

The FERPA IQ Test

Test your FERPA IQ! What follows is a 20-question FERPA quiz. Give it to your staff. Test yourself. See how you do. The test focuses on practical everyday FERPA application, and the answers should be readily at hand for most student affairs administrators. The correct answers are below. All content for this article written by Brett A. Sokolow, JD, with input from Linda P. Rowe, Ed.D, and Mary Louise Antieau, JD.

1. A student at your college, Denzel Washington, requests access to specific educational records of his own conduct. Choose the correct statement:
 - a. Denzel has 45 days in which to conduct the inspection
 - b. The University has 45 days by which it must grant Denzel the access
 - c. The University has 29 days by which it must grant the access to Denzel
 - d. The University has 45 days to determine whether access should be granted
2. Local police forward an arrest record on a student to campus law enforcement. For campus law enforcement to share this record with the alleged victim, they must obtain a signed FERPA consent from the arrested student...TRUE OR FALSE?
3. Campus law enforcement forward the arrest record referenced in the question above to the Director of Campus Conduct. For the Director to share this record with the alleged victim, s/he must obtain a signed FERPA consent from the arrested student...TRUE or FALSE?
4. A female victim of sexual misconduct, Jodie Foster, wants to send an email out to the campus. In it, she wants to identify her perpetrator (another student) by name, and describe his offense. The perpetrator's attorney finds out, and contacts you, demanding that you prevent this email from being sent, asserting that FERPA prohibits such disseminations by victims. Does FERPA prohibit Jodie from sending this email?
5. A campus hearing results in a finding of "not responsible" on a sexual misconduct complaint. The college wants to provide the outcome to the victim, but because of the not responsible finding, wants her to sign a confidentiality agreement. Is this permissible under FERPA?
6. TRUE or FALSE? Victims of crimes of violence are only entitled to know the outcome and sanction of complaints they have commenced if there is a finding of responsibility.
7. The college releases to the public that Cary Grant, a student, was found in violation of the college's policy on burglary, and was expelled. Grant objects to this release as a violation of FERPA. Is he right?

8. Jane Monroe, the mother of your student, Marilyn, calls your office. She asks to know whether her daughter has been in any trouble lately. You ask Jane if she takes Marilyn as a dependent on her tax return. She says yes. You then give her full information on three conduct violations in which her daughter has been recently involved (none of which are crimes of violence). Has FERPA been violated?
9. Coach Paterno, your college's head football coach, calls you. He has heard that his player, Mickey Rourke, was recently sanctioned by your office, and has had a no-contact restriction imposed on him, involving another player. Coach Paterno asks for you to share information with him about Mickey's conduct record. Would FERPA allow this?
10. An RA catches your student, Halle Berry, in possession of alcohol. She is under age 21. The RA immediately picks up the phone and calls Halle's mother, and tells her about the violation. Has the RA violated FERPA?
11. Al and Tommy Lee are roommates at your college. Tommy Lee accuses Al of stealing money from his wallet, and commences a complaint against Al. Al is found responsible for a theft, and ordered to make restitution within one month. Tommy Lee demands to know the outcome of the hearing. You refuse, citing FERPA. He then makes a record request for any information on the sanctions placed on Al that personally identify Tommy Lee and pertain directly to him. Is he entitled to that information?
12. Mai Lin is depressed. On a visit home, her parents sense that something is amiss. They call the college, and are referred to a Dean. The Dean has been told by Health Services that Mai Lin has made several suicidal threats, and has attempted suicide once. Is the information about the suicidal ideation and suicide attempt FERPA protected?
13. Assuming that the information referenced in the question above is FERPA protected, and that Mai Lin is not a dependent of her parents, may the Dean release this information to Mai Lin's parents?
14. A complainant and respondent are parties to a campus hazing incident. They each complete written statements about the incident, which the institution intends to exchange between them prior to the hearing. What FERPA hurdles must first be addressed?
15. Your campus makes a public release about a student's infraction. He is livid, and threatens to sue you for violation of his FERPA rights. The most accurate response from you is:
 - a. Well, my Daddy is a lawyer too...
 - b. So sue me...it builds character
 - c. What's FERPA?

