

RECORDS ACCESS MANUAL



PREPARED BY:

Office of General Counsel
The California State University

REVISED JULY 2007

RECORDS ACCESS MANUAL
Table of Contents

- I. INTRODUCTION 1

- II. CALIFORNIA PUBLIC RECORDS ACT..... 2
 - A. The Public’s Access to Records..... 2
 - B. Definition of a “Public Record” Subject to the Act..... 2
 - C. Records Excepted from Disclosure..... 3
 - D. Response to a Public Records Act Request 4
 - E. Providing the Records..... 6
 - F. Electronic Records 7
 - G. Remedy for Violations of the Public Records Act..... 8

- III. CALIFORNIA INFORMATION PRACTICES ACT 9
 - A. Purpose..... 9
 - B. Definition of “Personal Information” Protected by the Act..... 9
 - C. CSU’s Obligations Under the Act..... 9
 - D. Authorized Disclosures 10
 - E. Individuals’ Rights Under the Act 12
 - F. Required Disclosure of Security Breach..... 12
 - G. Remedies for Violation of the Act :..... 13
 - H. Use of Social Security Numbers (Effective 7/1/05)..... 13

- IV. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT 15
 - A. Purpose and Scope 15
 - B. Definition of an “Education Record” Protected by the Act..... 15
 - C. Records Excepted from the Act 15
 - D. Directory Information 16
 - E. Individuals’ Rights Under FERPA 17
 - F. Disclosure of Protected Education Records or Information to
Third Parties 18
 - G. Disclosures to the U.S. Citizenship and Immigration
Services (USCIS) 19
 - H. Disclosures Permitted Without Consent 20
 - I. Recordkeeping of Disclosures 23
 - J. Challenging the Contents of an Education Record 24
 - K. Remedy for Violation of FERPA..... 24

V.	FREQUENTLY ASKED QUESTIONS.....	25
A.	California Public Records Act	25
B.	California Information Practices Act	36
C.	FERPA	37

I.
INTRODUCTION

This manual provides an overview of the three most significant statutes governing access to records in the possession of the California State University – (1) the California Public Records Act, which is now embedded in the constitution; (2) the Information Practices Act; and (3) the Family Educational Rights and Privacy Act (commonly known as FERPA or the Buckley Amendment). While there are other statutes that govern more specific categories of records, these three are the most generic and come up the most frequently. Inquiries about other statutes should be directed to University Counsel assigned to the campus where the questions arise.

It is important at the outset to understand that the public purposes served by these three statutes are not the same. The Public Records Act was enacted to give the public information about how their business is being conducted; it calls for the **disclosure** of public records. The Information Practices Act and FERPA, by contrast, were enacted to protect the privacy of persons who are the subject of public records; they mandate **non-disclosure** of those records. These fundamental differences should be kept in mind when evaluating the disclosure of any records that are subject to these statutes.

The discussion in this manual is not exhaustive. Consultation with University Counsel assigned to the campus on which specific questions arise is encouraged.

II.
CALIFORNIA PUBLIC RECORDS ACT

A. The Public's Access to Records

The purpose of the California Public Records Act is to promote “access to information concerning the conduct of the people’s business [which is] a fundamental and necessary right of every person in this state.”¹

In 2004, California voters passed a ballot proposition amending the California Constitution to protect the public’s right of access to government records and government meetings.² This constitutional provision does not go beyond those rights already present in the Public Records Act, but gives greater emphasis to the public’s right to access government information. This new constitutional amendment makes clear that the public’s right of access must be broadly construed, and all exceptions narrowly construed.

B. Definition of a “Public Record” Subject to the Act

Public records subject to disclosure are defined to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”³

¹ Government Code § 6250.

² Art. I, Section 3, California Constitution.

³ Government Code § 6252(e) (emphasis added).

RECORDS ACCESS MANUAL
Revised August 2006

The term “writing” is further broadly defined to include:

“...any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”⁴

All records maintained by the CSU are potentially subject to disclosure under the Act, including both electronic and hard copy, unless they fall into a clearly authorized exception. Records of auxiliary organizations become subject to disclosure under the Act where they have been made a part of CSU records, or used by a CSU employee in the performance of his/her job. As stated in *California State University v. Superior Court*, 90 Cal. App. 4th 810, 824 (2001):

“The mere custody of a writing by a public agency does not make it a public record, but if a record is kept by an officer because it is necessary or convenient to the discharge of his official duty, it is a public record.”

