

# FERPA 101: A Private Conversation

*Presented by Helen B. Garrett, Ed.D.*  
University Registrar and Chief Officer of  
Enrollment Information Services  
University of Washington  
[helenbg@uw.edu](mailto:helenbg@uw.edu)

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# Agenda

- > FERPA Basics
- > Key Definitions
- > What Information Can I share?
- > FERPA Pitfalls to Avoid
- > How Does the UW Privacy Office Navigate a FERPA Breach?
- > What Training Materials Are Available?
- > Your Questions



# How well do you know FERPA?

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→ 1 Finger

FERPA, huh?



→ 5 Fingers

I could hold my own if a man with a badge appeared!



→ 10 Fingers

I know this and I could be providing this training!



# FERPA BASICS

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# In FERPA Speak

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1

Access to  
education  
records, with  
99.31  
exceptions

2

Control over  
access, with  
exceptions

3

Right to  
challenge  
contents



# In Plain English

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1

Right to  
inspect and  
review  
education  
records

2

Right to  
control  
disclosure of  
information  
from  
educational  
records

3

Right to  
seek  
amendment  
to incorrect  
educational  
records



# What is FERPA?

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**F**amily **E**ducational **R**ights and **P**rivacy **A**ct of 1974



Helen in 1974

**U. S. Department of Education**

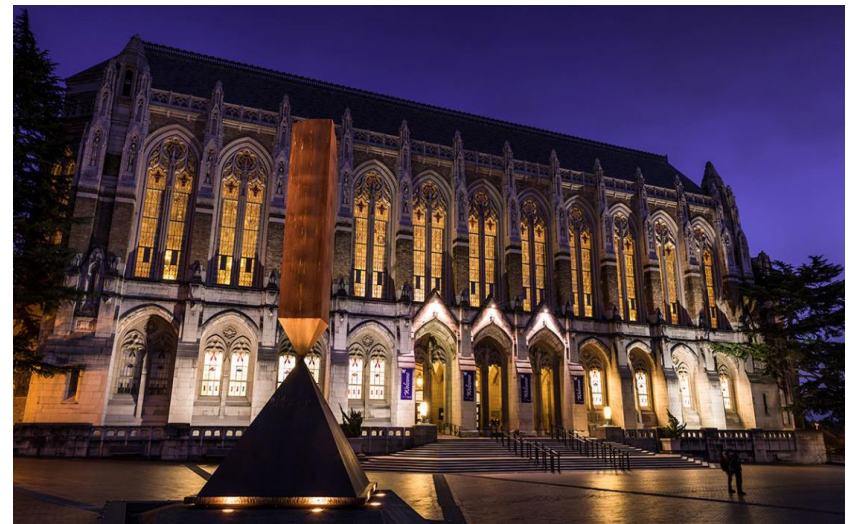
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>



# Who is Responsible for FERPA?

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- Typically the Registrar
- Who else should care? Everyone!
  - Financial Aid
  - Business Office
  - Legal Counsel
  - Counseling and Advising
  - President's Office
  - Athletics
  - Faculty
  - Departments
  - Etc.



➤ Anyone with access to educational records, including student employees



# Who has a right to access education records without student's written permission?

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A **school official** (performing duties for or on behalf of the institution, need not be an employee, could be an outside entity) may access **education records** (directly related to a student and maintained by the institution) if they have a **legitimate educational interest** (they could justify to the student and Department of Education that they needed to access records and have a right to do so without written permission from the student) and they have a **need to know** (they need to access education records to do their job and not because they are just curious)



# Faculty and Staff FERPA Basics Training

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- Any UW school official who has access to education records (directly related to a student and maintained by the institution) should complete the FERPA Basic Training course
  - Faculty/Staff FERPA Training or <https://registrar.washington.edu/staffandfaculty/ferpa/>



# Who has FERPA Rights?

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- All students attending an institution of higher education receiving federal Title IV funds, regardless of age
- All students for whom records are maintained, regardless of method
- Parents lose rights when student is in attendance, regardless of age
- Students retain all FERPA rights until deceased



# FERPA Annual Notification Requirements

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***Student Must Read and Accept That They Have Read UW's Annual FERPA Notice in the Pre-Registration Steps Each Quarter That they Register for Classes:***