- d. FERPA does not allow a private right of action. Students cannot sue colleges for FERPA violations.
16. One of your students, Uma Thurman, commits a violent knife attack on another student, Bill. You interim suspend her during the investigation. Twice, your campus police discover that she is not respecting the terms of the suspension, and she is returning to campus. You trespass her, and notify Bill that Uma may be at large. Uma trespasses again, and threatens a friend of Bill's, but is not caught. You then make a public alert on campus stating that "A second-year student, Uma Thurman, has been accused of a violent attack on a fellow student. She has been barred from campus temporarily, but refuses to respect the terms of her suspension. She has returned to campus several times. Please be aware that Uma Thurman is at large, and is evading campus police. She may be dangerous, and armed with a large knife. If you see Uma Thurman or receive information that she is on campus, please call Campus Safety immediately at..." Does this release violate FERPA?
17. Glenn is stalking Michael. She is caught and brought before a conduct panel, where she is found in violation of your college policy on stalking. May you release this outcome to Michael? May you make public release of this information?
18. Referring to the question above, suppose you make public release, as follows: Senior student Glenn Close was found in violation of the campus stalking policy on February 12th. She was found to have engaged in three separate instances of stalking of Michael Douglas, also a senior at the university. Has FERPA been violated?
19. Demi Moore, a student, repeatedly sexually harassed Michael Douglas (who obviously has a repeat pattern of victimization, here). None of the behavior was physical. She was held in violation of the student code of conduct for sexual harassment? Is Douglas entitled to any information about the outcome and/or sanction?
20. Julia was drunk and knows that someone had sex with her, but cannot identify who. She accuses Rupert of sexual misconduct, because she woke up in Rupert's room, although she barely remembers what happened. In investigating, it becomes clear to you that Rupert is not to blame. He provides compelling evidence that he is gay and was with his boyfriend at the time. He throws suspicion onto his roommate Dermot, who denies even knowing Julia. There is insufficient evidence for the college to take any action. Julia remains fearful of Rupert, because she knows the college is not pursuing her allegation, but has not told her why. If you want to explain to Julia why she should not be fearful of Rupert, is there any way that FERPA will allow you to do so?

Answers to the FERPA IQ Test

1. b. The University has 45 days by which it must grant Denzel the access **CORRECT. THE UNIVERSITY MAY (AND SHOULD) GRANT ACCESS SOONER IF IT CHOOSES TO.**
2. **FALSE. THE ARREST RECORD IS A PUBLIC RECORD. WHEN IT IS GIVEN TO CAMPUS LAW ENFORCEMENT, IT BECOMES A LAW ENFORCEMENT RECORD. LAW ENFORCEMENT RECORDS (IF THEY MEET THE REGULATORY DEFINITION—CREATED AND MAINTAINED FOR A LAW ENFORCEMENT PURPOSE) ARE NOT PART OF A STUDENT’S EDUCATIONAL RECORD, AND ARE NOT SUBJECT TO THE PROTECTIONS OF FERPA.**
3. **TRUE. ONCE LAW ENFORCEMENT SHARES THE RECORD WITH THE CONDUCT OFFICE, THE PROTECTIONS OF FERPA ATTACH TO THAT COPY OF THE RECORD. ANY RELEASE BY THE CONDUCT OFFICE MUST BE SUBJECT TO WRITTEN CONSENT (OR AN EXCEPTION TO THE RESTRICTIONS ON RELEASE).**
4. **NO. IT DOES NOT. BECAUSE SEXUAL MISCONDUCT IS A CRIME OF VIOLENCE, AND THE RESPONDENT WAS FOUND TO HAVE VIOLATED COLLEGE POLICY, PUBLIC RELEASE IS PERMITTED BY THE COLLEGE. GIVEN THAT IT IS PERMITTED, RELEASE BY THE VICTIM TO THE PUBLIC IS ALSO PERMITTED.**
5. **NO. THE COLLEGE CAN WARN THE COMPLAINANT THAT FERPA PROHIBITS REDISCLOSURE, BUT IT CANNOT CONDITION RELEASE ON THE SIGNING OF A CONFIDENTIALITY AGREEMENT, BECAUSE THE CLERY ACT REQUIRES UNCONDITIONAL RELEASE OF THE OUTCOMES AND SANCTION TO THE COMPLAINANT IN WRITING.**
6. **THIS IS TRUE, BECAUSE OF THE USE OF THE WORD ENTITLED. VICTIMS ARE PERMITTED TO KNOW THE OUTCOME AND SANCTION, IF THE COLLEGE ELECTS TO SHARE THAT WITH THEM. CURRENT LEGISLATION WOULD MAKE THIS PERMISSIVE RELEASE MANDATORY IF ENACTED.**
7. **NO. BURGLARY IS A CRIME OF VIOLENCE, AND THE COLLEGE MAY MAKE RELEASE OF THIS INFORMATION TO THE PUBLIC IF IT ELECTS TO, BECAUSE SMITH WAS FOUND IN VIOLATION. WHAT IS A CRIME OF VIOLENCE IS NOT INTUITIVE. VIOLENCE IS NOT REQUIRED FOR ALL OFFENSES CONSIDERED TO BE CRIMES OF VIOLENCE, SUCH AS STALKING, ARSON AND INTIMIDATION.**