C. Records Exempt from Disclosure

There are numerous exceptions established by the Act. Some of the more common are:

- preliminary drafts, notes, or memoranda not retained in the ordinary course of business, when the public interest in withholding clearly outweighs the public interest in disclosure;⁵

⁴ Government Code § 6252(e).

⁵ Government Code § 6254(a).

RECORDS ACCESS MANUAL
Revised August 2006

- records pertaining to pending litigation to which the CSU is a party until the litigation has been finally adjudicated or otherwise dismissed;⁶
- personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;⁷
- records exempted or prohibited from disclosure by federal or state law, including the law of privilege;⁸
- any record, where the public interest served by withholding clearly outweighs the public interest to be served by disclosure.⁹

An agency is not required to provide a list of documents withheld under an exemption.¹⁰ However, courts have sometimes ordered such a list when a lawsuit seeking to compel the disclosure of public records is filed.

The application of these exceptions to a particular set of circumstances is rarely free from doubt. If challenged, the courts are required to construe every exception narrowly, and CSU has the burden of establishing that the record was properly not disclosed.

D. Response to a Public Records Act Request

CSU must respond to a Public Records Act request within ten days after receipt. There can be confusion about what constitutes a request under the Act, as opposed to an ordinary request for information. Obviously, something in writing that formally references the Act constitutes such a request. But something less formal, which does not reference the Act at all, can also be considered a Public Records Act request. In terms of good relationships with the press or others, it may be a good practice in some instances to

⁶ Government Code § 6254(b).

⁷ Government Code § 6254(c).

⁸ Government Code § 6254(k).

⁹ Government Code § 6255.

¹⁰ *Haynie v. Superior Court*, 26 Cal. 4th 1061, 1073-1074 (2001).

RECORDS ACCESS MANUAL
Revised August 2006

construe a less formal request for records or information as a formal request under the Public Records Act. Consultation with University Counsel on the proper construction of a particular request is encouraged.

The Public Records Act requires public agencies to assist members of the public in making “a focused and effective request that reasonably identifies an identifiable record or records.”¹¹ This means that, in some instances, CSU must engage in a dialogue with a requesting party to assist in record identification, describe the information technology and physical location, and/or provide suggestions to overcome any practical basis for denying access to records or information. CSU must always facilitate, not frustrate, the production of relevant information to the public to the extent reasonable under the circumstances.

If the records requested are clear from the request and are made available, or if the requested records are protected by one of the specific exceptions in the law, further dialogue with the requesting party is not required.¹²

CSU may, when appropriate, respond to a Public Records Act request by stating that no records exist that respond to the request and therefore none can be produced. However, this response is permissible only if CSU has first made a reasonable effort to obtain additional clarifying information from the requester that will help identify the record(s) sought, and, where appropriate, conducted a reasonable search.¹³

It is not necessary to provide the actual records within the ten-day initial response time, but rather a written response as to whether records will or will not be disclosed. If records are available for disclosure, they must be made available for inspection or copying within a **reasonable** amount of time based on their volume and complexity. If records are not available for disclosure, the written response must indicate the legal reasons why, and identify the names and titles or positions of each person responsible for

¹¹ Government Code § 6253.1(a).

¹² Government Code § 6253.1(d).

¹³ Government Code § 6253.1(b).

RECORDS ACCESS MANUAL
Revised August 2006

the denial.¹⁴ The reasons for not disclosing records should be stated clearly and should be sufficient to justify the University's decision in a later court dispute.¹⁵

In unusual circumstances,¹⁶ the ten-day time limit for CSU's initial response may be extended by written notice for up to 14 more days, by setting forth the reasons why an extension is required and the date on which the response will be provided. The written response must also contain an estimated date on which the records will be made available.

Each campus should have a central contact point for coordination of Public Records Act requests. The CSU General Counsel should be notified of all incoming requests, so they can be coordinated throughout the system. Each campus should respond to requests for records maintained at that campus. University Counsel are available to respond to questions and provide advice.

