



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT ("FERPA")

FREQUENTLY ASKED QUESTIONS

The Office of Legal Services ("OLS") periodically receives questions from faculty and administration seeking advice on whether or not student information can be released to a party other than the student. The following is a sampling of the questions that we have received along with a link to some specific questions and answers regarding FERPA as it relates to campus safety concerns. If you have any questions or concerns about this information, or if you have a specific question that you would like us to add to this document, please contact OLS at (210) 485-0050.

Please keep in mind that the purpose of this document is to provide you with some guidance and assistance but it is not intended to be a substitute for legal advice in specific circumstances. It would be impossible to address every fact scenario that could arise involving the release or disclosure of student information. Please always remember that contacting OLS with any questions is recommended and encouraged.

I. FERPA AND THE TEXAS PUBLIC INFORMATION ACT

QUESTION: If a request for information under the Texas Public Information Act (PIA) requires disclosure of student information, can the college rely upon FERPA as an exemption from disclosure of the same information?

ANSWER: Sometimes. Alamo Colleges is a political subdivision of the State of Texas and is therefore governed by PIA and subject to requests for public information. When analyzing a request for information under FERPA and PIA, one should remember that FERPA permits disclosure when it does not otherwise prohibit disclosure. PIA on the other hand, requires disclosure when disclosure is not prohibited. So generally, if FERPA does not prohibit the disclosure, the student information must be disclosed under PIA (such as for directory information). The point to remember is that **if FERPA prohibits disclosure, PIA will not require it**. All PIA requests should go to OLS and PIA requests for disclosure of "personally identifiable information" on a student should be no different and should, therefore, be immediately forwarded to OLS.

II. FERPA AND CAMPUS SAFETY CONCERNS

Please click on the following link: [NAUCANotes](#) – used with permission.

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1. What is FERPA?

ANSWER: FERPA, Family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment, is a federal law that governs the release of and access to educational records. FERPA applies to all schools that receive funds under an applicable program of the U.S. Department of Education. If you would like more information, go to <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

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2. To whom does FERPA apply?

ANSWER: FERPA applies to a student who is, or has been, in attendance at Alamo Colleges. The student's age is not a consideration. Whether under 18 years of age, older than 18, or older than 21, the student has the same FERPA protections provided the student is (or was) enrolled in a college course. Physical presence in class is not required. Therefore, a student who receives instruction through distance learning and other contemporary modalities will be covered by FERPA. Education records pertaining to high school students enrolled in and attending dual credit courses with Alamo Colleges will be protected by FERPA.

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3. What is "personally identifiable information"?

ANSWER: Personally identifiable information ("PII") includes a student's name and other *direct* personal identifiers, such as the student's SSN or student number. PII also includes *indirect* identifiers, such as the name of the student's parent or other family members; the student's or family's address, and personal characteristics or other information that would make the student's identity easily traceable. The regulations recently added "biometric records" to PII, which has been defined to mean a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual, including fingerprints, retina and iris patterns, voiceprints, DNA sequence, facial characteristics and handwriting.

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4. How does the College determine when it is appropriate to disclose indirect identifying information?

ANSWER: The general rule for disclosing indirect information, without consent, has become a reasonable certainty standard and requires a balancing test. The College must determine whether the **indirect identifiers** and/or other information, alone or in combination, is **linked or linkable** to an education record that would allow a **reasonable person** in the college community, who does not have personal knowledge of the relevant circumstances, to identify the student with **reasonable certainty**. The College which has been asked to disclose the information must weigh all factors, including information that is linked or linkable to the student and which is already public, such as law enforcement records and published directories. (*Consult with OLS before releasing indirect identifiers.*)

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5. What is "directory information"?

ANSWER: Directory information is information that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information may be disclosed without consent from the student. Students have the opportunity to opt out of directory information disclosures during registration by completing and signing a form provided by the College.

Each individual college of the Alamo Colleges has agreed that Directory Information shall be considered to be the following:

- Student's Name
- Dates of Attendance
- Major
- Classification
- Enrollment status (full-time or part-time)
- Previous institution(s) attended
- Degree(s) awarded
- Academic honors/awards.

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6. What is an "education record"?

ANSWER: Education records are currently defined as all records 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.

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7. When can the college disclose education records without consent from the student?

ANSWER: Disclosure is permissible without a student's consent under any of the following circumstances:

1. The College may (but is not required to) disclose education records to a parent or legal guardian of a dependent student under any circumstances. Proof of dependency must be provided to the College. The parent seeking disclosure must provide the college with a copy of the most recent year's federal tax return showing that the student was listed as the parent's dependent. The parent is not required to provide an entire copy of his/her federal tax return; rather, the parent need only provide a copy of the section listing the student as a dependent.
2. If the student is not a dependent, the College may (but is not required to) disclose to a parent or legal guardian education records relating to any violation of law or of District Policy or of College rules governing the use or possession of alcohol or a controlled substance, if the College has determined that the student committed a disciplinary violation with respect to such use or possession and the student is under the age of 21 at the time both the violation and the disclosure.
3. The College may disclose personally identifiable information from education records to parents and other appropriate parties in connection with emergencies if knowledge of the information is necessary to **protect the health or safety** of the student or other individuals. Various facts should be weighed before making a disclosure under this

option. The totality of the circumstances pertaining to a threat to the safety or health of the student or other individuals should be considered and there should be a reasonable basis for a rational person to conclude that a threat to health or safety is present. The college should make a record of the “articulable and significant threat” that formed the basis for the disclosure **and** the parties to whom the information was disclosed. “Appropriate parties” include, but are not limited to, parents of the student, law enforcement, potential victims and their families, friends, and the Alamo Colleges’ SOBI Team and other school officials trained to evaluate and handle such emergencies. (*Consult OLS before disclosing information under this option.*)

