective date of November 9, 1974, 90 days after enactment. FERPA was enacted as a new § 438 of the General Education Provisions Act (GEPA) called "Protection of the Rights and Privacy of Parents and Students," and codified at 20 U.S.C. § 1232g. It was also commonly referred to as the "Buckley Amendment" after its principal sponsor, Senator James Buckley of New York. FERPA was offered as an amendment on the Senate floor and was not the subject of Committee consideration. Accordingly, traditional legislative history for FERPA as first enacted is unavailable.

Senators Buckley and Pell sponsored major FERPA amendments that were enacted on December 31, 1974, just four months later, and made retroactive to its effective date of November 9, 1974. These amendments were intended to address a number of ambiguities and concerns identified by the educational community, including parents, students, and institutions. On December 13, 1974, these sponsors introduced the major source of legislative history for the amendment, which is known as the "Joint Statement in Explanation of Buckley-Pell Amendment" ("Joint Statement"). See Volume 120 of the Congressional Record, pages 39602-39606.

Congress has amended FERPA a total of nine times in the nearly 28 years since its enactment, as follows:
- P.L. 93-568, Dec. 31, 1974, effective nov. 19, 1974 (Buckley-Pell Amendment)
- P.L. 96-88, Oct. 17, 1979 (Establishment of Department of Education)
- P.L. 101-542, Nov. 8, 1990 (Campus Security Act)
- P.L. 103-382, Oct. 20, 1994 (Improving America's Schools Act)
- P.L. 106-386, Oct. 28, 2000 (Campus Sex Crime Prevention Act)

**Scope and Applicability**

FERPA is a "Spending Clause" statute enacted under the authority of Congress in Art. I, § 8 of the U.S. Constitution to spend funds to provide for the general welfare. ("No funds shall be made available under any applicable program..." unless statutory requirements are met.)

**How Do I Find...**
- Student loans, forgiveness
- College accreditation
- No Child Left Behind
- FERPA
- 2015 Budget Proposal
- FAFSA

**Information About...**
- Transforming Teaching
- Family and Community Engagement
- Early Learning
- K-12 Reforms

**Connect**
- Facebook
- Email
- Twitter
- RSS
- YouTube
- Google+

**Related Topics**
- Key Policy Letters

**Covered Institutions**
To whom does it apply?

- Applies to all students who attend post-secondary institutions.
- GA Tech defines “in attendance” as registered for classes.
- Does not apply to:
  - Applicants who are denied admission.
  - Those applicants who were accepted but did not attend.
Why do we have to comply?

From the Family Policy Compliance Office (FPCO):

• The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Source: http://www.ed.gov/policy/gen/reg/ferpa/rights_pg2.html#1
Definition of “receives funds”

• (c) The Secretary considers funds to be made available to an educational agency or institution if funds under one or more of the programs referenced in paragraph (a) of this section-
  • (1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract;
  • or (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV-A-I and IV-B, respectively, of the Higher Education Act of 1965, as amended).

Source: http://www.ed.gov/policy/gen/reg/ferpa/rights_pg2.html#1
What does it do?

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records.

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records.

They are:

- The right to inspect and review the student’s education records
- The right to request the amendment of the student’s education records that the student believes are inaccurate or misleading.
- The right to consent to disclosures of personally identifiable information contained in the student’s education records, except to the extent that FERPA authorizes disclosure without consent.
- The right to file a complaint with the U.S. Department of Education concerning alleged failures by the Georgia Institute of Technology to comply with the requirements of FERPA.
Education Records

"Education records"

• The term means those records that are:
  ◦ (1) Directly related to a student; and
  ◦ (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

Different Formats

- Education records are stored in different formats
- Olden days – paper
- Electronic age –
  - Wikis
  - Websites
  - Blogs
  - Applications
  - Portable media (usb drives, phones, etc.)
  - Cloud storage
  - databases
  - backups of databases
  - Images of documents
  - PDF files
  - Paper records

