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## FERPA ESSENTIALS FOR FACULTY

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**ai** ACADEMIC  
IMPRESSIONS



### LEARNING OUTCOME

## After participating...

...you will be able to apply FERPA regulations more effectively in both your teaching and your administrative work to ensure full compliance.

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IMPRESSIONS 2

## AGENDA

- An overview of the FERPA framework
- What is, and is not, an "education record"?
- When, and to whom, may education records be disclosed?
- What rights do students have to see, and demand changes to, their own education records?
- FERPA implications of educational technology
- Practical tips

## Has this ever happened to you?

- Mike Mediocre, a so-so student in your fall class on corporate finance, asked you for a recommendation for a high-level Wall Street job, and you (reluctantly) agreed, sending in an appropriately lukewarm letter. Not surprisingly, Mike didn't get the job, and now he is demanding a copy of the letter, claiming that you have ruined his life and threatening a lawsuit. Those letters are confidential, aren't they?

## Or this?

- As part of your English course, you require your students to post their weekly essays to a course web page, so that they can read each others' and discuss them in class. It has proven to be a great teaching technique over the years and has resulted in rich discussions and improved performance. However, one of your students is now refusing to participate, arguing that you are violating some federal statute called FRAPPE, or something like that. That's just ridiculous - isn't it? And isn't it time to start thinking about retirement . . . ?

## Or (Heaven forbid) this?

The screenshot shows the homepage of 'Above the Law' (a law firm blog). The main headline is 'Oops! Top Law School Email Screw-Up Reveals Grades, Ranks Of All Clerkship Applicants' by Staci Zaretsky. The article text states: 'Over the course of the past few years, law school personnel have found it especially difficult to keep their students' personal information private. In April 2012, someone at Baylor Law School sent out an email containing a trove of admissions data — from names, to grades, to LSAT scores — to every student admitted to the Class of 2015. In March 2014, Loyola Law School in Los Angeles sent out an email with a heap of financial information for the entire graduating class — up to and including Social Security numbers and loan amounts — to some members of the Class of 2014.' An image of a woman looking at a laptop is also visible. On the right, there is a social media sidebar and a 'One Question Site Survey' poll asking how favorably users view the Pennsylvania business environment.

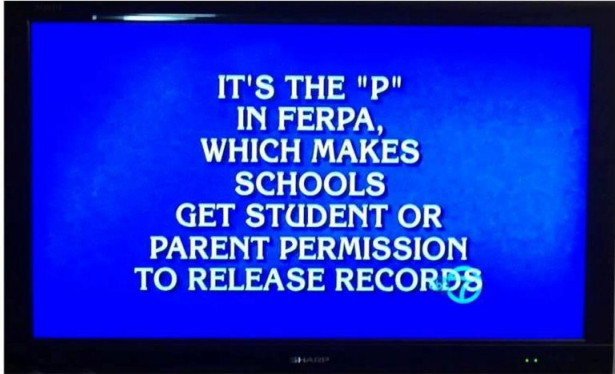
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## AN OVERVIEW OF THE FERPA FRAMEWORK



■ Our Love's  
in Jeopardy,  
Baby!

*I'll take Education Abbreviations for \$400, Alex*

A screenshot of a Jeopardy! game board screen. The screen has a blue background with white text that reads: "IT'S THE 'P' IN FERPA, WHICH MAKES SCHOOLS GET STUDENT OR PARENT PERMISSION TO RELEASE RECORDS". A green number '3' is visible in the bottom right corner of the screen.

IT'S THE "P"  
IN FERPA,  
WHICH MAKES  
SCHOOLS  
GET STUDENT OR  
PARENT PERMISSION  
TO RELEASE RECORDS



## ■ FERPA

- The Family Educational Rights and Privacy Act of 1974
- A.K.A. the Buckley Amendment

## ■ FERPA's Big Three

- College students have the right, *in general*, to:
  - Control the disclosure of their "education records" to others
  - Inspect and review their own "education records"
  - Seek amendment of their "education records"

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## WHAT IS, AND IS NOT, AN "EDUCATION RECORD"?



### ■ So, What's an "Education Record"?

"[O]fficial records, files, and data directly related to [students], including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns."



