



# TEXAS SOUTHERN UNIVERSITY

## FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

### Office of the General Counsel

Andrew Hughey – General Counsel

Tammye Curtis-Jones – Associate General Counsel

Kenneth A. McKanders – Associate General Counsel

Cheryl Cash – Assistant General Counsel

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# Introduction to FERPA

- FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA), 20 USC 1232 (g) and its Implementing Regulations, 34 CFR Part 99
- Applies to public and private institutions of higher education that receive Federal funds from any program administered by the U.S. Secretary of Education
  - Education related grants and contracts
  - Students receiving Federal financial aid
  - Violate Act – student can file a complaint with U. S. Department of Education; penalty – University could lose Federal funding
- The Family Policy Compliance Office (FPCO) of the U. S Department of Education – is charged with the development, interpretation and enforcement of FERPA

# FERPA: Rights of Students

- FERPA provides three basic rights to college students:
  - right to inspect and consent to disclosure of their own education records
  - right to request corrections to their education records if the information is inaccurate, misleading or otherwise in violation of student's FERPA privacy rights
  - right to restrict access of others to personally identifiable records (subject to several exceptions)
- Education records – broadly defined to include virtually “all” records maintained by an educational institution (or party acting on behalf of institution), in any format (e.g. paper, electronic, video) that are “directly related” to one or more of its past or present students
  - an education record is “directly related” if it is “personally identifiable” to the student
  - includes records relating to admissions, financial aid, discipline, athletics, class schedules, disability, housing, grades, etc.
  - does not include student employment records (employment records must be made in the normal course of business, relate exclusively to the student's employment, and not be available for any other purpose), treatment records, law enforcement records, records in sole possession of maker used for personal memory
  - while a student does not have access to “treatment records” under FERPA, student can have those records reviewed by a physician or other appropriate professional of the student's choice

# FERPA: Rights of Students

- University must annually provide its students with written notice of their rights under FERPA
- Notices should be placed in student related publications – Catalogs, Course Bulletins, Conduct Code
- Upon University's receipt of a request from a student to inspect and review their education records, University must make records available within a reasonable period of time, no later than forty-five (45) days; University does not have to provide students with copies of their records, except where failure to provide copies of records effectively denies the student access to their records (e.g. student residing out of state – have to travel to Houston, Texas to inspect records)
  - can charge fee for copies (not for search) – unless charging fee effectively denies student access to records
  - cannot destroy records while a request for inspection is pending
  - Note TSU may be required to provide copies of records to students who file a request pursuant to the Texas Public Information Act

# FERPA: Rights of Students

- If a student believes that their educational records are inaccurate, misleading, or violate the student's privacy, the student can submit a written request for amendment of the records
- University must respond to the request within a reasonable period of time
- If University denies the student's request for amendment, the student has a right to request a hearing
  - Hearing officer (e.g. TSU administrator) cannot have direct interest in the outcome of the hearing; hearing process - listen to student, review any documents/information the student submits in support of their claim – render decision in writing (summarize evidence and state reasons for the decision)
- If the Hearing officer denies student's appeal to amend record, student must be advised of their right to submit a statement commenting on the contested information or stating why he/she disagrees with the University's decision - whenever the disputed record is disclosed the student's statement must also be disclosed

# FERPA: Limitations on Student Rights

- Limitations on student's right to inspect their educational records
- Student does not have a right to review a confidential letter of recommendation where the student has waived in writing their right to review the recommendation letter and the letter is used "solely" for the purpose for which it was initially solicited
  - student cannot be required to sign waiver as a condition of admission to or receipt of service or benefit from the university
  - if no waiver is signed by the student, the student has a right to review the recommendation letter
  - if University uses the recommendation letter for any purpose other than the purpose for which the letter was initially solicited, student has a right to review the recommendation letter (e.g. recommendation letter submitted in support of a student's application to a Masters program – university subsequently reviews the letter in re to student's application to a doctorate program – or reviews the letter during a subsequent disciplinary proceeding)
  - confidential recommendation letters placed in a student's file before the effective date of FERPA – Jan. 1, 1975, can remain confidential even if no waiver was signed by student – so long as letter is used solely for the purpose for which it was initially solicited
- Student does not have a right to review a Professor's grade book – so long as it remains in the possession of the Professor, not used for any purpose other than calculating the student's grade in the course.
- Student does not have a right to review parents' financial records
- If records contain information regarding more than one student, the requesting student may only inspect/review the specific information about that student

# FERPA: General Provisions

- General rule - student education records may not be disclosed without the written consent of the student - Exceptions
- FERPA allows institutions to designate certain classes of information as “directory information” that “may” be released to anyone without the student’s consent
- “Directory Information” is “information that generally would not be considered harmful or an invasion of privacy if disclosed”
- University must provide annual notice to students of the classes of information it has designated as “directory information”
- Student who does not want all or some of the designated classes of information to be released without their consent, must file a written request to withhold “directory information”

