

# FERPA & STUDENTS PRIVACY

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CPCS557 Sensitive Information in a Wired World

# FERPA 101

- Family Educational Rights and Privacy Act of 1974
  - Also known as Buckley Amendment
- Protects the privacy of students education records
- Applies to all educational institutions that receive federal funding
- Specifies rights of parents and students
- Creates general ‘privacy framework’ for educational institutions

# WHO IS PROTECTED UNDER FERPA?

- FERPA applies to either eligible students or their parents
- Eligible student:
  - 18 years or older  
or
  - Enrolled in a postsecondary institution
- Parents rights are fully transferred when a student becomes an 'eligible student'

# 4 FERPA RIGHTS

- Inspect and review their own education record within 45 days
- Request changes to their record if inaccurate or misleading
- Have some control over the release of their record
- File a complaint with the U.S. Department of Education

# PARENTS' RIGHTS

- Parents of eligible students generally do not have any rights under FERPA
- Exceptions
  - Parents may be notified of alcohol or drug violations by students under the age of 21
  - Parents supply a proof that the student is a dependent for tax purposes
    - Paying tuition is not enough!
  - Parents have a written consent from their child

# EDUCATION RECORD

- Directly related to a student
- Maintained by an educational institution, or a party acting for the institution, or a person acting for that institution
- Examples
  - Grades, GPA, SSN, schedule, total number of credits, gender, race, ethnicity, nationality, emergency contact information, financial information, etc.

# (NOT) EDUCATION RECORD

- Sole possession records
  - Record that is not shared with anyone and is maintained solely by one person (faculty, staff, etc.)
  - If sole possession records are shared with anyone, they immediately become a part of the education record
- Example
  - If a professor keeps private notes about her students and does NOT share them with anyone else, they are sole possession records
  - The moment another faculty member is shown these notes, they become a part of ER and can be inspected
  - (At least in theory)

# DIRECTORY INFORMATION

- Student information that would not generally be considered harmful or an invasion of privacy if disclosed
- Can be released without student's consent
  - Students can request not to disclose directory information
- Very, very ambiguous and case specific



# YALE'S DIRECTORY INFORMATION<sup>[4]</sup>

- Name
- Dates of attendance
- School or residential college affiliation
- Local and other addresses and local land line telephone number
- E-mail address and University person identifier (UPI)
- Date and place of birth
- Major field of study enrollment status
- Participation in University-sponsored extracurricular activities and sports
- Height and weight of members of athletic teams
- Degrees, honors, and awards received
- Previous educational institution(s) attended
- Name and address of parents or guardian
- Picture or video of the student

# EXCEPTIONS

- Legitimate educational interests
  - Necessary for employees to carry out their duties
  - ‘Need to know’ principle
    - (curiosity is not a legitimate educational interest)
- Emergencies
  - Immediate emergency or disaster (not a *possible* or *eventual* emergency)
- Complying with other laws
  - Law enforcement requests, subpoenas, court orders, etc.

# ENFORCEMENT

- Enforced by the Secretary of Education
- Administered by the Family Policy Compliance Office of the Department of Education
- Some assistance provided by the Privacy Technical Assistance Center
- FERPA violations investigated by FPCO
  - And the fun begins here...

# ENFORCEMENT CONT.

- Let's assume you file a complain that your FERPA rights have been violated
- FPCO will investigate whether there was a violation and whether it was systematic
- Consequences
  - Request for voluntary compliance  
or
  - Termination of funds

*“Enforcement is like choosing between a squirt gun and a nuclear bomb, when perhaps a rifle may be more appropriate” [5]*

# ISSUES

- FERPA applies to the policy or practice of a school, not to individual cases
  - No personal right of action
  - No right of redress
- If Yale discloses your entire education record (by *mistake*) but there is no policy/practice to do so, then Yale is still in compliance with FERPA

# ISSUES CONT.

- Everyone who has access to ER is responsible for safeguarding the privacy and confidentiality of ER
  - Everyone = No one ?
- Does not reflect technological advances
  - No distinction between physical and electronic files
  - No specification for online teaching and teaching with modern technologies
- No one really understands FERPA and/or is fully aware of its implications

# “BEST” WAY TO COMPLY

*“Assume that all of your students must provide written consent before any education records may be released to anyone other than the student” [6]*



