

FERPA Plenary-2024 MSACROA Annual Conference
December 2, 2024

1. Our campus employs a full-time Rabbi, a Priest, and a Protest Chaplain. If they keep and share notes on students, would those notes be education records subject to inspect and review provisions?

A. Yes

B. No

C. It Depends

FERPA defines “education records” as being directly related to a student and maintained by an institution or party acting on behalf of the institution. As such, shared notes kept by school officials would meet this definition and be subject to review by the subject student. Since the notes are shared, they would not qualify as “sole possession” records. More information on the education record definition can be found on page 154 of the 2012 AACRAO FERPA Guide.

2. Our institution generally requires theses and dissertations to be made publicly available upon completion. Would a student’s directory information restriction prevent this even if the restriction was invoked after publication?

A. Yes

B. No

C. It Depends

Theses and dissertations are education records and would not be considered directory information. Thus, signed consent would be required to make them publicly available, and a student restriction of directory information would not impact consent that was provided. References to regulations 99.3 and 99.31 can be found on pages 154 and 161 of the 2012 AACRAO FERPA Guide, respectively.

3. Our institution received a request to inspect and review from a former student requesting a list of all university employees who have searched for his ID number in our student information system. Is this an education record subject to inspection?

A. Yes

B. No

C. It Depends

An education record is defined in FERPA as being directly related to a student and maintained by the institution or a party action for the institution (see 99.3). Thus, **if** the institution maintains a list of employees who have searched for or accessed the student’s

education records in the student information system, then that would be an education record subject to “inspect and review”. Reference to 99.3 can be found on page 154 of the 2012 AACRAO FERPA Guide.

4. Our institution wants to use institutional e-mail as a form of electronic signature for FERPA purposes of signed consent. Would an e-mail from a student’s institutional e-mail account qualify as an electronic signature for FERPA?

- A. Yes
- B. No
- C. It Depends

The FERPA Regulations require that institutions use reasonable methods to authenticate the identity of an individual prior to disclosing student education records (see 99.31(c)). Identity authentication using institutional e-mail of the students is a good process because it would presumably require use of a unique password known only to the student in order to access the e-mail account. This essentially serves as an electronic signature and meets the “safe harbor” standard set out in the 2004 regulations permitting the acceptance of electronic signatures. Appendix J in the 2012 AACRAO FERPA Guide contains the April 21, 2004 final regulations on electronic signatures, which begins on page 353.

5. Once a treatment record or a law enforcement unit record is shared beyond those specific purposes and a copy becomes an education record, does the original treatment record or law enforcement unit record become an education record, too?

- A. The treatment record becomes an education record
- B. The law enforcement unit record becomes an education record
- C. Both become an education record
- D. Neither become an education record

A law enforcement unit record maintained by a law enforcement unit maintains its status as such even if a copy of that record is maintained by the institution as an education record. However, a treatment record loses its status apart from an education record once they are shared with any party other than a treatment provider. See “Education Records” on page 154 in the 2012 AACRAO FERPA Guide. Also, Appendix I on page 346 of the FERPA Guide contains the relevant joint guidance.

6. Our institution records students’ pronouns within our student information system, and we need to operationalize their use in compliance with FERPA. Students’ pronouns can be disclosed under the following exception(s) to written consent.

- A. Directory Information
- B. To School Officials with Legitimate Educational Interest

- C. Both A and B
- D. Neither A nor B

Pronouns may not be a directory information item, but they could be shared with School Officials with Legitimate Education Interest, including on a class roster or advising roster.

7. Our institutional FERPA policy defines a student to include students that have applied for admission. Under this policy definition, would FERPA rights apply to a student once they have applied?

- A. Yes
- B. No
- C. It Depends

Based on the institutional definition, an applicant would be a student “in attendance”. Therefore, the primary rights would apply to applicants just as they would with any other student. Institutions have the latitude to define applicants as students within a FERPA policy. Any definition of a student for these purposes should have some reasonable basis, but it can be no later than the first day of class attendance or other academic activity.

8. A student at our institution has been accused of academic dishonesty in two different classes within two different terms. Can details of the first violation be shared with the instructor reporting the second violation?

- A. Yes
- B. No
- C. It Depends

It would depend on the institution’s definition of Legitimate Educational Interest articulated in the annual FERPA notification to students. If the disclosure fits within that definition, then details of the first violation could be shared with the instructor reporting the second violation.

9. Our institution maintains copies of past commencement programs on its website, which are publicly available, and a graduate not currently attending has requested their name be removed from a past program. The graduate can compel the desired outcome by:

- A. Restricting release of directory information
- B. Requesting amendment to an education record
- C. Both of the above
- D. None of the above

The institution would not be required to honor the request of a former student to restrict release of that student's directory information, nor would the student's name on a historic document be subject to the amendment process. See 99.37.

10. A former student now living in a different state has made a request to inspect and review their education record. The institution can fulfill its obligations with this primary right by taking the following action:

- A. Requiring the student to travel to the campus
- B. Meet via Zoom and screen share the requested records
- C. Mail copies of the requested records to the student
- D. Either B or C

The institution is required to provide an opportunity for a student or former student to exercise their right to inspect and review their education record without requiring the student to travel beyond a reasonable commuting distance to do so. Providing the student an opportunity via a meeting screen share or by providing copies of the records would both be options for meeting this requirement. You can find the relevant regulation on page 157 of the 2012 AACRAO FERPA Guide.

11. If a student is both an "eligible student" and a "dependent student" in regard to FERPA, then the FERPA rights belong to:

- A. The parents
- B. The student
- C. Both A and B

The term "eligible student" refers to a student that is either 18 or is enrolled in postsecondary education, which marks the point when rights under FERPA transfer from the parent(s) to the student. Separately, 99.31 includes an exception to written consent for disclosure of education records to parents of a "dependent student". This dependent status is established through claiming the student on federal income taxes. The institution may disclose education records to parents based on this exception to written consent, but that does not impact the rights the student possesses as an eligible student.

12. I have a habit of e-mailing notes to myself for storage purposes. If I do so without sending or copying anyone else on the e-mail, would those notes be considered sole possession records or education records?

- A. Education Records
- B. Sole Possession Records
- C. It Depends

These would be considered sole possession records until such point that another school official accesses the records either on the server where they are stored or by you sharing them (at which point they would lose their “sole possession” status).

13. Do FERPA regulations dictate that an admissions office should not retain the “admissions portion” of students’ education records?

- A. Yes
- B. No**
- C. It Depends

FERPA regulations do not dictate whether the “admissions portion” of an education record should be maintained, or if maintained, where it should be maintained once the applicant is a student in attendance. The records do become education records once the student is attendance and are at that point subject to FERPA regulations. If, or where, the records are maintained is determined by the institution.

14. Since we are not permitted to use SSN to help identify a student in response to an inquiry for directory information, can we use date of birth (DOB)?

- A. Yes
- B. No
- C. It Depends**

Any response to a request for directory information would need to be limited to those items the University has designated as such, and criteria used to identify a student or group of students in response to such a request would need to be limited to items designated as directory information. In regard to DOB, if listed as directory information, FERPA would not require that you disclose that information, but some other regulations might. If age discrimination is a concern, another option would be to consider listing only month and day of DOB as directory information.