FERPA

**Family Educational Rights and Privacy Act**
FERPA
Examples

➢ Your office receives a call from a recruiting firm asking for the names and addresses of all students with a GPA over 3.0. Can you give this information?

➢ Parents of a student call and want to discuss a student’s academic performance in class. Can you discuss this with the parent?

➢ An individual contacts your office and states that he needs to get in touch with his child regarding an emergency. Can you disclose the location of the student’s next class to the caller?

➢ A professor leaves graded exams in a box outside of her classroom for students to retrieve. Can this be done?
FERPA
The FERPA Trinity

*College students (undergraduate, graduate and professional) have the right to:*

- Control the *disclosure* of their education records to others (records directly related to students and maintained by an educational institution).
- *Inspect and review* their own education records.
- *Seek amendment* of their education records.
**FERPA Disclosure**

*Before disclosing education records, an institution must obtain a signed, dated written consent from all relevant students, 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.
FERA Disclosure Exceptions

Directory Information is an exception to the disclosure rule. Advance notice must be given, providing an opportunity to opt out.

- name
- email
- address, phone number
- dates of attendance
- major
- degrees
- honors and awards received
- participation in officially recognized activities and sports
- information not generally considered harmful or an invasion of privacy if disclosed
FERPA Disclosure Exceptions

Exceptions to the Disclosure rules:

- School Officials whom the institution has determined to have legitimate educational interests – students serving on committees, job requirements. Institution, not individual, makes the determination.
- Comply with a judicial order or lawfully issued subpoena – make a reasonable effort to notify if permitted.
- Parents of a dependent student for federal tax purposes – need to obtain a copy of parent’s tax return.
- Parents of a student under 21 – if student violated alcohol or drug rules, health or safety issue, lawsuit in which institution is an adversary.
FERPA Disclosure

*Additional notes on Disclosure:*

- Make a record of each request and each disclosure and maintain it with relevant educational record.
- Cannot re-disclose information without student consent.
- Only use for specified purpose.
Students have the right to Inspect and Review their records as long as the following applies:

- Allow student to “inspect and review” their own education records within 45 days of request.
- Provide copies only if circumstances effectively prevent student from exercising the right to inspect and review.
- Does not include financial records of parents or confidential letters of recommendation to which student has waived access.
- Does not include record that relates to more than one student.
FERPA
Seek Amendment

Student may request amendment of records containing information that is inaccurate, misleading, or in violation of the student’s rights of privacy.
FERPA Examples

• Your office receives a call from a recruiting firm asking for the names and addresses of all students with a GPA over 3.0. Can you give this information?
  *No – unless you have written approval from all students.*

• Parents of a student call and want to discuss a student’s academic performance in class. Can you discuss this with the parent?
  *No – unless student is a dependent.*

• An individual contacts your office and states that he needs to get in touch with his child regarding an emergency. Can you disclose the location of the student’s next class to the caller?
  *No – offer to contact student.*

• A professor leaves graded exams in a box outside of her classroom for students to retrieve. Can this be done?
  *No – unless you have written approval from all students.*
Americans with Disabilities Act

Faculty, Staff and Student Issues
Under the Americans with Disabilities Act

Striking the balance between reasonable accommodations and essential functions.
Americans with Disabilities Act
Examples

➢ Susan, a staff person, is about to be terminated for absenteeism and having a fist fight with an associate dean. She now claims that she suffers from alcoholism and that this is the cause of her bad behavior. She requests a FMLA leave of absence and requests other accommodations for her alcoholism.

➢ Joe, a faculty member, requests not to have to perform research for the next academic year because he has depression that causes him to be unproductive. There is also great concern because you just learned that he has talked to others about doing something drastic.

➢ Cindy, a student, is failing several of her courses because she is not turning in her assignments and the work she is turning in is poorly written. The department chair and several of her professors have observed in her class work and tests indications of learning disabilities. They would like to help Cindy succeed.
Americans with Disabilities Act
ADA Employment Essentials

- An employer cannot discriminate against an applicant or employee or treat an applicant or employee differently based on the employee’s disability.
- An employer generally must provide a working environment that is barrier-free for disabled employees.
- An employer must provide reasonable accommodations for a documented disability.
- An employer must provide auxiliary aids to assist the employee in communicating in the work environment.
- An employer cannot retaliate against any employee for raising a disability claim or for seeking an accommodation for a disability.
Americans with Disabilities Act
University as a Public Accommodation

- The University may not discriminate against or segregate disabled individuals.
- The University must provide auxiliary aids to those using the public accommodations, upon request – including students attending public lectures or events.
Americans with Disabilities Act
Questions to Ask

Are they *Disabled*?