E. Providing the Records

Public records are generally open to inspection at all times during CSU's normal business hours. There is no charge for inspecting records. A charge may be imposed for the "direct" cost of copying the records.¹⁷ This includes the expense of the duplicating equipment, supplies, and the cost of the staff operating the equipment. It does **not** include the cost of locating, retrieving, or inspecting records.¹⁸ Records are not required to be copied or provided until appropriate costs have been paid by the requester.

¹⁴ Government Code § 6253(d).

¹⁵ Government Code § 6255.

¹⁶ "Unusual circumstances" means the need: (1) to search for and collect records from distant locations; (2) to search for, collect and appropriately examine a voluminous amount of records; (3) for consultation with another agency also having substantial interest in the matter; or (4) to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

¹⁷ Government Code § 6253(b).

¹⁸ *North County Parents Organization for Children with Special Needs v. Department of Education*, 23 Cal. App. 4th 144 (1994).

RECORDS ACCESS MANUAL
Revised August 2006

CSU's direct cost of duplication has been established at \$0.20 per page, for records up to 8½ x 14 in size, irrespective of whether they are produced in hard or electronic format.¹⁹ The CSU's direct cost of duplicating unusual records – e.g., blueprints, computer disks, DVDs, electronic back-up tapes – are calculated on a case-by-case basis. Note that some statutes establish specific charges for specific types of records,²⁰ which supercede the CSU's established charge.

F. Electronic Records

If a request seeks records in a specific format – e.g., hard or electronic format – they must be produced in that format, so long as they were created in that format originally.²¹ It is not necessary to reconstruct records that were once electronic back into that format, if they have been changed.²² It is not necessary to produce records in electronic format if it would jeopardize the security or integrity of the original record or any proprietary software in which it is maintained.²³ It is appropriate to offer to produce records in an electronic format, but it is not permissible to make them available *only* in electronic format.²⁴

The requester *must* bear any added cost of producing electronic records if (1) the request calls for production out of sequence with otherwise regularly scheduled intervals; or (2) the request requires data compilation, extraction, or programming.²⁵ These additional costs cover the “cost to construct a record,” and the “cost of programming and computer services necessary to produce a copy of the record.”²⁶

¹⁹ See Coded Memorandum AD 06-02.

²⁰ Government Code § 6253(b)(For example, costs for copying California Conflict of Interest Form 700s are set by statute at \$0.10 per page.)

²¹ Government Code § 6253.9(a)(2).

²² Government Code § 6253.9(c).

²³ Government Code § 6253.9(f).

²⁴ Government Code § 6253.9(d), (e).

²⁵ Government Code § 6253.9(b).

²⁶ *Id.*

RECORDS ACCESS MANUAL
Revised August 2006

G. Remedy for Violations of the Public Records Act

A person who has been denied access to a public record may file a lawsuit to enforce his/her right to inspect or receive a copy of the public record. If the court finds that refusal to disclose the record was unjustified, the court may enter an order requiring its disclosure. The court may also order the public entity to pay reasonable attorneys' fees and court costs. If the court finds the refusal to disclose was justified, the CSU may recover its attorneys' fees only where it can demonstrate that the request was clearly frivolous.

III.
CALIFORNIA INFORMATION PRACTICES ACT

A. Purpose

The California Information Practices Act was enacted in 1977 to protect individuals' privacy rights in "personal information" contained in state agency records. The Act reflects the Legislature's determination that the right to privacy is in jeopardy and that the maintenance and dissemination of private information should be subject to strict limits.²⁷

B. Definition of "Personal Information" Protected by the Act

"Personal information" protected by the Act is defined as any information maintained by a state agency that identifies or describes an individual, including, but not limited to, name, Social Security Number, physical description, home address, home telephone number, education, financial matters, medical or employment history, and statements made by or attributed to the individual.²⁸

C. CSU's Obligations Under the Act

A state agency is obligated to maintain only that personal information which is relevant and necessary to accomplish its purpose.²⁹ It must collect that information, to the extent practicable, from the individual directly and not from other sources.³⁰ Where information is obtained from other sources, the agency must maintain a record of those sources from which the information was obtained.³¹ The agency must designate an employee to be responsible for the agency's compliance with the Act.³²

²⁷ Civil Code § 1798.1.