- Right and method to inspect and review education records
- Right and method to seek amendment
- Right to consent
  - Other than 99.31 exceptions
- Right to file a complaint with the Dept of Education
- Definition of legitimate educational interest/school officials
- Directory information
  - Defined by institution



# Signature of Release

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Should include:

- 1) Record(s) to be released
- 1) To Whom
- 1) Purpose

Can be:

- 1) Submitted to the institution
- 1) Submitted to a third party
- 1) Electronic signature



# **Eight Data Points You May Not Release!\*** **(Even to parents paying the bills)**

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- **Social Security Number**
- **Citizenship**
- **Gender**
- **Ethnicity**
- **Religious preference**
- **Grades**
- **GPA**
- **Daily class schedule**



**\*Except to students and school officials**



## KEY DEFINITIONS

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# Important FERPA Terms

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- **Student**
  - Anyone attending your institution, of any age
- **Student Record**
  - Any information or data recorded in any medium
- **Education Record**
  - Any information directly related to a student, maintained by an educational agency or institution
- **Directory Information**
  - Student info that would not be harmful if disclosed
- **School Official**
  - Member of an institution acting in a student's educational interest, limits on "need to know"





# What Exactly is a Student?

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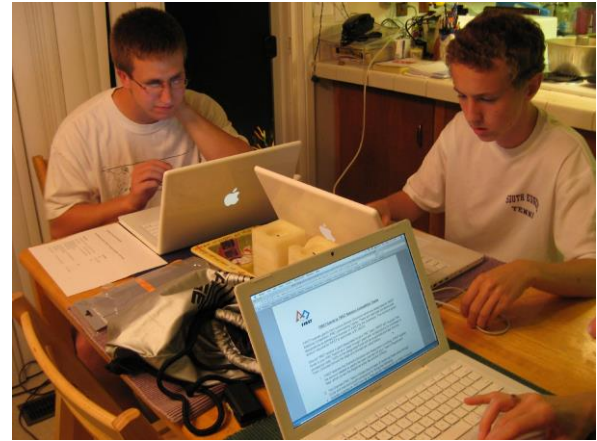
- **In attendance**
  - Institutionally defined
- **All students for whom records are maintained, regardless of method**
- **Rights begin when in attendance regardless of age**
  - Parents lose right at 18 or when attending
- **Acquire all FERPA rights when a student**



# What is Attendance?

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- **Classroom Attendance**
  - In-Person
- Video conferencing, satellite, or internet
- Telecommuting
- Skype or Facetime
- It does not matter whether a person attends in-person or online



# What Information Can I Share?

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# Considering Releasing Student Data?

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Ask yourself the “W” questions:

- Why am I being asked to release student data?
- Who is asking?
- What student release is needed?
- What determines that this is a student education record?
- What is the record being requested?
- Where is this student record going?
- Where do I need to record that it was released?

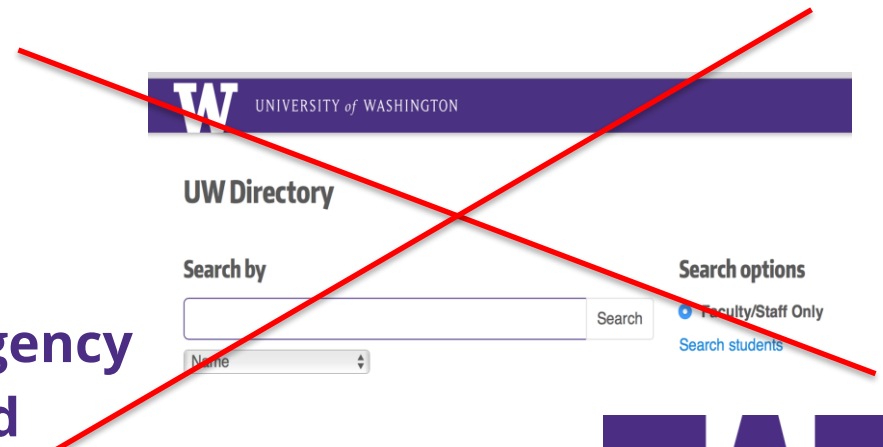
**W**

# FERPA Allowed Directory Information

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Institution decides, but may include:

- Student's name
- Telephone number
- Photograph
- Dates of attendance
- Major, field of study
- Grade level
- Weight/height of athletes
- Participation in sports
- Recognized activities
- Most recent educational agency
- Other institutions attended
- Address
- Email address
- Enrollment status
- Date and place of birth
- Degrees, honors, & awards