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"[O]fficial records, files, and data directly related to [students], including all material that is incorporated into each student's record folder, and intended for school systems and specifically outside the school system and specifically including, but not necessarily limited to, identifying data, academic work, tested, level of achievement (grades, standardized achievement scores), attendance, scores on tests of intelligence, aptitude, and psychological tests, test inventory results, health and information, teacher or counselor observations, and verified reports of serious or recurrent behavior patterns."

## ■ So, What's an "Education Record"?

- "'Education records' . . . 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"

## ■ So, What's an "Education Record"?

- "'Education records' . . . means those records that are:
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## ■ So, What's an "Education Record"?

- "'Educational . . . institution' means any public or private . . . institution" that receives funds "under any program administered by the Secretary [of Education]"



## ■ So, What's an "Education Record"?

- "'Record' means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche"
- N.B.: Does *not* include information that is not "recorded" — that is, personal knowledge

## ■ So, What's an "Education Record"?

- "'Student' . . . means any individual who is or has been in attendance at an educational . . . institution"
  - Applicants are not "students" unless they are accepted and "attend"
  - But "students" retain FERPA rights even after leaving the institution
    - Once attached, FERPA rights in any given record continue to exist until either the record's destruction or the student's death

## ■ So, What's an "Education Record"?

- "'Attendance' includes, but is not limited to . . . [a]ttendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom"
- "We do not agree that the definition of *attendance* should be limited to receipt of instruction leading to a diploma or certificate, because this would improperly exclude many instructional formats."

## ■ So, What's an "Education Record"?

- In general, a record is "**directly related**" to a student if it contains "personally identifiable information" about that student
  - *Possible* exception if student is truly tangential to the record
  - Records that have been "de-identified" may be released without restriction

## ■ So, What's an "Education Record"?

- "'Personally identifiable information' includes, but is not limited to":
  - The name of the student or of the student's parent or other family member
  - The address of the student or student's family
  - Personal identifiers such as SSNs and student ID numbers
  - Other indirect identifiers such as date or place of birth or mother's maiden name

## ■ So, What's an "Education Record"?

- "Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty"

## ■ So, What's an "Education Record"?

- "Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty"
- "Information requested by a person who the educational . . . institution reasonably believes knows the identity of the student to whom the education record relates"



## ■ So, What's an "Education Record"?

- "Maintain" is . . .



## ■ So, What's an "Education Record"?

- "Maintain" is *not defined*!
- *Owasso Independent School District v. Falvo* (U.S. 2002):
  - "FERPA implies that education records are institutional records kept by a single central custodian, such as a registrar."
  - "The ordinary meaning of the word 'maintain' is 'to keep in existence or continuance; preserve; retain.'"

## ■ So, What's an "Education Record"?

"The phrase 'acting for' connotes agents of the school, such as teachers, administrators, and other school employees."

– Including you . . .

## ■ We Don't Need No "Education"

- "Education records" certainly includes transcripts, exams, papers, and the like
- But it also includes:
  - Financial aid and account records
  - Disability accommodation records
  - Disciplinary records
  - E-mails to or from or about students
  - Photographs
  - "Unofficial" files
  - Records that are publicly available elsewhere
  - Information that the student has publicly revealed
  - *Virtually everything!*

## ■ Except for These:

- "Sole possession" records
  - *As long as not shared or accessible*
- "Employment" records
  - *Unless student status is a job requirement*
- "Alumni" records
  - *But not if they "relate back"*
- "Law enforcement" records
  - *But only the law enforcement office's copy*
- "Treatment" records
  - *Only if not shared*

## The Metaphysics of Medical Records

- FERPA does not *prohibit* the release of treatment records to persons other than "individuals providing the treatment" under any of the exceptions applicable to education records
  - It simply excepts them from the "inspect and review" right, and defers to state law on patient access, as long as they are not shared more broadly
- HIPAA: "Protected health information" *excludes* individually identifiable health information in either "education records" or "treatment records"
- But state medical confidentiality rules still apply (to medical professionals)



## QUESTIONS



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## WHEN, AND TO WHOM, MAY EDUCATION RECORDS BE DISCLOSED?



