

## **FERPA – an integral piece to the institution**

For a copy of the presentation, please email Troy Milligan, Redlands Community College, at [troy.milligan@redlandsc.edu](mailto:troy.milligan@redlandsc.edu) , or contact him at 405.422.1206. For more information, you may also want to visit the FERPA website at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

**FERPA**

# THE NEW AND IMPROVED FERPA

PRESENTED BY

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**GRACIOUS THANKS GIVEN TO**

**JOHN SNODGRASS,  
REGISTRAR**

**CHAPMAN UNIVERSITY**

**FOR THE USE OF A LARGE PORTION  
OF HIS PRESENTATION IN THIS ONE**

# **POP QUIZ – QUESTION #1**

**You have been contacted by the Admissions Director at POISE University who requests any pertinent information on a Ms. D. Meanor, one of your former students who is in her first semester at PU. The Director also sent a copy of the transcript from your institution that D submitted as part of her application for admission. In reviewing the copy, you determine that it is a fraud and definitely has been tampered with. D also had a very dubious record at your institution, and actually was on disciplinary probation. Wanting to set the record straight, you fax the disciplinary record to the Admission Office at PU, as well as verifying that her transcript is bogus. “Foul!” D proclaims, and she files a complaint with the FERPA Compliance Office against BOTH institutions, stating that she did not sign a release allowing the sending of any of those records between the schools.**

**GUILTY OR NOT GUILTY? WHY?**

## **POP QUIZ – QUESTION #2**

**Your supervisor hands you a letter sent from PU’s main feeder school, which states:**

**“Please send us the names, email addresses, class levels, academic majors, and GPA of all of our students who have transferred to PU. We are having a ‘Transfer Night’, and would like to recognize our former students and ask those who have done well to speak.”**

**Your supervisor (the Dean of Enrollment Management) says, “Let’s do this. We have just signed an articulation agreement with them, and this is a great opportunity”. You think to yourself, “Hmm, can we do this?”**

**CAN IT BE DONE? WHY OR WHY NOT?**

## **POP QUIZ – QUESTION #3**

**PU's online system allows students to login on the web and perform all of the typical online processes. In order to use the system a student must have a UserID and a PIN. The UserID can be the ID number or it can be the student's Social Security Number. By default, if a student has never logged into the system, their PIN will be their birthday. Once they login using their birthday, they are forced to switch their PIN to another six-digit number, and it cannot be their birthday. They are also forced to setup a security question in case they ever forget their new PIN.**

**Do PU's policy and procedures dealing with online access meet FERPA requirements?**

**YES OR NO? WHY OR WHY NOT?**

## **POP QUIZ – QUESTION #4**

**In the final round of the national women's NJCAA golf championship, Ru Lost is tied with another individual for the top individual honors. As Ru swung back to tee off on the final hole, she is hit on the head by an errant ball from another player on a nearby hole. She slumped to the ground, not moving and unconscious. After several minutes, tournament doctors determined the situation to be serious, an ambulance was summoned, and Ru was rushed to the hospital. PU's Athletic Director immediately contacted the Dean of Students, who, upon learning of the situation, immediately contacted the President, the Public Information Director and Ru's parents.**

**Fortunately, Ru recovered completely, remembering nothing of the incident. However, concern was raised as to the contacting of her parents initially because of FERPA restrictions related to emergency and safety situations specifically omitting contacting the parents. Ru had been an independent student, and no releases were signed.**

**ISSUE OR NON-ISSUE? WHY OR WHY NOT?**

## **POP QUIZ – QUESTION #5**

**“Hello. This is Bertha Venation from ACME degree verification, and I would like to verify whether or not Heath Krazee earned his bachelor’s degree at PU, as well as his major and date of conferral. His SSN is 123-45-6789; can you help me?”**

**PU’s Enrollment Services specialist, Yaz I. Cann, known for his cheerful demeanor and speedy response time, replied “Why yes, Bertha, Heath earned his BA in Creative Attendance, conferred on May 31, 1988. Is there anything else I can help you with?”**