# What is UW's Directory Information?

<https://registrar.washington.edu/students/ferpa/>

Pursuant to WAC 478-140-024(5), directory information at the University of Washington is defined as:

Student's Name	Street Address
Email Address	Telephone Number
Date of Birth	Date of Attendance (Not Daily)
Degrees & Awards Received	Major/Minor(s) Field of Study
Class (i.e. FR/SO)	Participation in Officially Recognized Activities/Sports
Weight/height-Intercollegiate Athletes	Student's Name Most Recent Previous Educational Agency or Institution Attended by Student



# What is Allowed – Not UW Directory Information?

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Institution decides, but may include:

- Student's name
- Telephone number
- ~~Photograph~~
- Dates of attendance
- Major, field of study
- Grade level
- Weight/height of athletes
- Participation in sports
- Recognized activities
- Most recent educational agency
- Other institutions attended
- Address
- Email address
- ~~Enrollment status~~
- Date and place of birth
- Degrees, honors, & awards



# What is an “Opt-Out”?

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- Code in your system to acknowledge students’ decision to opt-out of directory information release (SDB/EARS)
- Must be visible to anyone who might release information
- Most misunderstood aspect of FERPA
  - All education records are confidential
  - Directory information is ok to release, unless opt-out is in place
- Never have to release directory information to anyone, except to student
- If you do not know how to see the Opt-Out “FERPA No” you may not release any Directory Information





# What are not Education Records?

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- Law enforcement records\*
- Treatment/medical records\*
- Alumni records
- Employment records (unless job is for a student only)
- Sole possession records



\*once disclosed become education records



# Who are School Officials?

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- **Individual or group providing a necessary service**
  - No inherent rights under FERPA
  - Have a “need to know” status
    - i.e. legitimate educational interest
  - Responsible for knowing FERPA
- **Outsourced parties performing duties done by school officials**
  - Listed in annual FERPA notification
  - Records remain under control of the institution
  - Must not re-disclose information



## **FERPA**

Family Educational  
Rights and Privacy Act

# 99.31 Exceptions?

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- To the student
- School officials
- Post-secondary institutions
  - Student seeks to enroll or is enrolled
- Authorized federal, state or local educational agencies
- In connection with financial aid to determine award
- Organizations conducting studies for the institution
- Parents of dependent students
- In compliance with a judicial order or subpoena
- In connection with a health or safety emergency
- Directory information: no opt-out



# FERPA Pitfalls to Avoid

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# Emails and FERPA Compliance

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- **Emails can present a challenge for compliance with FERPA, since even an uw.edu email can be emulated**
- **It is always a best practice to use methods that require authentication using a NetId to share student data via email; especially when it involves more than one student record**
- **Refrain from sharing specific student data (GPA, grades, disciplinary information) by email alone**
- **Use uw.edu emails when sending emails. Do not use personal email addresses for students or to send and receive emails**
- **Consider adding this statement to your Outlook signature block:**
  - Privileged, confidential or patient-identifiable information may be contained in this message. This information is meant only for the use of the intended recipients. If you are not the intended recipient, or if the message has been addressed to you in error, do not read, disclose, reproduce, distribute, disseminate, or otherwise use this transmission. Instead, please notify the sender by reply e-mail, and then destroy all copies of the message and any attachments. Thank you



# Law Enforcement Inquiries

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- **FERPA records cannot mix with Campus Safety records**
  - Automatically become FERPA protected if this happens
- **Outside entities with badges cannot have access to student data without student permission**
  - Exception: in a health or safety emergency
- **Do not release a student's schedule or location without student's written permission**
  - Even to law enforcement!



# Law Enforcement Inquiries

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- **Do not allow anyone access to students in your classrooms including other students looking for them (regardless of the reason), or:**
  - **FBI**
  - **CIA**
  - **Police**
  - **Anyone with a badge**
- **Refer these individuals to the Office of the University Registrar or UW Police Department**



# HIPAA/Medical Records

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- FERPA does apply to Health Clinic/Disability Services/Counseling Services records.
- FERPA applies to most public and private postsecondary institutions and thus, to the records of the students these campuses service.
- These records will be either education records or treatment records under FERPA, both of which are excluded under the HIPAA privacy rule, even if the school is a HIPAA covered entity.





