

## FERPA Basics for NSU Staff

### The Essence

- The *Family Educational Rights and Privacy Act* (FERPA) is the federal law designed to protect the privacy of education records. It also provides guidelines for appropriately using and releasing student education records.
- It is intended that students' rights be broadly defined and applied. Therefore, consider the student as the "owner" of the information in his or her education record, and the institution as the "custodian" of that record.

### Key Terms/Definitions

**"EDUCATION RECORDS"** include any record maintained by the institution that contains information that is personally identifiable to a student (in whatever format or medium) with some narrowly defined exceptions:

- Records in the "sole possession of the maker" (*e.g.*, private advising notes not accessible or released to others).
- Law enforcement records created and maintained by a law enforcement agency for a law enforcement purpose.
- Employment records (unless the employment is based on student status). The employment records of student employees (*e.g.*, FWS students, graduate teaching associates, etc.) are part of their education records.
- Medical/psychological treatment records (*e.g.*, from a health or counseling center).
- Alumni records (*i.e.*, those created after the student graduated or left the institution).

**"DIRECTORY INFORMATION:"** Those data items that are generally not considered harmful or an invasion of privacy if publicly available. Cannot be released if student has a "*Confidential*" on his or her record. Each institution establishes what it considers to be directory information. At NSU, this information includes: name, address (local, home, and email), telephone (local and home), academic program of study, dates of attendance, photo ID photograph, place of birth, year in school, enrollment status, anticipated graduation date, participation in sports, and degrees and awards received.

- Directory Information *cannot* include: race, gender, SSN (or part of an SSN), grades, GPA, country of citizenship, or religion. Except in very specific circumstances, a student id number (SIN) also cannot be considered directory information.
- Every student must be given the opportunity to have directory information suppressed from public release. At NSU, a student's Banner records are marked as "*Confidential*" when non-disclosure is requested. Everyone within the institution must abide by a student's request that no information be released about the student.
- It is important to understand, that a "*Confidential*" does *not* mean that a school official within the institution who has a demonstrated legitimate educational interest (*e.g.*, faculty member teaching the student in class) is precluded from using the information to perform that official's job duties.

**"PARENT:"** With reference to FERPA, the term "parent" refers to either parent (including custodial and non-custodial, if divorced).

### When do FERPA rights begin?

A FERPA-related college education record begins for a student when he or she enrolls in a higher education institution. At a postsecondary institution, rights belong to the student in attendance, regardless of the student's age.

### Basic Rights of Students under the Act:

- Be notified of their FERPA rights at least annually
- Inspect and review their records
- Amend an incorrect record
- Consent to disclosure (with exceptions)

### **Annual Notification**

NSU notifies students of their FERPA rights every academic year, usually in the fall, via their NSU email account.

### **Inspection and Review**

Students have the *right* to see everything in their “education record,” except:

- Information about other students
- Financial records of parents
- 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 once there is a request to inspect and review. It is important to know and understand NSU’s records retention policy.

### **Right to Consent to Disclosure**

Start with the premise that the student has the right to control to whom his or her education record is released. Then, there are several exceptions when that permission is not required.

#### WHEN IS PRIOR CONSENT NOT REQUIRED?

Generally speaking, an institution may disclose records without consent if certain requirements are met, but it is not required to do so. Some examples of the exceptions to the law regarding the release requirement include:

- “School officials” with a “legitimate educational interest.” Employees and legal agents have access to education records in order to perform their official, educationally-related duties
- Disclosure to another institution where the student seeks to enroll or is enrolled
- Disclosure to the Department of Education, state/local education authorities
- Disclosure in connection with the receipt of financial aid
- Disclosure to state/local officials in conjunction with legislative requirements
- Disclosure to organizations conducting studies to improve instruction, or to accrediting organizations
- Disclosure to parents of *dependent students* (IRS definition). **NOTE:** NSU considers *all* students as independents and as such, education records are not shared with parents without the written consent of the student
- To comply with a judicial order or lawfully issued subpoena
- Disclosure for a health/safety emergency (must document what the emergency was and to whom the information was released)
- Disclosure of directory information provided the student has not requested confidentiality
- Disciplinary information:
  - Disclosure to the alleged victim of a crime of violence, such as information from disciplinary proceedings
  - *Only* when found in violation, and *only* for crimes of violence—release of name, sanction and outcome can be made to anyone
  - 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)

FERPA rights at a postsecondary institution end with a student’s death. However, NSU will only make records of deceased students available to the parent(s), spouse, executor/executrix, or other authorized parties upon written request. This request must include the need for the records, identify the requestor’s relationship to the deceased student, and be accompanied with an official record certifying authorization to receive the student records (i.e., assignment as executor/executrix).

### **Key Resources for Additional Information:**

- Your campus registrar, Elaine Poff (poff@nova.edu)
- AACRAO (Compliance)—[www.aacrao.org/resources/compliance/ferpa/](http://www.aacrao.org/resources/compliance/ferpa/)
- Family Policy Compliance Office of the U.S. Department of Education (administers FERPA compliance)—<https://www2.ed.gov/policy/gen/guid/fpco/>