**Since PU has degrees and majors listed in their directory information, is this a FERPA problem?**

**SURE IS OR SURE IS NOT? WHY OR WHY NOT?**



# WHAT IS FERPA ALL ABOUT?

Providing students guarantees regarding the access to and confidentiality of their education records

- Right to access
- Right to challenge contents
- Right to control disclosure – the major portion of how we all deal with educational records

# WHEN ARE THE NEW REGULATIONS IN EFFECT?

- **NOW - January 8, 2009**
- **Final regulations posted on the FPCO website:**  
<http://www.ed.gov/policy/gen/guid/fpc/index.html>

## **34 CFR Part 99.3: Impacted Sections**

- **Attendance**
- **Directory Information**
- **Disclosure**
- **Educational Record**
- **Personally Identifiable Information**
- **State Auditor**

# **34 CFR Part 99.3: Attendance**

## **Definition:**

**Old – “Attendance in person or by correspondence.”**

**New – “Attendance 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.”**

**Comments from federal DOE – “We do not agree that the definition of attendance should be limited to receipt of instruction leading to a diploma or certificate...”**

# 34 CFR Part 99.3: Directory Information

New –

- an educational agency may not designate the student's Social Security Number as part of 'directory information'
- directory information may include a student's user ID *IF* it cannot be used to gain access to education records except when used with one or more other factors to authenticate the user's identity

## **34 CFR Part 99.3: Disclosure**

- **Changes definition of disclosure to allow the release/return of an educational record to the institution/party that created the record to resolve questions regarding validity**
- **Allows institutions to return transcripts, recommendations, etc. that appear to have been falsified back to the institution or school official identified as the creator/sender in order to confirm authenticity. Allows sending school to confirm or deny accuracy of the record, and send a correct version. Consent from the student is not required.**

# **34 CFR Part 99.3: Personally Identifiable Information**

**Old –**

**(e) A list of personal characteristics that would make the student's identity easily traceable; or**

**(f) Other information that would make the student's identity easily traceable**

# **34 CFR Part 99.3: Personally Identifiable Information**

**New –**

**(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;**

**(f) 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 be able to identify the student with reasonable certainty; or**

**(g) Information requested by a person who the institution reasonably believes knows the identity of the student to whom the educational record directly relates.**



# **34 CFR Part 99.3: Personally Identifiable Information**

**New –**

## **Biometric Record**

**“...a record of one or more measureable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.”**

# **34 CFR Part 99.3: Education Record**

**New –**

## **Peer Grading**

**Clarifies that peer-graded papers that have not been collected and recorded by the instructor are not considered maintained by an educational institution and, therefore, are not education records under FERPA**

**(as based on the Supreme Court Case Owasso)**

# **34 CFR Part 99.3: Education Record - Exclusions**

**New –**

## **Former Students**

**Clarifies that with respect to former students, education records exclude records that are created or received by the institution after an individual is no longer a student in attendance *and are not directly related to the individual's attendance as a student.***

## **34 CFR Part 99.3: State Auditor**

**Old –**

**Permit institutions to disclose education records to State and local educational authorities for audit or evaluation of education programs (does not address disclosure of education records to State auditors not employed by an education authority).**

**New –**

**Defines State auditor as a party member under any branch of government with authority and responsibility under state law to conduct audits; may have access to education records for purposes of auditing federal or state supported education programs.**

# QUESTIONS ???



# **34 CFR Part 99.31: Conditions Under Which Prior Consent Is Not Required For Disclosure**

**An institution may disclose without consent if disclosure means one or more of the following conditions (new regs specifically address the following):**

- **School officials**
- **Parents of dependent students**
- **Institutions where the student seeks to enroll or is enrolled**
- **Judicial order/subpoenas**
- **Health and safety**
- **Disciplinary**
- ***ex parte***
- **Sex offender**
- **Directory information**
- **De-identified records**