# FERPA IN THE 21<sup>ST</sup> CENTURY

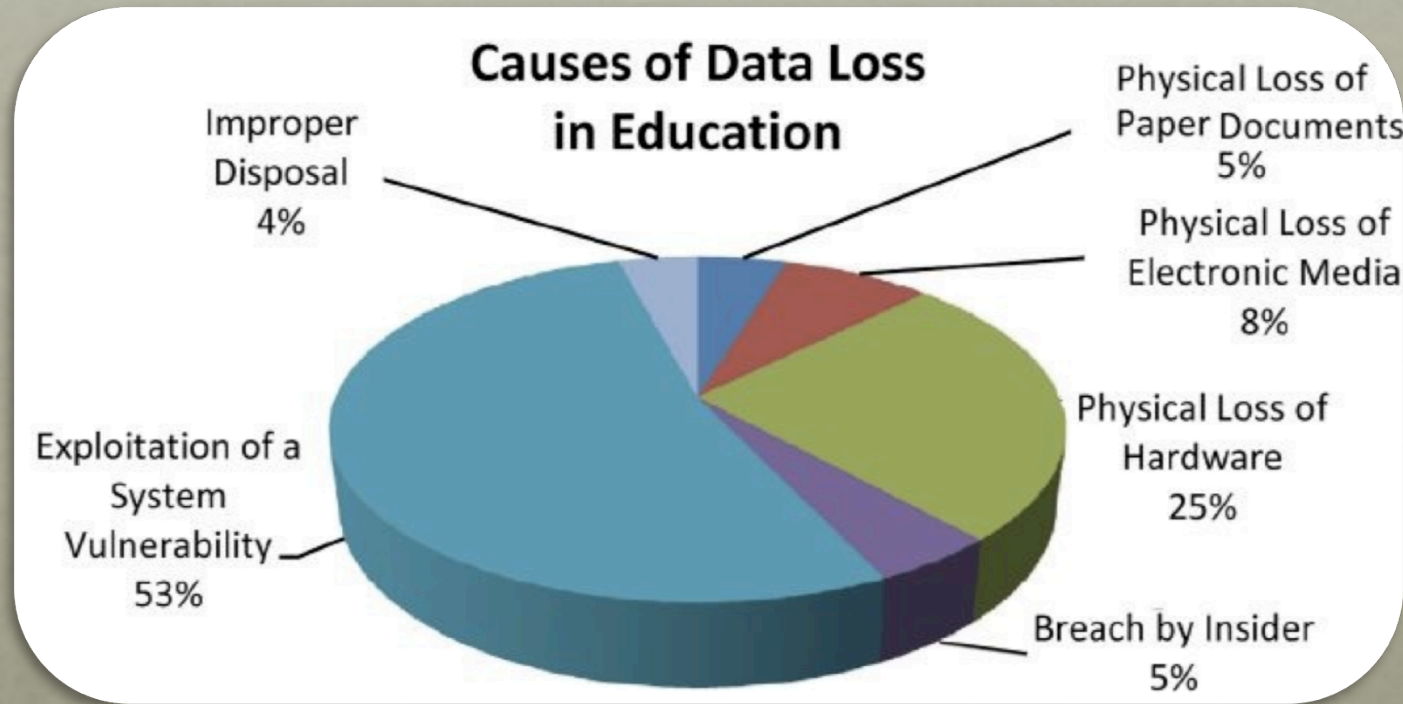
- North Carolina State University's excellent disclaimer

*“Please note that FERPA was written before the Internet existed, it is an awkward fit to modern teaching, and concerns about the workability or usefulness of FERPA are better addressed to the U.S. Department of Education.” [7]*

# REQUIREMENTS

- Schools required to maintain ‘direct control’ over the disclosure of education records to outside parties
- Schools required to use *reasonable methods* to secure data and ensure that school officials obtain access to only those education records in which they have legitimate educational interests

*“Computer systems at colleges and universities have become favored targets because they hold many of the same records as banks but are much easier to access”*



[8]

# FERPA IN THE 21<sup>ST</sup> CENTURY

- New meaning of education record?
  - Emails, chats, discussion forums
- Course Management Systems
- Online Courses
- Third Party Systems
  - TurnItIn has been criticized for potential FERPA violation because papers are submitted without explicit permission

Q&A?

THANK YOU!

# RESOURCES

- [1] Family Policy Compliance Office, U.S. Department of Education  
<http://www2.ed.gov/policy/gen/guid/fpc/index.html>
- [2] American Association of Collegiate Registrars and Admissions Officers  
<http://www.aacrao.org/federal-relations-and-public-policy/compliance/ferpa.aspx>
- [3] Privacy Technical Assistance Center <http://nces.ed.gov/programs/ptac/>
- [4] Yale University <http://divinity.yale.edu/sites/default/files/ferpa.pdf>
- [5] Courtney S. Shiley, “Putting the Rights into the Family Education Rights and Privacy Act: Enforcement and the Private Right of Action”, MIT, June 2003,  
<http://stuff.mit.edu/people/cshiley/Thesis/DANCE-DANCE-FERPA.pdf>
- [6] FERPA BASICS, OSU Offices of Academic Affairs and Legal Affairs, October 6, 2004
- [7] NC State University [http://www.ncsu.edu/general\\_counsel/legal\\_topics/ferpa/](http://www.ncsu.edu/general_counsel/legal_topics/ferpa/)
- [8] DigiCert, Protecting the Security of Education Records”