What is a disability?

- A physical or mental impairment that substantially affects one or more major life activities – walking, seeing, hearing, learning, working…
- Determination made on case-by-case basis.
- Disabilities can include obvious and non-obvious disabilities – learning disabilities, alcoholism, cancer, diabetes, depression…
Have they *Asked for Accommodations*?

- University not under obligation to identify individuals it feels are disabled – instead ask “Is there anything the department can do to assist you in performing your job/program?”
- Focus on behavior, unless fitness for duty is the issue.
- Try not to turn a situation into a disability case.
- The student or employee must ask for help.
Americans with Disabilities Act
Questions to Ask

Is there a *Reasonable Accommodation* that can be provided?

Include modifications or adjustments to the work environment:
- Facilities
- Job restructuring
- Modified work schedule
- Reassignment to a vacant position
- Provision of qualified readers

Employee of student must come forward to ask for help
- Employer must engage in an interactive process to identify reasonable accommodations
- Employer does not have to provide requested accommodations
- Employer can provide alternative reasonable accommodations
Can the person perform the *Essential Functions* of the job/program with or without any reasonable accommodations?

- The person is only entitled to reasonable accommodations and to retain their job if they are able to perform the essential functions of the job.
Americans with Disabilities Act
Questions to Ask

Is it an *Undue Burden* on the University to provide the accommodation requested?

- The University does not have to provide accommodations if it can show that the accommodations would pose an undue hardship on the University.
- Undue hardship is significant difficulty or expense when considered in light of a number of factors including overall financial resources of institution
  - very difficult to refuse based on financial undue hardship.
  - Possible if accommodation affects the ability of others to do their job or the University to carry out its mission.
Americans with Disabilities Act
Questions to Ask

Does the person pose a *Direct Threat* to himself or others?

- Employee cannot pose a direct threat to himself or others.
- Employer can take disciplinary action against an employee who is disabled by poses such a threat.
- University can request documentation showing that employee does not pose threat.
Americans with Disabilities Act
University Process

For Faculty and Staff:
• Contact the Equal Opportunity and Diversity Office

For Students:
• Contact Disability Services in Educational Support Services

These offices will obtain proper documentation and formulate a plan for accommodations.
Americans with Disabilities Act Documentation

- Medical documentation – diagnosis for a leave of absence or disability information – must be segregated from personnel files or official student academic files.
- this applies to Schools and Departments
  - transfer such information to EOD or Disability Services
Americans with Disabilities Act

Examples

Susan, a staff person, is about to be terminated for absenteeism and having a fist fight with an associate dean. She now claims that she suffers from alcoholism and that this is the cause of her bad behavior. She requests a FMLA leave of absence and requests other accommodations for her alcoholism.

- You can always discipline for misconduct – no reasonable accommodation for bad behavior!
- Not entitled to retroactive accommodations for disabilities.
- Talk to HR regarding FMLA leave issues.
- Can be disciplined for absenteeism regardless of cause, unless missed time due to FMLA leave.
Joe, a faculty member, requests not to have to perform research for the next academic year because he has depression that causes him to be unproductive. There is also great concern because you just learned that he has talked to others about doing something drastic.

- Refer Joe to EOD Office.
- If disabled, work on appropriate accommodations.
- Request may not be possible if it alters an essential function.
- May need documentation that disability does not provide a threat.
Cindy, a student, is failing several of her courses because she is not turning in her assignments and the work she is turning in is poorly written. The department chair and several of her professors have observed in her class work and tests indications of learning disabilities. They would like to help Cindy succeed.

- Don’t assume student has a disability.
- Ask if assistance can be provided.
- If student indicates she may need help inform her of Disability Services in Educational Support Services.
- It is not reasonable accommodation to say student does not need to turn in assignments. She may not be able to perform essential functions.