### ■ Disclosure

- Before disclosing education records — *or information from education records* — to anyone other than the student(s) to whom the records relate, an institution must obtain a signed and dated written consent from the student(s), specifying:
  - The records that may be disclosed
  - The purpose for which they may be disclosed
  - The persons or classes to whom they may be disclosed





## ■ Except for Disclosures:

- Of "directory information"
  - May include name; address; e-mail address; telephone number; photograph; date and place of birth; major; grade level; enrollment status (undergraduate or graduate, full- or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of athletes; degrees, honors, and awards received; most recent educational institution attended, and other information "that would not generally be considered harmful or an invasion of privacy if disclosed"



## ■ Except for Disclosures:

- Must give students notice of your definition and an opportunity to opt out
- Students cannot use opt out to prevent disclosure of name, institutional e-mail address, or other identifier in classes in which they are enrolled
- Cannot disclose or confirm directory information if an SSN or other non-directory information is used to confirm the student's identity



## ■ Except for Disclosures:

- To "school officials . . . whom the . . . institution has determined to have legitimate educational interests"
  - Each institution specifies its own standards
  - "School officials" may include any employee or agent, including students serving on committees and outside contractors
  - "Legitimate educational interests" may include what is needed to do one's job

## ■ Except for Disclosures:

- Getting class rosters from and turning grades in to the registrar
- Reporting a student to the academic misconduct committee
- Contacting student affairs about a student of concern
- Talking about departmental students?
- Seeing grades from other classes?
- Getting details about a disability accommodation?

## Except for Disclosures:

- To "parents . . . of a dependent student" for federal tax purposes
  - Parents of college students have no general right to see their children's records, *even if the students are minors*
  - Need to obtain a copy of parents' most recent federal tax return or confirmation from student to verify dependent status
  - **Warning: Tell them about this *before* there's a problem**

### Registrar R 3.0 Release To Parent Revised 4/2010

Under the Family Educational Rights and Privacy Act (FERPA), most information about you from RISD records, including grades received, is considered confidential and, with certain exceptions, generally may not be released to third parties, including your parents, without your written consent. See the *Course Announcement 2010-2011* for more information about FERPA.

You may authorize Rhode Island School of Design to release information from your records to your parents by completing the information requested below and returning this form. Or, you may return it to the Registrar's Office during the first week of the semester.

Please note that without this authorization, RISD's ability to disclose information from your records to your parents or to speak with your parents about information from your records will be significantly restricted. You are urged to inform your parents of this fact if you decide not to execute the authorization form.

I, \_\_\_\_\_, authorize  
Print name

Rhode Island School of Design to disclose any and all information from my records to my parent(s). This consent will remain in effect while I am enrolled at RISD unless withdrawn by me in writing at the Registrar's Office.



Student (signature) \_\_\_\_\_

Date \_\_\_\_\_

RISD ID # (if known) or your street address \_\_\_\_\_

(If your parents have changed address since admission or if grades must go to each parent at a separate address, please provide names and address on the back of this form. If you have previously submitted this release, you need not do it again.)

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### Release of Grades To Parent(s)

Name(s) and address(es) of parent(s) to receive grades

Name:

Street Address:

City, State, Zip

Name:

