Understanding Privacy in Higher Education
(First in a Two-Part Series)

A person saying she is a student’s parent telephones you with a question about the student’s residence hall assignment. Do you provide the requested information? Or, imagine that a 16-year-old high school student is taking class at Case Western Reserve University, and her parents contact you wanting to know her last test grade. Do you tell them?

Like other higher education institutions, CWRU is required to comply with numerous federal and state privacy laws regarding how it collects and uses individuals’ information. One such law is FERPA, the Family Educational Rights and Privacy Act, which targets information from student education records.

Passed by Congress in 1974, FERPA gives several rights to students in post-secondary institutions. With certain specified exceptions, they have the right to access their education records, to amend the records, and to consent to (or withhold consent to) the disclosure to third parties of personally identifiable information from their education records. Schools that receive federal Department of Education funding, such as CWRU, must comply with FERPA or risk having such funding denied.

What are FERPA-protected education records?

FERPA is written to protect students’ “education records”, defined as documents, files, and other materials that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. This broad definition includes items like transcripts, exams, class schedules, financial aid records, disciplinary records, photos, emails, and biometric information (such as fingerprints, retina and iris patterns, and DNA sequences).

While the definition of a FERPA-protected “education record” is broad, it is not all-encompassing. For example, if a record is completely scrubbed of all personally identifiable information, it is no longer protected under FERPA.

Other items that are not FERPA-protected are “sole possession records”, which are records of instructional, supervisory, or administrative personnel that are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute. An example of this is a note used as a personal memory aid by a professor.
Law enforcement records also are not protected by FERPA. These are records created and maintained by the school’s law enforcement unit for the purpose of law enforcement, such as a campus police department. However, if the law enforcement unit shares copies of other campus offices for other purposes, such as Residence Life, then those copies become subject to FERPA.

Personal observations also are not governed by FERPA. FERPA covers records and information from records, not information that is generally known about a student, even if the knowledge later becomes part of a record.

**Right to access education records (and to request changes to them)**

One of the purposes of FERPA is to allow students to challenge the content of their education records to ensure they are accurate, and to give them the opportunity to correct or delete information from the education record that is inaccurate. For instance, students may want to read hearing documents from a Student Conduct matter for which they were the subject, or they may want to see the details of a housing damage report.

According to FERPA, schools must comply with a request to inspect and review education records within 45 days of receiving the request. In responding, schools are generally allowed to permit the student to see the records in person. They are required to give copies, or make other arrangements for access, only if failure to do so would effectively deny the student access to their records. If, for example, the student is studying abroad and therefore cannot come to campus to view their records the school may be required to provide alternative arrangements. If a CWRU student wishes to amend an education record, the department receiving the request should seek guidance from the University Registrar or the Compliance Office.

Schools may not destroy education records if a request for access is pending. If the education records sought contain information on more than one student, the student may inspect, review, or be informed of only the specific information about his or her records; the school should block out the information about other students.

There are some exceptions to students’ access rights under FERPA. For example, there are certain education records that FERPA explicitly says students may not see, including the financial records of their parents that may be maintained by the school (such as in the Financial Aid Office).

Postsecondary schools are required to annually notify students of their FERPA rights, and CWRU does this on the web pages of the University Registrar, [http://www.case.edu/registrar/student_records.html](http://www.case.edu/registrar/student_records.html).

**Consenting to the disclosure of information from education records**

Under FERPA, institutions generally cannot release personally identifiable information (“PII”) contained in education records to external parties without the specific written consent of the student. However, “directory information,” or information that one might find in a document that a school ordinarily would make open to the public, like a student directory, yearbook, playbill, or a sports program, is not generally considered an invasion of privacy if released, though it is PII. This includes things like a student’s name, date and place of birth, major field of study, and participation in officially-recognized university activities. Schools may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties and/or for specific purposes, and they must give students a notice of their directory information policy plus the opportunity to opt out. The CWRU Notice on Directory Information can be found on the pages of the University Registrar, [http://www.case.edu/registrar/general/ferpa/policy/](http://www.case.edu/registrar/general/ferpa/policy/).

There are several exceptions to FERPA’s rule requiring consent of the student before the institution can share education records with someone outside the institution. In such cases, it generally would be within
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the institution’s discretion to disclose the information. (Although FERPA would allow a disclosure, there may be other legal or institutional reasons not to disclose). Institutions may not need consent to disclose information from a student’s education record when making disclosures to school officials with legitimate educational interests in the student, to schools in which a student seeks or intends to enroll, to authorized representatives of federal & state government for law enforcement purposes, in connection with student’s financial aid package, to comply with a judicial order or subpoena, and to accrediting organizations.

When a student is a tax-dependent of his/her parents, the institution may—at its discretion—disclose information from the student’s education records to the parents. (The university first should verify the student’s tax-dependent status.) Finally, in a health or safety emergency, an institution may disclose PHI from an education record to anyone it reasonably believes can help manage the situation.

Enforcement of FERPA

If an institution is found to be noncompliant with FERPA, its federal funding could be put in jeopardy. For this reason, if someone asks you for information that you believe may be protected by FERPA, please contact the University Registrar or the Compliance Office for help in managing the request.

For more information on FERPA, or privacy-related issues in general, call Lisa Palazzo, Director of Export Control and Privacy Management, at 368-5791, or Boyd Kumher, University Chief Compliance, Export Control and Privacy Management Officer, at 368-0833.

MEET MICHELLE ARENDT
NEW ATTORNEY IN THE OGC

Michelle Arendt recently joined the Office of General Counsel after having represented CWRU as outside counsel at various times throughout her career. She previously worked as an attorney with Ogletree Deakins, where her practice focused on counseling clients on compliance with employment and labor laws and defending employment litigation matters involving issues such as wrongful termination, discrimination, retaliation, non-compete agreements, breach of contract, negligent hire/retention, and violations of state and federal employment laws.

Michelle has been recognized as a Best Lawyer in America (2012-2015) and as a Rising Star by Ohio Super Lawyers Magazine (2005-2012). Michelle earned a B.A. from the University of Dayton, summa cum laude, and she graduated cum laude from Case Western Reserve University School of Law. As a CWRU alum, Michelle is happy to be returning to the University.