# Health and Safety Emergencies

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- “Articulable and significant threat to the health and safety of the student or other individuals”
- May release to local law enforcement, parents or outside entities if release is related to safety
- Must record release in student information system
  - To whom
  - What was released
  - Why (health and safety emergency)



# Health and Safety Emergencies

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- If you sense that a student may be in danger to himself or herself or to any other person:
  - Emergency? Call 911.
  - FERPA exists to protect the privacy of education records, but if a threat of danger or violence is present, and you need to report FERPA protected information to non-UW officials, you may do so.
  - Notify Office of the Registrar afterward of the nature of the release and what was released to whom.
- **Example UW Protocol When Releasing Disclosing PI Related to Health and Safety Emergency:**

<https://registrar.washington.edu/staffandfaculty/protocol-when-disclosing-personally-identifiable-student-information-related-to-a-health-or-safety-emergency-situation/>



# Faculty Issues

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- Peer Grading
- Letters of recommendation
- Releasing information to lawyers/law enforcement
- Posting grades/records
- Faculty may only access information related to the class they are teaching or advising
- Students can no longer ask/expect to be anonymous in the classroom



# Faculty Issues: Letters of Recommendations

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## Tips for Letters of Recommendation and FERPA

- Be sure to obtain a release from the student to complete any recommendation form or to provide a letter of recommendation asking for educational records beyond faculty observations
- Observations (i.e. student contributed significantly) are not FERPA educational records and can be given freely
- Permission to provide a recommendation can be written and/or in an email from the student. Save it for at least six months.
- Know exactly what you are allowed to comment on or not:
  - Grades/attendance/GPA – you must have written permission from the student to release these and any other student record data points
- Permission to complete an external reference form must be signed by the student, if it comes externally. Often this is on the form itself.
- Requests from federal entities must have student permission to release any student record information as part of a recommendation



# Faculty Issues: Advice for Navigating Remote Learning and FERPA

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- **UW Privacy Resources - <https://privacy.uw.edu/>**

## **Policies, Standards, and Guidelines:**

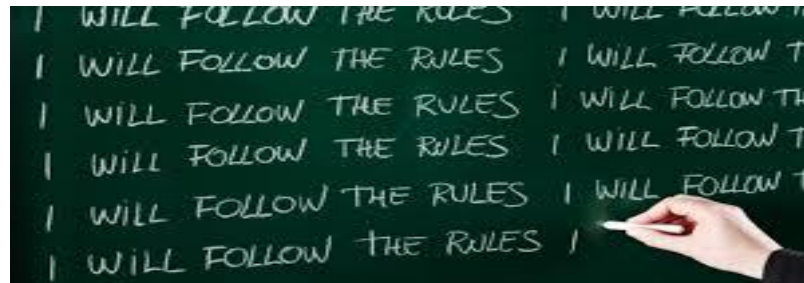
- [Online Monitoring Guideline](#)
- [Privacy Best Practices for Live Streaming](#)
- [Privacy Best Practices for Online Conferencing](#)



# Disciplinary Records

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- May release outcome of disciplinary hearing to victim of the crime
- Disciplinary records are not sole possession records and are therefore subject to FERPA
- May release information to institution where student seeks to enroll or has enrolled
- May release if related to a health and safety emergency



# Parents

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- **You may release to parents:**
  - With students' written permission
  - In connection with a health or safety emergency
  - If student is under 21 and violates law or school policy related to alcohol or a controlled substance
  - If student is a dependent for tax purposes



# Federal Employees/Military Requests

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- **Solomon Act**
  - May release data to each branch of the military once each term
  - Student is at least 17, registered in at least one credit
  - Can exclude opt-out students
  - May charge a fee
- **Federal/military reps must have a signed release to obtain student FERPA protected data (i.e. transcripts/bills)**





# Subpoenas/Judicial Orders

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- **Duces Tecum** – requires documents, papers for the court
- **Ad Testificandum** – requires a person to testify
- **Must make reasonable attempt to notify student**
  - 14 calendar days or 10 working days
  - Exception is for Federal Grand Jury – do not notify!
- **Must only respond to court with jurisdiction or to a federal district court**
- **Student may “quash” subpoena**
- **Consult college legal counsel**