# **34 CFR Part 99.31: School Official**

## **Outsourcing –**

### **New –**

**Expands the school official exception to include contractors, consultants, volunteers, and other outside parties to whom an educational institution has outsourced institutional services or functions as long as:**

- (1) In order to be considered a ‘school official’ an agency or institution must be able to show that a non-employee or other outside party is providing an institutional service or function that the agency or institution would otherwise use employees to perform.**
- (2) The school must also show that the outside party would have ‘legitimate educational interest’ in the information disclosed if the service were performed by employees.**

# **34 CFR Part 99.31: School Official**

## **Outsourcing , continued –**

**(3) An agency or institution must be able to show that the outside party, in providing these services, is under the direct control of the agency**

**(4) The outside party is subject to the same redisclosure conditions**

**(5) Records directly related to a student that are maintained by such parties are education records, *including any new student records created***

**(6) The institution must comply with annual FERPA notification requirements in 34 CFR Part 99.7**



# **34 CFR Part 99.31: School Official**

## **Access Limitations of ‘legitimate educational interest’**

**New –**

**“an educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interest. Controls may include:**

**Physical – e.g. locked filing cabinets or desks**

**Technological – e.g. software which implements role or field-based security features**

**Administrative – e.g. an institutional policy that prohibits access except for legitimate educational interest; must be effective in ensuring compliance in lieu of physical or technological access controls.**

# **34 CFR Part 99.5/99.31: Disclosure to Parents**

## **99.5 –**

**All rights transfer from the parent to the student in the post-secondary environment**

## **New –**

**“Nothing in this section prevents an institution from disclosing education records or personally identifiable information from education records to a parent without the prior consent ... if the disclosure meets the conditions set forth in 34 CFR Part 99.31 ...”**

# **34 CFR Part 99.31: Disclosure to Parents**

**99.31(a)(8) The student is a dependent for Federal income tax purposes:**

- **Disclosure may be to either parent if at least one of the parents has claimed the student as a dependent on the parent's most recent tax return**

**To make such a dependency determination, a school may:**

- **Ask the parent to provide a copy of the most recent Federal income tax form (financial information may be redacted) showing dependency; or**
- **Ask students to indicate if they are claimed as a dependent for tax purposes by either parent (at registration, on their FERPA or financial aid app., etc.)**

## **34 CFR Part 99.31: Disclosure to Parents**

**99.31(a)(10) In connection with a health or safety emergency**

**99.31(a)(15) If the student is under the age of 21 and has violated a law or an institutional rule or policy governing the use or possession of alcohol or a controlled substance;**

**If the disclosure falls within any other exception to the consent requirement in 99.31(a) of the regulations, such as the disclosure of directory information or in compliance with a court order or lawfully issued subpoena.**

***Ensures that institutions understand that FERPA does not block information sharing with parents if the above exceptions apply***

## **FURTHERMORE...**

***Institutions may choose to follow a policy of not disclosing education records to parents of eligible students in these circumstances; FERPA does not mandate such a policy.***

# **34 CFR Part 99.31/99.36: Health or Safety Emergency**

**Old –**

**Disclosure may be made to any person whose knowledge of information is necessary to protect health and safety of the student or others;**

**New –**

**Disclosure may be made to any person whose knowledge of information is necessary to protect the health and safety of the student and others, *including release to the student's parents.***

# **34 CFR Part 99.31/99.36: Health or Safety Emergency**

**Old –**

**(c) Paragraphs (a) and (b) of this section will be strictly construed**

**New –**

**(c) Old language replaced by three important  
'liberalizations'**

**(1) institution may take into account the 'totality of  
the circumstances';**

# **34 CFR Part 99.31/99.36: Health or Safety Emergency**

**New –**

**(c) Old language replaced by three important  
'liberalizations', continued...**

**(2) if institution determines there exists an  
'articulable and significant threat', it may disclose  
education record information to any person whose  
knowledge of the situation is necessary to protect  
the student or other individuals**