# FERPA: General Provisions

- “Directory information” statement should be included in student related publications – should expressly identify all classes of information which University has designated as “directory”
- FERPA “directory information” categories include but are not limited to: name, address, telephone listing, electronic e-mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g. undergraduate or graduate; full-time or part-time), participation in officially recognized sports and activities, weight and height of members of athletic teams, degrees, honors and awards received, and most recent educational agency or institution attended
  - Student’s Social Security Number cannot be designated as “directory”; Student ID number can be designated as “Directory Information” only if ID number cannot be used to access the student’s records except when used in conjunction with one or more factors that authenticate the user’s identity (e.g. PIN)



# FERPA: General Provisions - Disclosure

- Can disclose education records without the student's consent to "other school officials" who have "legitimate educational interests" in the information
- FERPA allows the university to broadly define who qualifies as a "school official" and what is a "legitimate educational interest" – university must provide annual notice of its definitions to its students
- Model definitions from The Family Compliance Office
  - A school official is a person employed by the University 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 University has contracted as its agent to provide a service instead of using University employees or officials (such as an attorney, auditor, or collection agent); a person serving on the Board of Regents; 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 responsibilities for the University

# FERPA: General Provisions - Disclosure

- FERPA permits (does not require) disclosure of information from education records to appropriate parties, including parents, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals
  - Must document disclosures - keep record documenting perceived threat and the parties to whom information was disclosed
- FERPA permits disclosure to parents of student if the student is their dependent for federal tax purposes
  - Must verify student's dependent status (e.g. tax returns)
- FERPA permits disclosure to parents of information relating to the student's violation of law or the university's rules or policy governing the use or possession of alcohol or a controlled substance, if student has committed a disciplinary violation and is under the age of 21 at the time of the violation and disclosure
- FERPA permits disclosure in connection with financial aid the student has applied for or received (if necessary to determine eligibility, amount of aid, conditions of aid, to enforce terms and conditions of aid)

# FERPA: General Provisions - Disclosure

- FERPA permits disclosure of education records to Federal and State Officials and organizations conducting studies on their behalf (FERPA regulations define scope of disclosures – disclosure conditioned – no further disclosure by receiving party without the student’s consent)
- FERPA permits disclosure of the final results of a disciplinary proceeding conducted against a student who is an alleged perpetrator of a crime of violence or a non-forcible sex offense, if the university determines as a result of disciplinary proceeding that the student committed a violation of the University’s own rules or policies with respect to such crime or offense
  - “final results” disclosure is limited to the name of student who is the alleged perpetrator, the violation the student was found to have committed, and the sanction imposed against the student by the University
- FERPA permits disclosure of the final results of a disciplinary proceeding to a victim of a crime of violence or a non-forcible sex offense whether or not the alleged perpetrator was found in violation of the University’s rules and policies
  - “final results” disclosure limitations as noted above
- FERPA permits disclosure of education records to officials of other institutions at which the student seeks or intends to enroll or where the student is already enrolled, so long as disclosure is related to the student’s enrollment or transfer
  - must inform students individually or provide annual notice to all students
  - must condition disclosure on receiving party’s agreement not to disclose information without student’s consent, will use only for the purpose for which disclosure was made

# FERPA: General Provisions - Disclosure

- Can disclose education records/information without the student's consent in response to a subpoena or judicial order
  - General Counsel's Office reviews subpoenas/judicial orders
- Prior to disclosure – must notify student/former student of the subpoena or order before complying
  - General Counsel's Office sends notice letter to student's current address or last known address TSU has on file – must make good faith effort to notify student in advance of compliance
- Exception to notice requirement – where grand jury subpoena or other subpoena issued for law enforcement purposes “instructs the institution not to notify the student”

# FERPA: General Provisions - Disclosure

- FERPA disclosure restrictions apply only to information from the student's education records – not to personal knowledge derived from direct, personal experience with a student
- TSU faculty or staff member personally observes student engaging in harassing or threatening behavior, can disclose observation to Public Safety, Dean of Students, etc.
- If observation reduced to writing in a document that identifies the student, the record would be subject to FERPA protections – faculty/staff member could still disclose their personal observations
- Nothing in FERPA prohibits university from contacting its law enforcement unit, orally or in writing, for the purpose of asking the unit to investigate a possible crime or enforce local, State or Federal law

# FERPA: Education Records

- Records that are created by campus law enforcement unit at least in part for law enforcement purposes are not “education records” and are not subject to FERPA
- If copies of Police reports are shared with a campus official – copies of the record would become subject to FERPA, the original record in the law enforcement unit would continue not to be subject to FERPA
- Student education records that are shared with campus law enforcement as school official with a legitimate educational interest, remain subject to FERPA