# Third Parties

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- **May disclose personally identifiable information to:**
  - **Contractor**
  - **Consultant**
  - **Volunteer**
  - **Other party doing work normally done by institution**
- **Data belongs to student and is in custody of institution**
- **Must train on FERPA/no third party re-disclosures**
- **Put in annual FERPA notice**
- **May not re-disclose in response to subpoena or judicial order without institution notifying student**



# Registered Sex Offenders

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- **Disclosures under the Campus Sex Crimes Prevention Act**
  - FERPA law requires/encourages educational institutions to collect and maintain information on registered sex offenders
  - Notify faculty if underage student in class, registered sex offender must choose another section, do not notify under age student



# Using SSN/Passwords

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- **Social Security Numbers (any or all) cannot be used as directory information or to confirm identity of a student**
- **Schools should not allow easy to know information (such as date or place of birth, mother's maiden name) as a password prompt or a way to access educational records**
- **Take care when releasing information on the phone, use data (not SSN) known only to student**
  - i.e. classes taken/former instructor names



# Authorized Representatives

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## Requests for Information

- **May release with written agreements related to studies conducted for institution**
- **Authorized reps can be any national or state authority or educational body**
- **Can re-disclose**
  - **Ask them not to and to destroy unused data**
- **Personally identifiable information can move back and forth between institution and agency now without student's consent**
- **Agencies must abide by FERPA**



# Campus Leaders

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- **Do not assume campus leaders all know FERPA**
- **Take care when releasing information to school officials in a position of authority**
- **Is this a school official with a legitimate need to know?**
- **If release request violates FERPA, decline the request. If required to comply, make note of the request and to whom it was released in student's record.**



# How does the UW Privacy Office Navigate a FERPA Breach?

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# UW PRIVACY OFFICE REMEDIATION

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- UW Privacy - <https://privacy.uw.edu/>
- Report an Incident-Breach Notification
- <https://privacy.uw.edu/report/breach-notification/>





# UW PRIVACY OFFICE REMEDIATION

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- Report it to UW Privacy (Or University Registrar)
- Immediately isolate the systems or issues
- Preserve system logs
- Limit sharing of information - limit it to need to know
- Be clear about what is substantiated or not, if we do not know the facts that is ok
- Mark documents “draft” until finalized
  - Report:
    - Date of discovery
    - Date it occurred
    - Brief Description
    - Type of data involved
    - Number of identifiable records
    - Organization(s) or unit(s) involved
    - Students impacted
    - Systems involved
- Send names of impacted students to Registrar



# UW PRIVACY OFFICE REMEDIATION

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- Conduct your own forensic analysis
- Delete, move, or alter files on the system (preserve evidence)
- Blast email to all involved about the breach
- Spin or propagate unsubstantiated facts
- Do not communicate that there is a breach to individuals who are not:
  - The remediation decision makers
  - Involved in the incident management process
  - Those not impacted by the breach
  - External to your institution



# What Training Materials Are Available?

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# UW FERPA Training Resources

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- [FERPA@uw.edu](mailto:FERPA@uw.edu) (Email and Website)
- Campus FERPA Training Materials: 11-minute video and voluntary quiz

UW-Seattle

<https://registrar.washington.edu/staffandfaculty/ferpa/>

UW-Bothell

<https://www.uwb.edu/registration/policies/ferpa-for-staff-and-faculty>

UW-Tacoma

<https://www.tacoma.uw.edu/uwt/registrar/ferpa-uw-employees>



# When In Doubt, Do Not Give It Out!

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Knock, knock.  
Who's there?  
FERPA.  
FERPA, who?

I'm sorry, I can't  
tell you that.

someecards  
user card



# When in Doubt, Don't Give It Out

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- **Before releasing data, consider:**
  - Educational Record?
  - Student?
  - Signature required?
  - Must vs. may: do I have to release?
  - School official: do they provide a service to institution?
  - Need to know: job-related?
  - Is this directory information? Opt-out in place?
  - Institutional policies and procedures?



# When in Doubt, Don't Give It Out

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- You are *never* obligated to give out FERPA protected information.
- FERPA law states that schools have up to 45 days to provide students with access to their information and this does not require the information to be copied and released, but just to make the information visible to review.
- The more pressure you are receiving to release information, the more you want to assume that the person asking does not have the right to access the student's information.



Why did the chicken cross the road?

Your  
Questions?

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Sorry, I can't tell you without a release!