**(3) if there is a rational basis for determination, the  
department will not substitute its judgment for that  
of the institution**



# **34 CFR Part 99.32: Health or Safety Emergency Record Keeping Requirements**

**Old –**

**No reference to health or safety emergencies.**

**New –**

**(5) An educational agency or institution must record the following when it discloses personally identifiable information from education records under the health or safety emergency exception in 34 CFR Part 99.31/99.36:**

- (i) the articulable and significant threat that formed the basis for disclosure;**
- (ii) parties to whom the institution disclosed the information**

# **34 CFR Part 99.31/99.36: De-identification**

**Old –**

**None**

**New –**

**(b) education records may be released without consent “after the removal of all personally identifiable information provided that the institution 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 reasonable available information”**

## **34 CFR Part 99.31/99.36: Disclosure to institution in which student has enrolled**

**Old –**

**(2) “the disclosure is, subject to the requirements of 99.34, to officials of another school, school system, or institution of post-secondary education where the student seeks or intends to enroll.”**

**New –**

**(2) “the disclosure is, subject to the requirements of 99.34, to officials of another school, school system, or institution of post-secondary 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 enrollment or transfer.”**

# **34 CFR Part 99.31/99.36: Disclosure to institution in which student has enrolled**

**Additional comments from the Federal DOE...**

- (1) FERPA places no specific restrictions related to the release of disciplinary records**
- (2) Release is not limited to the most recent institution student has attended**
- (3) Institution may disclose any records it could have disclosed when student was seeking or intending to enroll at the new institution.**

# **34 CFR Part 99.31: Organizations Conducting Studies**

**Old –**

**A school may disclose education records to organizations conducting studies “for, or on behalf of” the disclosing school (but does not explain what that means)**

**New –**

**Clarifies that the institution**

- (1) does not have to initiate the research request or agree with or endorse the conclusions or results.**
- (2) must agree with the purposes of the study**
- (3) retains control over the information from the education records disclosed**

# **34 CFR Part 99.31: Organizations Conducting Studies**

**New –**

**Clarifies that the institution, continued...**

**(4) Must have a written agreement with the receiving organization that specifies:**

- the purpose of the study**
- the information may only be used to meet the purpose of the study**
- restrictions on redisclosure**
- records are returned to the institution or destroyed when no longer needed**

## **34 CFR Part 99.31: Updates**

**Updates or amends FERPA regulations to specifically include language related to releasing or re-releasing of information in accordance with the following Acts:**

**Patriot Act – allows response to Ex Parte Order without notice to the student**

**Campus Sex Crimes Prevention Act – allows the disclosure of information received under community notification program concerning registered sex offenders who are students (although institutions are not required under FERPA to collect or maintain information about registered sex offenders**

**Clery Act – clarifies responsibility of institution to disclose information to accuser and accused allows redisclosure by accuser**

# **34 CFR Part 99.31: Redisclosure by State and Federal Authorities**

**Old –**

**Not permitted**

**New –**

**Permits state and federal authorities to redisclose education records on behalf of the institution, so long as the requirements of 99.31 and 99.32 (recordkeeping) are met**



# **34 CFR Part 99.31: Identification & Authentication**

**New –**

**(c) “an educational agency or institution must use reasonable methods to identify and authenticate the identity of students, parents, school officials, and any other parties to whom the institution discloses personally identifiable information from education records.”**

# **34 CFR Part 99.31: Identification & Authentication**

**Authentication of identity generally involves:**

- requiring a user to provide something that only the user knows, such as a PIN, password, or answer to a personal question;**
- requiring something that only the user has, such as a smart card or token;**
- or a biometric factor associated with no one other than the user, such as a finger, iris, or voice print.**

# **34 CFR Part 99.37: Conditions on Disclosure of Directory Information**

**New –**

**(b) an institution must continue to honor any valid request to opt out of directory information disclosures made while the individual was a student unless the student rescinds that decision**