²⁸ Civil Code § 1798.3.

²⁹ Civil Code § 1798.14.

³⁰ Civil Code § 1798.15.

³¹ Civil Code § 1798.16.

³² Civil Code § 1798.22.

D. Authorized Disclosures

A state agency may not disclose personal information except in certain limited circumstances specified in the Act. The more common exceptions permit disclosure in the following circumstances.³³

- to the individual to whom the information pertains;
- where the individual to whom the information pertains has given voluntary written consent to disclose the information to an identified third party no more than 30 days before the third party requested it, or within the time limit agreed to by the individual in the written consent;
- to an appointed guardian or conservator or a person representing the individual provided it can be proven with reasonable certainty through CSU forms, documents or correspondence that the person is the authorized representative of the individual to whom the information pertains;
- to persons within the agency who need the information to perform their functions;
- to another governmental agency when required by law;
- in response to a request for records under the California Public Records Act (unless the Public Records Act provides an exception);
- where there is advance written assurance that the information is to be used for purposes of statistical research only and where the information will only be redisclosed in a form that does not identify any individual;

³³ Civil Code § 1798.24

RECORDS ACCESS MANUAL
Revised August 2006

- where the agency has determined that compelling circumstances exist which affect the health or safety of the individual to whom the information pertains, and notification is transmitted to the individual at his or her last known address, and disclosure does not conflict with other state or federal laws;
- pursuant to a subpoena, court order, or other compulsory legal process if, before disclosure, the agency notifies the individual to whom the record pertains, and if the notification is not prohibited by law;
- pursuant to a search warrant;
- to a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

The above list is a general summary of permitted disclosures under the Act. Some of these disclosures may impose requirements not included in this discussion. Consultation with University Counsel before releasing personal information covered by the Information Practices Act is encouraged.

E. Individuals' Rights Under the Act

Individuals have the right to inquire and be notified about whatever personal information a state agency maintains concerning them.³⁴ An opportunity to inspect any such personal information must be afforded within 30 days of any request.³⁵ If the record containing the personal information also contains personal information about another individual, that information must be deleted from the record before it is disclosed. Individuals may request copies of records containing any personal information about them, and those copies must be provided within 15 days of the inspection.³⁶ The agency may charge up to 10 cents per page for making any copies.³⁷ Individuals may request an agency to amend personal information concerning them and, if the request is denied, the individual may request a review of that decision by the head of the agency or his/her designee.³⁸

F. Required Disclosure of Security Breach

An agency that owns or licenses computerized data that includes personal information must disclose any breach of system security to California residents whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.³⁹ The disclosure must be made as quickly as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system.⁴⁰ "Personal information" in this context means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social Security number; (2) driver's license number or California Identification Card number; (3) account number (which could include a student identification number), credit or debit card number, in combination with any required security code, access code, or

³⁴ Civil Code § 1798.32.

³⁵ Civil Code § 1798.34(a).

³⁶ Civil Code § 1798.34(b).

³⁷ Civil Code § 1798.33.

³⁸ Civil Code §§ 1798.35 and 1798.36.

³⁹ Civil Code § 1798.29(a), effective July 1, 2003.

⁴⁰ Civil Code § 1798(a), (c).

RECORDS ACCESS MANUAL
Revised August 2006

password that would permit access to an individual's financial account.⁴¹ The statute provides specific methods for providing the required disclosure to affected individuals. Contact University Counsel if such a disclosure is required.

G. Remedies for Violation of the Act

Individuals may file suit for failure to comply with the Act, and are entitled to an award of reasonable attorneys' fees, if successful.

H. Use of Social Security Numbers

Effective July 1, 2005, CSU must comply with Civil Code section 1798.85, which restricts the use of Social Security Numbers. Under the new law, it is unlawful to do any of the following:

- (1) Intentionally communicate or otherwise make an individual's Social Security Number available to the general public;
- (2) Print an individual's Social Security Number on any card required for the individual to access products or services, such as a library card or university identification card;
- (3) Require an individual to transmit his or her Social Security Number over the Internet, unless the connection is secure or the Social Security Number is encrypted;
- (4) Require an individual to use his or her Social Security Number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site; or

⁴¹ Civil Code § 1798(d).