# DOE Model Notification or Rights under FERPA

- The Family Educational Rights and Privacy Act (FERPA) afford eligible students certain rights with respect to their education records. (An “eligible student” under FERPA is a student who is 18 years of age or older or who attends a postsecondary institution.) These rights include:
  1. The right to inspect and review the student's education records within 45 days after the day the [Name of postsecondary institution (“School”)] receives a request for access. A student should submit to the registrar, dean, head of the academic department, or other appropriate official, a written request that identifies the record(s) the student wishes to inspect. The school official will make arrangements for access and notify the student of the time and place where the records may be inspected. If the records are not maintained by the school official to whom the request was submitted, that official shall advise the student of the correct official to whom the request should be addressed.
  2. The right to request the amendment of the student’s education records that the student believes is inaccurate, misleading, or otherwise in violation of the student’s privacy rights under FERPA.
- A student who wishes to ask the school to amend a record should write the school official responsible for the record, clearly identify the part of the record the student wants changed, and specify why it should be changed.
- If the school decides not to amend the record as requested, the school will notify the student in writing of the decision and the student’s right to a hearing re-garding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

# DOE Model Notification or Rights under FERPA (continued)

- 3. The right to provide written consent before the university discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.
- The school discloses education records without a student's prior written consent under the FERPA exception for disclosure to school officials with legitimate educational interests. A school official is a person employed by the [School] in an administrative, supervisory, academic, research, or support staff position (including law enforcement unit personnel and health staff); a person serving on the board of trustees; or a student serving on an official committee, such as a disciplinary or grievance committee. A school official also may include a volunteer or contractor outside of the [School] who performs an institutional service of function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, or collection agent or a student volunteering to assist 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 responsibilities for the [School].
- [Optional] Upon request, the school also discloses education records without consent to officials of another school in which a student seeks or intends to enroll. [NOTE TO POSTSECONDARY INSTITUTION: FERPA requires a school to make a reasonable attempt to notify each student of these disclosures unless the school states in its annual notification that it intends to forward records on request.]
- 4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA is:
  - Family Policy Compliance Office
  - U.S. Department of Education
  - 400 Maryland Avenue, SW
  - Washington, DC 20202



# DOE Model Notification or Rights under FERPA (continued)

- [NOTE: In addition, a school may want to include its directory information public notice, as required by §99.37 of the regulations, with its annual notification of rights under FERPA.]
- [Optional] See the list below of the disclosures that postsecondary institutions may make without consent.
- FERPA permits the disclosure of PII from students' education records, without consent of the student, if the disclosure meets certain conditions found in §99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the student, §99.32 of FERPA regulations requires the institution to record the disclosure. Eligible students have a right to inspect and review the record of disclosures. A postsecondary institution may disclose PII from the education records without obtaining prior written consent of the student –
  - To other school officials, including teachers, within the [School] whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in §99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))
  - To officials of another school where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of §99.34. (§99.31(a)(2))
  - To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as a State postsecondary authority that is responsible for supervising the university's State-supported education programs. Disclosures under this provision may be made, subject to the requirements of §99.35, in connection with an audit or evaluation of Federal or State supported educational programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (99.31(a)(3) and 99.35)

# DOE Model Notification or Rights under FERPA (continued)

- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§99.31(a)(4))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out their accrediting functions. (§99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to §99.36. (§99.31(a)(10))
- Information the school has designated as “directory information” under §99.37. (§99.31(a)(11))
- To a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense, subject to the requirements of §99.39. The disclosure may only include the final results of the disciplinary proceeding with respect to that alleged crime or offense, regardless of the finding. (§99.31(a)(13))
- To the general public, the final results of a disciplinary proceeding, subject to the requirements of §99.39, if the school determines the student is an alleged perpetrator of a crime of violence or non-forcible sex offense and the student has committed a violation of the school’s rules or policies with respect to the allegation made against him or her. (§99.31(a)(14))
- To parents of a student regarding the student’s violation of any Federal, State, or local law, or of any rule or policy of the school, governing the use or possession of alcohol or a controlled substance if the school determines the student committed a disciplinary violation and the student is under the age of 21. (§99.31(a)(15))

# Questions

Contact information – Office of General Counsel –  
310 Hannah Hall

Tammye Curtis-Jones – Associate General Counsel  
713 313-7893

e-mail: [curtisjonest@tsu.edu](mailto:curtisjonest@tsu.edu)

Kenneth A. McKanders – Associate General Counsel  
(713) 313-1818

e-mail: [mckanderska@tsu.edu](mailto:mckanderska@tsu.edu)