**(c) opt out of directory information does not prevent an educational institution from disclosing or requiring a student to disclose the student's name, electronic identifier, or institutional email address in the classroom.**

# **34 CFR Part 99.37: Conditions on Disclosure of Directory Information**

**New –**

**continued...**

**(d) prohibits an institution from using an SSN when used in alone or in conjunction with other data elements in order to identify a student or the student's records when disclosing or confirming directory information.**

# **34 CFR Part 99.64/99.65/99.66/99.67: Enforcement**

**Clarifies the Department's responsibilities related to authority and enforcement:**

- Affirms FPCO's authority to investigate a school when a student files a complaint or may conduct its own investigation when no complaint has been filed or has been withdrawn;**
- Clarifies information FPCO may require to investigate and resolve complaints**

## **34 CFR Part 99.64/99.65/99.66/99.67: Enforcement**

**Clarifies the Department's responsibilities related to authority and enforcement:**

- Clarifies that violation may be determined without being based upon policy or practice of the school;**
- Clarifies that the Secretary may take action to terminate assistance only when a school has been found to have a policy or practice in violation of FERPA AND the school fails to voluntarily come into compliance.**

*FPCO affirms that there is no intention or plan to initiate FERPA institutional compliance reviews or expand investigations beyond the current practice.*

# QUESTIONS ???



# **POP QUIZ – QUESTION #1**

**You have been contacted by the Admissions Director at POISE University who requests any pertinent information on a Ms. D. Meanor, one of your former students who is in her first semester at PU. The Director also sent a copy of the transcript from your institution that D submitted as part of her application for admission. In reviewing the copy, you determine that it is a fraud and definitely has been tampered with. D also had a very dubious record at your institution, and actually was on disciplinary probation. Wanting to set the record straight, you fax the disciplinary record to the Admission Office at PU, as well as verifying that her transcript is bogus. “Foul!” D proclaims, and she files a complaint with the FERPA Compliance Office against BOTH institutions, stating that she did not sign a release allowing the sending of any of those records between the schools.**

**GUILTY OR NOT GUILTY? WHY?**



# **RESPONSE TO POP QUIZ QUESTION #1**

**Not guilty...**

**Two inclusions in the new regulations would allow for the sending of these records without requiring a student's written consent for release, designed to deal with fraudulent and/or tampered records and the ability of institutions to confirm or deny accuracy and authenticity.**

**99.31 was amended to allow disclosure even after the student has already enrolled, if the disclosure is for purposes related to the enrollment or transfer, and the disclosure definition in 99.3 allows for the return of documents for authenticity determination**

## **POP QUIZ – QUESTION #2**

**Your supervisor hands you a letter sent from PU’s main feeder school, which states:**

**“Please send us the names, email addresses, class levels, academic majors, and GPA of all of our students who have transferred to PU. We are having a ‘Transfer Night’, and would like to recognize our former students and ask those who have done well to speak.”**

**Your supervisor (the Dean of Enrollment Management) says, “Let’s do this. We have just signed an articulation agreement with them, and this is a great opportunity”. You think to yourself, “Hmm, can we do this?”**

**CAN IT BE DONE? WHY OR WHY NOT?**

## **RESPONSE TO POP QUIZ QUESTION #2**

**NO, it cannot be done! To release all of the requested information would be a FERPA violation.**

**While name, email address, class, and major may be considered directory information and could be provided to the feeder school without students' signatures of release, the GPA cannot be considered as directory information.**

**While the disclosure definition in 99.3 has been amended to allow institutions to return transcripts and other records that appear to have been falsified for authentication, this request is NOT based on validation or authentication.**