RECORDS ACCESS MANUAL
Revised August 2006

- (5) Print an individual's Social Security Number on any materials that are mailed to the individual, unless state or federal law requires the Social Security Number to be on the document to be mailed. But Social Security Numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, or to confirm the accuracy of the Social Security Number. Even if it is permissible to mail a Social Security Number, however, the number may never be printed, in whole or in part, on a postcard or other mailer that does not require an envelope, or which is visible on the envelope or without the envelope having been opened.

IV.
FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

A. Purpose and Scope

The purpose of the Family Educational Rights and Privacy Act (commonly known as FERPA or the Buckley Amendment), is to provide access for parents and students over the age of 18 (or attending a postsecondary institution) to their children's/their own, "education records."⁴² FERPA also protects parents'/students' privacy in those records by prohibiting their disclosure, or information contained in them, without written consent. FERPA applies to student records at any school that receives federal funds.

B. Definition of an "Education Record" Protected by the Act

FERPA defines an education record subject to the Act to include "those records, files, documents, and other materials that (1) contain information directly related to a student and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution."⁴³

C. Records Excepted from the Act

For purposes of FERPA, the term "education records" does not include:

- records of instructional, supervisory or administrative personnel kept in the sole possession of the maker, that are used only as a personal memory aid, and that are not accessible or revealed to any other person except a temporary substitute for the maker of the record;⁴⁴

⁴² The Department of Education has a useful series of question-and-answers about parents' access to student information at: <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html>

⁴³ 20 U.S.C. § 1232g(a)(4)(A).

⁴⁴ 20 U.S.C. § 1232g(a)(4)(B)(i) and 34 C.F.R. § 99.3.

RECORDS ACCESS MANUAL
Revised August 2006

- records separately maintained by a law enforcement unit of an educational institution that were created by the law enforcement unit for the purpose of law enforcement;⁴⁵
- records made in the normal course of business concerning an employee of an educational institution who is also a student, provided that the records relate exclusively to the individual in his or her capacity as an employee and are not available for use for any other purpose (*Note, however, that records relating to a student who is employed as a result of his or her status as a student are not subject to this exception, but rather are education records as defined by FERPA.*);⁴⁶
- records of a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in a professional capacity, made, maintained or used only in connection with the provision of treatment to the student, and which are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.⁴⁷ (For purposes of this exclusion, "treatment" does not include remedial education or activities that are part of a program of instruction.)

D. Directory Information

FERPA defines "directory information" as "information contained in an education record that would generally not be considered harmful or an invasion of privacy if disclosed, including but not limited to, the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height

⁴⁵ 20 U.S.C. § 1232g(a)(4)(B)(ii).

⁴⁶ 20 U.S.C. § 1232g(a)(4)(B)(iii).

⁴⁷ 20 U.S.C. § 1232g(a)(4)(B)(iv).

RECORDS ACCESS MANUAL
Revised August 2006

of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended.⁴⁸ Note that FERPA permits, but does not require that each of these items be designated as directory information. Each CSU campus makes its own determination of which categories of information are appropriate to designate as directory information.

The University may disclose directory information where it has given public notice to students of the types of information the University has designated as “directory information,” and provided individual students the opportunity to opt out of having any or all of those types of information disclosed as “directory information.”⁴⁹ For students who “opt out,” directory information is not available.

E. Individuals’ Rights Under FERPA

FERPA entitles parents/students access to educational records within a reasonable period of time, but in no case later than 45 days after the request is made.⁵⁰ If a record contains information about more than one student, the requesting student is only entitled to the portion of the record relating to him/her.⁵¹ Students are not entitled under FERPA to the financial records of their parents.⁵²

In addition, FERPA entitles parents/students to:

- challenge the contents of their education records;⁵³
- receive annual notification of their rights under FERPA;⁵⁴

⁴⁸ 20 U.S.C. § 1232g(a)(5)(A) and 34 C.F.R. § 99.3

⁴⁹ 34 C.F.R. § 99.37.

⁵⁰ 20 U.S.C. § 1232g(a)(1)(A) and 34 C.F.R. § 99.10.