Documents in our imaging system are “education records”.
International Students

- International students have the same rights as domestic students under FERPA.
  - inspect their records
  - request amendments
  - protect privacy
- International students consent to release of their information to certain governmental agencies on various forms.
- Department of Homeland Security requirements.
Releasing 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.
Directory Information

Directory Information is information not generally considered harmful or an invasion of privacy if disclosed. Effective November 1, 2009, Georgia Tech defines Directory information as:

- Name, address (including GT email address), and telephone listing
- Level (graduate or undergraduate)
- Field of study
- Enrollment status (full-time, part-time, less than part-time)
- Dates of attendance
- Degrees with associated honors and designations, and date(s) awarded
- Anticipated date of graduation
Confidentiality & Request NO PRINT

Students have the right to request that their records be flagged as confidential, or prohibit the printing of their information in the on-line or printed school directory. A previously requested confidentiality or no print indicator may be rescinded at any time.

Directory Information Policy

CONFIDENTIAL INDICATOR

Checking the "Confidential" Indicator option of this form will result in the following:

- No information will be released to anyone without a written release.
- Example: Prospective employers who telephone to confirm your degree will be told that information cannot be released for this person. They will be required to submit, to the Registrar's Office, a written release that you have signed in order to receive any information.
- No information will print in the on-line look-up (IU) or in the printed copy of the Campus Directory.
- Your name will not appear in the Commencement Bulletin when you graduate.
- Any Georgia Tech employee who has legitimate access to view your academic record will be given a visual reminder that your records are "confidential" each time your record is viewed.
- Your records will remain confidential until you notify the Registrar's Office that you wish to remove the "Confidential" flag, by completing a rescind form.

A signed, completed form or written request can be submitted to the Registrar's Office in room 104 of the Tech Tower, faxed to 404-894-0167, or mailed to:

Georgia Institute of Technology
Office of the Registrar
Student Records
Atlanta GA 30332-0915

DOWNLOAD FORM

NO PRINT INDICATOR

Checking the "No Print" indicator of this form will prohibit the printing of your name and any associated information in the on-line or printed directory. However, it will NOT flag your records as "Confidential".

A signed, completed form, or written request can be submitted to the Registrar's Office in room 104 of the Tech Tower, faxed to 404-894-0167, or mailed to:

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DOWNLOAD FORM
Flag in Banner
Confidentiality Flag

- A student can add or remove the confidentiality flag at any time.
- The Registrar’s Office adds or removes the fact very quickly on receipt of the request from the student.
- There are around 400 students in any given term who have requested confidentiality.
- If folks are getting data feeds from Banner, they need to recognize any such change and suppress data accordingly if the flag has been added.
- If folks are not getting data feeds from Banner, they need to be aware of this right that a student has under FERPA and be able to react to it appropriately.
Legitimate Educational Interest

The right to consent to disclosures of personally identifiable Information contained in the student’s education records, except to the extent that FERPA authorizes disclosure without consent.

One exception which permits disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person whether volunteering for or employed by the Institute in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the Institute has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.
Websites, Wikis, Google docs, etc.

- Public posting of non-directory information requires you to have a process whereby students may opt in, or opt out.
- Requiring public posting of non-directory information cannot be forced on a student as a requirement for taking a course.
- This isn’t about squelching creativity, it’s about protecting data under Federal law.
- User agreements
  - Google has unlimited, perpetual use rights of the data
  - Cloud providers’ contracts not vetted by GT Legal or GT Procurement probably do not contain the necessary provisions to protect FERPA data.
  - There is no “delete” button on the internet. All information posted could be available into perpetuity.
- For third party vendors on campus, we require a statement in the contract that addresses FERPA.
Privacy Considerations