**Therefore, in order to send GPA information, consent is required.**

## **POP QUIZ – QUESTION #3**

**PU's online system allows students to login on the web and perform all of the typical online processes. In order to use the system a student must have a UserID and a PIN. The UserID can be the ID number or it can be the student's Social Security Number. By default, if a student has never logged into the system, their PIN will be their birthday. Once they login using their birthday, they are forced to switch their PIN to another six-digit number, and it cannot be their birthday. They are also forced to setup a security question in case they ever forget their new PIN.**

**Do PU's policy and procedures dealing with online access meet FERPA requirements?**

**YES OR NO? WHY OR WHY NOT?**

# **RESPONSE TO POP QUIZ QUESTION #3**

**NO! The new wording 'known only to the student' is key.**

**PU's policy and procedures do not meet FERPA requirements and would be in violation of FERPA policy. The clearest explanation can be found in the 'Proposed Rules' section dealing with identification and authentication of identity, and how institutions must use reasonable methods to identify and authenticate the identity of students and other parties to whom it discloses educational records.**

**The last paragraph on page 15585 basically prohibits the pairing of a common form user name with the date of birth, SSN, or portion of the SSN, even if it is changed upon first login to the system.**

**So, the method of initial use, regardless as to how the student is informed, is in violation of FERPA at PU, because the PIN is the birth date and could be commonly known.**

**To be in compliance, the initial PIN must be a randomly assigned indicator not based on any known information and only available to the user.**

## **POP QUIZ – QUESTION #4**

**In the final round of the national women’s NJCAA golf championship, Ru Lost is tied with another individual for the top individual honors. As Ru swung back to tee off on the final hole, she is hit on the head by an errant ball from another player on a nearby hole. She slumped to the ground, not moving and unconscious. After several minutes, tournament doctors determined the situation to be serious, an ambulance was summoned, and Ru was rushed to the hospital. PU’s Athletic Director immediately contacted the Dean of Students, who, upon learning of the situation, immediately contacted the President, the Public Information Director and Ru’s parents.**

**Fortunately, Ru recovered completely, remembering nothing of the incident. However, concern was raised as to the contacting of her parents initially because of FERPA restrictions related to emergency and safety situations specifically omitting contacting the parents. Ru had been an independent student, and no releases were signed.**

**ISSUE OR NON-ISSUE? WHY OR WHY NOT?**

# **RESPONSE TO POP QUIZ QUESTION #4**

## **NON-ISSUE...**

**Under the new regulations, contacting the parents is not an issue. While CFR 34 Part 99.36 of the old regulations made no mention of contacting parents within the health and safety exception, the new regulations do specifically include parents as appropriate parties to whom the institution may disclose information.**

## **POP QUIZ – QUESTION #5**

**“Hello. This is Bertha Venation from ACME degree verification, and I would like to verify whether or not Heath Krazee earned his bachelor’s degree at PU, as well as his major and date of conferral. His SSN is 123-45-6789; can you help me?”**

**PU’s Enrollment Services specialist, Yaz I. Cann, known for his cheerful demeanor and speedy response time, replied “Why yes, Bertha, Heath earned his BA in Creative Attendance, conferred on May 31, 1988. Is there anything else I can help you with?”**

**Since PU has degrees and majors listed in their directory information, is this a FERPA problem?**

**SURE IS OR SURE IS NOT? WHY OR WHY NOT?**



# **RESPONSE TO POP QUIZ QUESTION #5**

**SURE IS a FERPA problem...**

**Even if PU had degree and major as directory information, this would be a FERPA violation. CFR 34 Part 99.37(d) prohibits an institution from using an SSN when used alone or in conjunction with other data elements in order to identify or help identify a student or the student's records when disclosing or confirming directory information.**

**PU's employee should not have answered 'Yes' or anything else, since the ACME employee used the SSN in describing the student in question.**

**MORE QUIZ QUESTIONS  
WILL BE SHARED  
DURING THE SESSION,  
IF TIME ALLOWS**



# QUESTIONS ???



**For a copy of the additional quiz questions or for any questions or comments after the session concludes, contact:**

**Troy Milligan**

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**405.422.1206**

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