⁵¹ 20 U.S.C. § 1232g(a)(1)(A) and 34 C.F.R. § 99.12(a).

⁵² 20 U.S.C. § 1232g(a)(1)(C)(i) and 34 C.F.R. § 99.12(b)(1).

⁵³ 34 C.F.R. § 99.20-99.22.

⁵⁴ 34 C.F.R. § 99.37.

RECORDS ACCESS MANUAL
Revised August 2006

- file complaints with the Department of Education regarding the failure of the institution to comply with FERPA.⁵⁵

F. Disclosure of Protected Education Records or Information to Third Parties

Except as otherwise provided, a valid written consent to disclose any record subject to FERPA is required before that record may be surrendered to any third party.⁵⁶ The consent must be in writing and must be signed and dated by the parent/student whose records are involved. It must state the purpose of the disclosure and specify to whom the disclosure is to be made. Disclosure is strictly limited to the party designated, and that party does not gain authority to disclose the record to any other party by virtue of having the record disclosed to him/her. When a disclosure is made with consent, and if the student or parent requests, the university must provide the student (not the parent) with a copy of the records that were disclosed.⁵⁷

Electronic Signatures

FERPA now permits postsecondary institutions to accept a signed and dated written consent in electronic form as a valid consent to disclose education records.⁵⁸ Under the new regulation:

- (d) “Signed and dated written consent” under this part may include a record and signature in electronic form that –
- (1) Identifies and authenticates a particular person as the source of the electronic consent; and
 - (2) Indicates such person’s approval of the information contained in the electronic consent.

⁵⁵ 34 C.F.R. § 99.63.

⁵⁶ 34 C.F.R. § 99.30.

⁵⁷ Id.

⁵⁸ 34 C.F.R. § 99.30(d) (effective May 21, 2004).

RECORDS ACCESS MANUAL
Revised August 2006

There are countless ways to comply with these new requirements and, as the technology develops, new systems will become available. According to the Family Policy Compliance Office, “The new regulation is purposefully narrow in scope and intended to be technology neutral” so that schools will have unlimited flexibility as the technology in this field changes.

While there is no single “right way” to comply, FPCO has recognized Federal Student Aid standards as a safe harbor for accepting electronic signatures under FERPA. The FSA Standards are available at: <http://www.ifap.ed.gov/dpcletters/gen0106.html>. Schools that choose to comply with this safe harbor should use the set-up and security measures described (particularly sections 3 through 7), as guidance.

Under any alternative method, a school must take steps to ensure that the eligible student, and not some other party, is the person giving the consent. A school may issue PIN numbers to students for this purpose, but no one else – not even school administrators – may have access to them. Student PINs should be encrypted and maintained in a secure database to ensure that they are not generally accessible to school officials or others.

A school should also take into account the requirements of its own Information Security Policy, adopted in accord with the Gramm-Leach-Bliley Act.

G. Disclosures to the U.S. Citizenship and Immigration Services (USCIS)

The USCIS requires foreign students attending an educational institution under an F-1 visa to sign Form I-20, which contains a consent provision allowing disclosure of information to the USCIS. The provision states, “I authorize the named school to release any information from my records which is needed by the USCIS pursuant to 8 C.F.R. 214.3(g) to determine my nonimmigrant status.” According to the Department of Education, which enforces FERPA, “This consent is broad enough to permit an educational institution to release personally identifiable information of a student who has signed a Form I-20 to the USCIS for the purpose of allowing the USCIS to determine the student’s nonimmigrant status.” According to the Department, students who have an M-1

RECORDS ACCESS MANUAL
Revised August 2006

or J-1 visa have signed similar consents, and their education records may also be disclosed to the USCIS.⁵⁹

H. Disclosures Permitted Without Consent

A written consent to disclose records subject to FERPA to third parties is not required in certain circumstances, including the following:⁶⁰

- to parents of a minor student, if that minor is still claimed by the parents as a dependent for income tax purposes;⁶¹
- to other officials of the agency who the agency has determined to have legitimate educational interests in the records (in appropriate circumstances, this may include contractors used to perform agency functions);⁶²
- to officials of another school where the student seeks or intends to enroll, if the affected student has been notified and provided an opportunity to challenge the content of any records to be released;⁶³
- to authorized representatives of the Comptroller General of the United States, the Secretary of the Department of Education or state educational authorities where the information is necessary to audit and evaluate federally supported education programs or to enforce legal requirements that relate to such programs;⁶⁴

⁵⁹ “Dear Colleague” letter dated 4/12/02, LeRoy S. Rooker, Director, Family Policy Compliance Office.