NOTE: Options 1, 2 and 3 are independent of one another. For example, the College may notify parents about a 19-year old student’s underage drinking violation even if the student is not their tax dependent. Likewise, the College may notify parents of a 22-year old student’s drug violations if the student is their tax dependent. Obviously, a situation need not be deemed a health or safety threat for option 1 or 2 to apply.

4. Education records may be released pursuant to a properly served subpoena and court order. (*Consult with OLS before responding to any subpoena or court order.*)
5. Education records may be released to anyone (this includes a public information request) without consent from the student if all personally identifiable information has been removed. (*Consult OLS before disclosing information under this option.*)

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8. Does the College need to verify the identity of parents or students seeking to obtain education records?

ANSWER: Yes. The regulations require the College to use reasonable methods to identify and authenticate the identity of parents, students, school officials, and any other parties to whom they disclose education records. OLS recommends obtaining a copy of a picture ID or a properly notarized statement from the requestor. [Forms](#) are available on OLS webpage. Forms are available on OLS webpage.

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9. Are education records of former students subject to FERPA?

ANSWER: Yes. Records that pertain to an individual’s previous attendance as a student are “education records” under FERPA regardless of when the records were created or received by the College.

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10. Does peer-grading in the classroom violate FERPA?

ANSWER: No. “Peer-grading” is the practice of having the students exchange tests, homework, or other papers to be graded by one another during class resulting in students knowing one another’s grade. FERPA protects the content of “education records.” While the definition of “education records” is broad, the U.S. Supreme Court and the recently amended regulations clarified that “education records” do not include grades on peer-graded papers before the grades are collected and recorded by the teacher.

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11. May an instructor discuss with another instructor or school official a student’s grade without the student’s consent?

ANSWER: Yes, if the instructors or other school official have a “legitimate educational interest” in the information. The Alamo Colleges have defined “legitimate educational interest” as follows: *“A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the Alamo Colleges.”* [This definition is part of the annual FERPA notice to students and parents contained in the student handbooks and academic catalogs.]

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12. Are an instructor’s personal observations subject to FERPA?

ANSWER: It depends on the facts. If the observations are relayed solely in a verbal conversation, then the observations are not subject to FERPA. If the instructor puts his/her personal observations in a written document, then the document becomes an educational record and should be disclosed only in accordance with FERPA guidelines.

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13. May the College disclose education records, without consent, to officials of another school, college or university where a student has been recently accepted or already admitted?

ANSWER: Yes. The authority to disclose or transfer education records to a student’s new school does not cease automatically at the moment a student has enrolled, rather it continues to any future point in time so long as the disclosure is for purposes related to the student’s enrollment or transfer. In other words, the College may disclose any records or information, including health and disciplinary records, that the College could have disclosed when the student was seeking or intending to enroll in the new college or university.

Without consent, the College may also update, supplement or correct any records it sent to another college or university during the student’s application and transfer period.

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14. May the College disclose information relating to a former student’s disability to another institution where the student is currently enrolled? Or, may the College request information relating to a new student’s disability after the student is enrolled?

ANSWER: Yes, in cases of emergency. After a student has been admitted to another institution, the new college or university may obtain information concerning the student, including the student’s disabilities, from any school or college previously attended by the student, in connection with an emergency and if the information sought is necessary to **protect the health and safety** of a student or other persons.

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15. Does the College have to keep a record of the information it has disclosed from a student's educational record?

ANSWER: The College must maintain a record of each request for access and each disclosure. These records must be kept with the educational records of the student as long as the educational records are maintained by the College.

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16. How may the College safeguard education records from unauthorized access and disclosure?

ANSWER: The College must use “reasonable methods” to control access to education records by school officials. The College may use physical and technological controls to protect education records, such as locks on filing cabinets for paper records and software applications with role-based access controls for electronic records. Alamo Colleges’ Policies relating to student records may also be relied upon by the College to enforce safeguarding education records. See:

Policy F.4.1 Student Records -

<http://www.accd.edu/district/ethics/searchfiles/F.4.1%20Policy.pdf>

Procedure F.4.1.1 Access to Student Records -

<http://www.accd.edu/district/ethics/searchfiles/F.4.1%20Policy.pdf>

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17. Who may the College contact with questions or concerns?

ANSWER: The College may contact the Office of Legal Services at (210) 485-0050; the College’s Vice President of Student Success; or the Vice Chancellor for Student Success at (210) 485-0150.

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If you have any questions, or if you would like us to add a specific question to this list, please contact Office of Legal Services at (210) 485-0050.

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