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Introduction to Family Educational Rights and Privacy Act (FERPA)

Overview

FERPA is a federal law that protects the privacy of student education records. It provides guidelines for appropriately accessing and releasing student education records. As an institution that receives funds under applicable programs administered by the U.S. Department of Education, TCC is required to comply with the FERPA law. For clarification purposes, consider the student as the “owner” of the information in his or her education records, and the institution as the “custodian” of those records. Under FERPA, TCC is obligated to protect the confidentiality of student information. Every single employee at TCC - faculty and staff, including student assistants - has a legal responsibility to preserve student privacy.

This document intends to help you understand the rights of students and your personal obligation to those rights. It is intended to provide you with the knowledge you need to administer student information securely.

Remember: The potential for misuse, whether intentional or not, whether criminal or not, **exists**. It is **your** responsibility to ensure that student information is not mishandled or abused. Access to sensitive information about students is a **professional privilege** that we all need to complete our daily job duties, but we must remember that the privilege carries with it **a legal and ethical responsibility**.

Key Definitions

STUDENT includes an individual who was, or is currently enrolled for a previous, current, or future quarter at TCC. If enrolled at TCC, the rights under FERPA are held by the student – and not the parent or guardian -, regardless of the student’s age.

EDUCATION RECORDS includes any records maintained by TCC that contain information that is personally identifiable to a student (in whatever format or medium). The formats could include but not limited to on paper, in a photo, on microfilm, on tape, on a computer information system such as PeopleSoft/ctcLink, TutorTrac or canvas, any other electronic media such as email.

A student's education record **DOES** include academic records, financial aid records, disciplinary records, student ID photo, etc.:

- Sole possession records or private notes of an individual staff or faculty (e.g. private advising notes).
- Law enforcement or campus security records.
- Employment records (unless the employment is based on student status).
- The employment records of student employees (e.g. work-study, wages, and graduate teaching associates) are part of their education records.
- Medical/psychological treatment records (e.g. from a health or counseling center) – as they may identify when a student was enrolled.
- Alumni records (i.e. those created after the student graduated or left the institution) - as they may identify when a student was enrolled.

If in doubt, assume that the information is an education record and is, therefore, **protected by the law**.

DIRECTORY INFORMATION includes items that are generally not considered harmful or an invasion of privacy if publicly available. Even though FERPA protects students' education records, some student information, called directory information, is available to the public. Each institution establishes what it considers to be directory information. Directory information could include;

- student name
- email address
- enrollment status at the college – e.g. part-time or full-time
- date(s) of enrollment
- division/area of study
- degrees, honors, and awards received
- participation in an officially recognized activities and sports
- weight and height of members of athletic teams

Every student must be given the opportunity to have directory information suppressed from public release. This process is often referred to as a “no release,” “opt out” or “suppression.” When a student makes this request, everyone within the institution must abide by a student’s request that no information be released about the student. The Registration office staff can look up whether or not a student has a release on file.

Please note: A “no release” request does not mean that a school official within the institution who has a demonstrated legitimate educational interest (e.g. a faculty member teaching the student in class) is precluded from using the information to perform that official’s job duties.

Students rights under FERPA: Students have a right to;

1. **Inspect and review their education records.** Students have the right to see everything in their “education records” within a reasonable time, except information about other students, financial records of parents, and confidential letters of recommendation if they waived their right of access. FERPA does not prescribe what records are created or how long they are to be kept; however, you cannot destroy a record if there is a request to inspect and review.
2. **Amend an incorrect record or challenge the accuracy of their education record**
3. **File a complaint:** with the U.S. Department of Education about a violation of FERPA.
4. **Waive their rights:** to inspect, review, amend, and prevent disclosure of their education records.
5. **Consent to disclosure:** FERPA prevents the unauthorized disclosure of student education records without a student's prior consent. However, FERPA allows certain exceptions regarding the release of education records without a student's prior consent. It is safe to start with the premise that the student has the right to control to whom his or her education record is released. In instances where a signed release is required, regulations now provide the flexibility to accept an electronic signature. Then, there are several exceptions when that permission is not required (see the note below on when prior consent is not required).

When is prior consent not required?

The institution may disclose records without consent if certain requirements are met, but it is not required to do so. FERPA allows institutions to disclose those records, without consent, to the following parties or under the following conditions;

- “School officials” with a “legitimate educational interest.” A school official is a person employed by the college 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 TCC 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 a student worker. 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 responsibilities.
- Disclosure to another institution where the student seeks to enroll or is enrolled.
- Disclosure to DOE, state/local education authorities.
- Disclosure in connection to the receipt of financial aid.
- Disclosure to state/local officials in conjunction with legislative requirements including subpoenas.
- Disclosure to organizations conducting studies to improve instruction, or to accrediting organizations.
- Disclosure to parents of dependent students (IRS definition).
- Disclosure to parents of any student under the age of 21, a violation of federal, state, local or institutional laws/regulations related to substance abuse (provided that other laws governing the institution, such as state law, do not preclude such disclosures).
- Disclosure for a health/safety emergency (must document what the emergency was and to whom the information was released).

Specific Issues for Faculty and Instructional Staff

POSTING GRADES: Since grades can never be directory information, it is inappropriate to post grades in a public setting. An instructor may not use any identifying information on a posted list of grades because it is then possible for others to determine which student earned which grade. This would be a FERPA violation since it is disclosure of identifiable education records. An instructor may, however, post grades if they are posted in such a manner that only the instructor and the individual student can identify the individual and his or her grade. Grades should never be posted by any portion of the SSN or in the same order as the class roster or in alphabetical order.

WEB-BASED TOOLS TO SUPPORT CLASSES: Courses supported by class websites and/ or discussion groups must take extra precautions to not inadvertently release non-directory student information. Only directory information can be available to the general public and other class members, so it is recommended that such web-based tools employ a security layer so that only class members and instructors can access appropriate information.

STUDENTS OPTING FOR NO RELEASE IN THE CLASSROOM SETTING: Students cannot choose to be anonymous in the classroom setting. If a student has chosen “no release” for his or her directory

information, that does not mean that an instructor cannot call on him or her by name in class or that the student's email address cannot be displayed on an electronic classroom support tool such as a discussion board, blog, or chat feature.

KEY NOTES

- FERPA rights at a postsecondary institution end with a student's death.
- Students have a formal right to file a complaint with the Department of Education:
Family Policy Compliance Office (FPCO)
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202-5920
Phone: 1-800-USA-LEARN (1-800-872-5327)
- **It doesn't matter how the information is conveyed**, whether one; speaks it over the phone, leaves a report lying on a desk, leaves a grade book open where students can see it, or walks away from a computer screen that displays student records, a breach of security is still breaking the law.
- As long as we have access to student information, or if we maintain student records, we are personally responsible for the **security** and the **confidentiality** of these records. It is each employee's primary responsibility to understand and agree to comply with the law's provisions about confidentiality and student information.

Key Resources for Additional Information

- American Association of Collegiate Registrars and Admissions Officers (AACRAO):
<http://www.aacrao.org/resources/compliance/ferpa>
- Family Compliance Office of the Department of Education (administers FERPA compliance):
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>