8. **YES. PROOF OF DEPENDENCY OR CONSENT BY MARILYN ARE NECESSARY PRIOR TO RELEASE. YOU CANNOT JUST ACCEPT A PARENT'S ASSERTION OF DEPENDENCY WITHOUT PROOF (UNLESS YOUR INSTITUTION MAKES A BLAKET ASSUMPTION OF DEPENDENCY WITH PROPER OPT-OUT NOTIFICATION).**
9. **YES. YOU ARE ALLOWED TO RELEASE INFORMATION FROM EDUCATIONAL RECORDS TO INSTITUTIONAL EMPLOYEES WHO HAVE A LEGITIMATE EDUCATIONAL NEED TO KNOW, SUCH AS COACHES, FACULTY AND RAs.**
10. **NO. RELEASE TO PARENTS/GUARDIANS UNDER THE ALCOHOL/DRUG EXCEPTIONS CAN OCCUR IMMEDIATELY UPON EVIDENCE OF A VIOLATION, THOUGH YOU OUGHT TO HAVE A CLEAR POLICY INDICATING WHETHER YOU WANT RA'S TO DO THIS.**
11. **YES. THESE ARE HIS EDUCATIONAL RECORDS, AND TO THE EXTENT THAT AL MUST MAKE RESTITUTION, TOMMY LEE HAS A RIGHT OF ACCESS TO THAT INFORMATION, EVEN IF THAT RELEASE INDIRECTLY DISCLOSES THE OUTCOME TO TOMMY LEE.**
12. **YES. HEALTH RECORDS ARE GENERALLY NOT FERPA-PROTECTED. ONCE THEY ARE SHARED WITH THE DEAN, RELEASE BY THE DEAN IS GOVERNED BY FERPA.**
13. **YES. FERPA HAS A HEALTH AND SAFETY EXCEPTION. YOU HAVE BROAD LATITUDE TO RELEASE INFORMATION AS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF MEMBERS OF YOUR COMMUNITY.**
14. **THEY MUST EXECUTE SPECIFIC WRITTEN CONSENTS FIRST ALLOWING THEIR STATEMENTS TO BE EXCHANGED.**
15. **d. FERPA does not allow a private right of action. Students cannot sue colleges for FERPA violations. CORRECT. THEIR ONLY RECOURSE IS A COMPLAINT TO THE FAMILY POLICY COMPLIANCE OFFICE OF THE DEPARTMENT OF EDUCATION.**
16. **NO. FERPA HAS A HEALTH AND SAFETY EXCEPTION. YOU HAVE BROAD LATITUDE TO RELEASE INFORMATION AS NECESSARY TO PROTECT THE HEALTH AND SAFETY OF MEMBERS OF YOUR COMMUNITY.**

17. May you release this outcome to Michael? **YES. STALKING IS A CRIME OF VIOLENCE.** May you make public release of this information? **YES, YOU MAY MAKE RELEASE OF CRIMES OF VIOLENCE TO THE PUBLIC AS LONG AS THERE IS A FINDING OF VIOLATION OF YOUR CODE WITH RESPECT TO THAT “CRIME.”**
18. **YES. THE 1998 EXCEPTIONS THAT ALLOW FOR RELEASE OF INFORMATION PUBLICLY ABOUT CRIMES OF VIOLENCE SPECIFICALLY PROHIBIT THE UNAUTHORIZED RELEASE OF INFORMATION THAT DOES OR COULD PERSONALLY IDENTIFY THE VICTIM.**
19. **YES. FERPA IS NOT INTERPRETED TO PREVENT RELEASE OF INFORMATION ABOUT REMEDIES TO SEXUAL HARASSMENT UNDER TITLE IX.**
20. **TRY THE MOST DIRECT ROUTE. ASK RUPERT TO EXECUTE A WRITTEN CONSENT GIVING YOU PERMISSION TO SHARE THIS INFORMATION WITH JULIA. IF HE WAS NOT INVOLVED, HE WILL LIKELY WANT HER TO HAVE THIS INFORMATION. IF HE DOES NOT, THERE IS NO HARM IN HAVING ASKED. YOU MAY ALSO BE ABLE TO RELEASE THE INFORMATION IF YOU DETERMINE THAT IT IS NOT PART OF RUPERT’S EDUCATIONAL RECORD. WHAT RUPERT TELLS AN ADMINISTRATOR ORALLY MAY NOT MEET THE DEFINITION OF AN EDUCATIONAL RECORD, DEPENDING UPON IN WHAT MEDIA RUPERT’S DEFENSE IS ALSO SUMMARIZED OR RECORDED.**

How did you do on the FERPA quiz? Many of us cannot cite chapter and verse on FERPA, but we do have an intuitive sense for what FERPA does and does not permit. The problem is that FERPA can occasionally be counter-intuitive. This quiz was designed to address some of those areas, and some of the more common misconceptions about FERPA.

All information offered is the opinion of the author, and is not given as legal advice. Reliance on this information is at the sole risk of the reader.

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