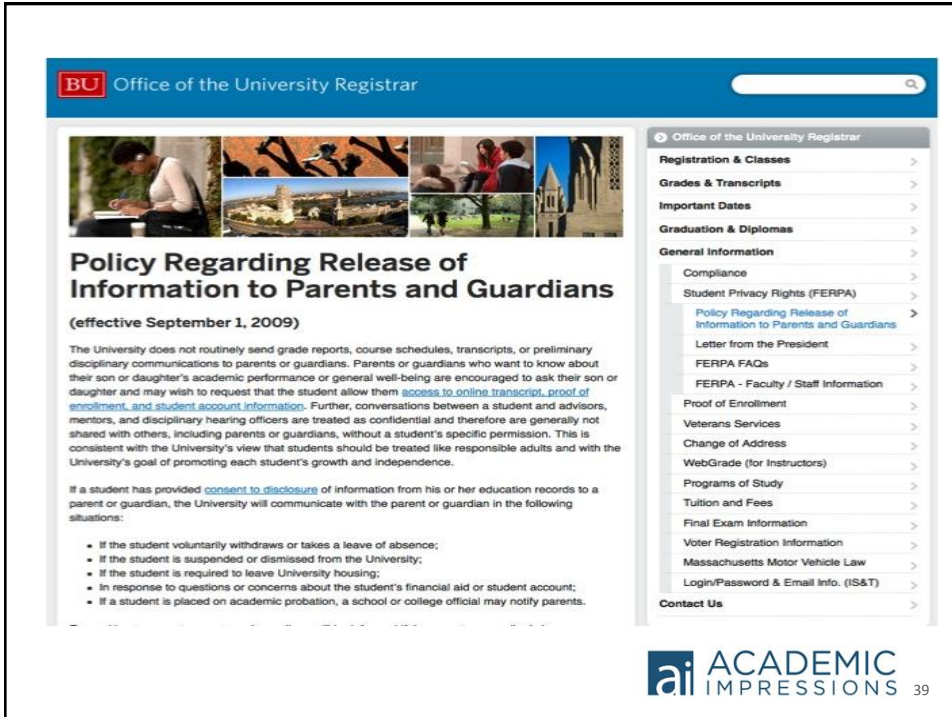
Street Address:

City, State, Zip

### Additional information about Grade Reports

The parent copy of the grade report is always mailed to the parental home address(es) specified above. Students access their grades on the RISD intranet site using WebAdvisor (<http://intranet.risd.edu>). Accessing this confidential part of the system requires the student's log-in name and password. Paper copies are sent to students only upon written request.

As a supplemental evaluation, instructors in studio classes may complete narrative evaluations of student work. These evaluations are sent only to the student.



**BU** Office of the University Registrar

## Policy Regarding Release of Information to Parents and Guardians

(effective September 1, 2009)

The University does not routinely send grade reports, course schedules, transcripts, or preliminary disciplinary communications to parents or guardians. Parents or guardians who want to know about their son or daughter's academic performance or general well-being are encouraged to ask their son or daughter and may wish to request that the student allow them [access to online transcript, proof of enrollment, and student account information](#). Further, conversations between a student and advisors, mentors, and disciplinary hearing officers are treated as confidential and therefore are generally not shared with others, including parents or guardians, without a student's specific permission. This is consistent with the University's view that students should be treated like responsible adults and with the University's goal of promoting each student's growth and independence.

If a student has provided [consent to disclosure](#) of information from his or her education records to a parent or guardian, the University will communicate with the parent or guardian in the following situations:

- If the student voluntarily withdraws or takes a leave of absence;
- If the student is suspended or dismissed from the University;
- If the student is required to leave University housing;
- In response to questions or concerns about the student's financial aid or student account;
- If a student is placed on academic probation, a school or college official may notify parents.

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### Except for Disclosures:

- In connection with an "articulable and significant threat to the health or safety of a student or other individuals"
  - Disclosure may be made to "appropriate parties" and may include "information [that] is necessary to protect the health or safety of the student or other individuals"

### ■ Except for Disclosures:

- Potential "appropriate parties" include not only people who can provide protection (such as law enforcement), but also threat assessment team members, people who may have information that may assist in providing or evaluating the need for protection (such as peers, mental health professionals, and prior schools attended), potential victims, and parents of the student or of potential victims

### ■ Except for Disclosures:

- "[T]he Department will not substitute its judgment for that of the . . . institution if, based on the information available at the time . . . there is a rational basis for the . . . institution's determination that a health or safety emergency exists and that the disclosure was made to appropriate parties."

## ■ Except for Disclosures:

- To "officials of another . . . institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer"
  - Includes recommendation letters
  - Unless disclosure is initiated by the student, must either:
    - Make a "reasonable attempt to notify" the student, *or*
    - Describe your practice of disclosing such information in your annual notice

## ■ Except for Disclosures:

- "An educational agency or institution, or a party that has received education records or information from education records under this part, may release the records or information . . . after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information."