- In November 2010, EDUCAUSE published a white paper on Privacy Considerations in Cloud-Based Teaching and Learning Environments.
- This white paper addresses:
  - Privacy in open, digital teaching, and learning environments
  - The rise of web 2.0 tools
  - Students’ use of and attitudes toward cloud-based tools
  - Ease of use and privacy concerns
  - FERPA in cloud-based instructional environments
  - FERPA: Applications and interpretations
  - Considering FERPA and advancing innovations
FERPA: Applications and Interpretations

“Today, the same rights are protected under FERPA, but since the educational (at least instructional) environment is somewhat different, institutions and faculty members are left wondering how to apply 1974 FERPA to today’s increasingly digital and open educational environment, especially in areas where interpretations and requirements related to the education record are unclear.”

Source: https://net.educause.edu/ir/library/pdf/ELI3024.pdf
FERPA and Advancing Innovation

“For the past few years, instructors have been incorporating cloud-based teaching and learning technologies into their courses, often with little or no thought about the privacy implications of having student work in an online, sometimes open, environment.

Institutions and faculty members need to be cognizant of FERPA requirements and determine how to interpret them for their classes, as well as develop ways for instructors to structure assignments in such a way that supports objectives and innovation.”

Source: https://net.educause.edu/ir/library/pdf/ELI3024.pdf
FERPA: Applicability

• The section of FERPA that applies here, that is most relevant to the discussion, is the one that states that institutions must, generally, have written permission from the student in order to release any information from the student’s education record. This pertains to information that is outside Tech’s definition of “directory information” and assuming that the student has not requested confidentiality.

• When a student’s work is posted online, a record of their work in a course is automatically created, and thus may subject to FERPA.

• This is different that face-to-face classroom interactions where a “record” is not created until the material is submitted to the instructor for grading.

Source: https://net.educause.edu/ir/library/pdf/ELI3024.pdf
FERPA: Applicability

• FERPA is an obligation of the institution, not of a specific faculty member. However, the consequences of a FERPA violation could be a sanction by the Department of Education.
  • No institution to date has suffered the more extreme sanction which is restriction on Federal funds, including financial aid and grants.
  • However, this is possible, and vigilance is warranted.
  • Individual instructors should be mindful that they carry the weight of the obligation for their institution.

Source: https://net.educause.edu/ir/library/pdf/ELI3024.pdf
North Carolina State Example

- FERPA privacy checklist for online course hosting
- “Because an online environment creates a record of student activity, it is subject to FERPA privacy rights, unlike verbal exchanges in the classroom.”
- The checklist addresses:
  - Activities that trigger FERPA duty
  - Ways to fulfill FERPA duty
    - Student consent or student comments only available to other students in the class, or student comments available to outside parties under contract to the institution
  - Special exceptions – requiring students to send a letter to the editor, post to a non-university blog, or post to social networking, etc. FERPA may not apply because the information is not in custody of the institution
Potential Solutions

• Following are some ways in which institutions can address this set of issues.
  • Social media policies related to Codes of Honor or Conduct
  • Requiring and standardizing student consent
  • Allowing students to “opt out”
  • Technical solutions – enabling pedagogical benefits while safeguarding student information
Why do we care?

- It’s the law
- Negative impact on the Institute’s reputation
- Impact on future Federal funding
  - Highly unlikely, but there is a first time for everything
- Impact on staffing resources – dealing with breaches is time consuming
Resources

2010 EDUCAUSE article on privacy considerations
• https://net.educause.edu/ir/library/pdf/ELI3024.pdf

North Carolina State information on online course hosting
• http://www.ncsu.edu/general_counsel/legal_topics/ferpa/ferpaforms.php

FERPA info at Tech
• http://www.registrar.gatech.edu/students/index.php (student tab)
• http://www.registrar.gatech.edu/faculty/index.php (faculty tab)
• http://www.registrar.gatech.edu/alumni/index.php (alumni/parents tab)
• http://www.registrar.gatech.edu/alumni/parentinfo.php (parent information)

Department of Education information
Questions?