### ■ Except for Disclosures:

- And several more
- N.B.: As far as *FERPA* is concerned, all of these are discretionary
  - May be public record or other disclosure requirements
- Also N.B.: These exceptions are independent of each other, not cumulative



## QUESTIONS

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## WHAT RIGHTS DO STUDENTS HAVE TO SEE, AND DEMAND CHANGES TO, THEIR OWN EDUCATION RECORDS?



### ■ Inspect and Review

- Must allow students to "inspect and review" their own education records within 45 days of request
- Need not provide copies unless "circumstances effectively prevent the . . . student from exercising the right to inspect and review"
- The *only* exceptions are financial aid records of parents and confidential letters of recommendation to which the student has waived access





## Seek Amendment

- Student may request amendment of records containing "information that is inaccurate, misleading, or in violation of the student's rights of privacy"
  - *Not* a grade grievance mechanism
  - If deny request, must give student an opportunity for a hearing
  - If still deny request, student may include a statement with the record

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## FERPA IMPLICATIONS OF EDUCATION TECHNOLOGY

## ■ U-Tube?

- May faculty require:
  - Participation on listservs?
  - Blog posts?
  - Use of online portfolios?
  - Creation and posting of videos?
  - Use of other social media?
- Does it matter whether it's hosted on-campus or off-site?
- Does it matter whether it's open to the public or closed to the class?

## ■ First Things First

- FERPA applies to educational institutions and their agents, not to students and not to external social media on their own
- At least as far as FERPA is concerned, students are free to post their own work wherever they want whenever they want
- Faculty *probably* may require students to do so, at least on independent external social media
- But may they require students to do so on school-owned or -sponsored social media, and/or may they post student work themselves?

### ■ Steve McDonald's "Implied Pedagogical Exception" Theory™

- FPCO: "Neither the statute, the legislative history, nor the FERPA regulations require institutions to depart from established practices regarding the placement or disclosure of student theses so long as students have been advised in advance that a particular undergraduate or graduate thesis will be made publicly available as part of the curriculum requirements."

### ■ Steve McDonald's "Implied Pedagogical Exception" Theory™

- FPCO: "The final regulations . . . ensure that . . . students [may] not use the right to opt out of directory information disclosures to remain anonymous in the classroom, by clarifying that opting out does not prevent disclosure of the student's name, institutional e-mail address, or electronic identifier in the student's physical or electronic classroom."

## ■ Steve McDonald's "Implied Pedagogical Exception" Theory™

- FPCO: "[W]hile [students] may opt out of the disclosure of directory information, this opt out does not prevent an educational agency or institution from requiring a student to wear, display, or disclose a student ID card or badge that exhibits directory information."

## ■ Steve McDonald's "Implied Pedagogical Exception" Theory™

- Owasso: "We doubt Congress meant to intervene in this drastic fashion with traditional state functions. Under the Court of Appeals' interpretation of FERPA, the federal power would exercise minute control over specific teaching methods and instructional dynamics in classrooms throughout the country. The Congress is not likely to have mandated this result, and we do not interpret the statute to require it."

## ■ Can vs. May vs. Should

- What is the pedagogical reason for requiring the posting to be public?
- If there is one, is it really important that the posting be attributed?
- What are the implications for the student's privacy?
- What are the implications for the student's intellectual property?
- Who's reading the contracts and terms of service?

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## PRACTICAL TIPS

## ■ A Few Last Things

- Posting grades
  - Only by anonymous number in non-alphabetical order
  - Better yet by authenticated web portal
- Returning exams and papers
  - No self-serve pick-up
- Writing letters of recommendation
  - Get a signed consent

## ■ A Few Last Things

- Talking to parents
  - Check student status first
  - Confirm they really are the parents
  - And remember that you don't have to at all . . . .
- Don't be (too) afraid of innovative pedagogies
  - Collaborative projects
  - Peer critique
  - Class listservs and social media

## A Few Last Things

- Be careful what you write down about your students
  - Or at least be careful about sharing it
  - "Three may keep a secret, if two of them are dead."
- Be careful how you dispose of it
- Be particularly careful with e-mail, other electronic communications, and digital storage



## QUESTIONS

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## EVALUATION

### Thank you!

Please remember to complete the event evaluation.  
Your comments will help us continually improve the  
quality of our programs.

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