⁶⁰ 34 C.F.R. § 99.31.

⁶¹ 34 C.F.R. § 99.31(a)(8).

⁶² 34 C.F.R. § 99.31(a)(1).

⁶³ 34 C.F.R. § 99.31(a)(2).

⁶⁴ 34 C.F.R. § 99.31(a)(3).

RECORDS ACCESS MANUAL
Revised August 2006

- to the Student and Exchange Visitor Information System (SEVIS), the USCIS internet-based system for tracking, monitoring and reporting information to the USCIS about international students;⁶⁵
- in connection with a student's application for, or receipt of, financial aid;⁶⁶
- to organizations conducting studies for educational agencies in connection with predictive tests, student aid programs, or improvements to instruction;⁶⁷
- to accrediting organizations for accrediting functions;⁶⁸
- to appropriate parties if the university determines that knowledge of such information is necessary to protect the health or safety of the student or other persons (*Note: This is a limited exception that generally applies only to a narrowly tailored release of information where the imminent danger to the student, other students, or other members of the campus community is apparent, or where there is an immediate need for the information to avert or diffuse serious threats to the safety or health of a student or other individuals*);⁶⁹
- to comply with a judicial order or subpoena so long as a reasonable effort is made to notify the student in advance of compliance unless the disclosure is in response to:⁷⁰
 - A Federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or

⁶⁵ 20 U.S.C. § 1232g(b)(1)(C); 34 C.F.R. §§ 99.31(a)(3); and 8 U.S.C. § 1372(a) (added by the USA PATRIOT Act).

⁶⁶ 34 C.F.R. § 99.31(a)(4).

⁶⁷ 34 C.F.R. § 99.31(a)(6).

⁶⁸ 34 C.F.R. § 99.31(a)(7).

⁶⁹ 20 U.S.C. § 1232g(b)(1)(I) and (h); 34 C.F.R. § 99.31(a)(10).

⁷⁰ 34 C.F.R. § 99.31(a)(9)(i-ii).

RECORDS ACCESS MANUAL
Revised August 2006

- Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;
- to comply with a court order to produce education records sought by the U.S. Attorney General (or designated federal officer or employee in a position not lower than Assistant Attorney General) based on “specific and articulable facts giving reason to believe that the education records are likely to contain information” relevant to the investigation or prosecution of terrorist acts;⁷¹
- to counsel or the court when the student whose records are being disclosed has sued the University, provided such a disclosure is relevant for the University to defend itself in the lawsuit;⁷²
- to the victim only, the final results of a disciplinary hearing conducted by the institution against the alleged perpetrator of a “crime of violence”⁷³ or of a “non-forcible sex offense,”⁷⁴ whether or not the charges are sustained;⁷⁵
- the final results of a student disciplinary hearing that upholds a charge of a “crime of violence” or a “non-forcible sex offense”;⁷⁶

⁷¹ 20 U.S.C. § 1232g(j) (added by the USA PATRIOT Act).

⁷² 34 C.F.R. § 99.31(a)(9)(iii)(B).

⁷³ For these purposes, a “crime of violence” includes the following: arson, assault offenses, burglary, criminal homicide (manslaughter by negligence), criminal homicide (murder and non-negligent manslaughter, destruction/damage/vandalism of property, kidnapping/abduction, robbery, and forcible sex offenses. 99 C.F.R. § 99.39. See also, definitions of these “crimes of violence” in Appendix A to 34 C.F.R. Part 99.

⁷⁴ For these purposes, a “non-forcible sex offense” includes the following: statutory rape and incest. 99 C.F.R. § 99.39. See also, definitions of these “non-forcible sex offenses” in Appendix A to 34 C.F.R. Part 99.

⁷⁵ 34 C.F.R. § 99.31(a)(13).

⁷⁶ 34 C.F.R. § 99.31(a)(14).

RECORDS ACCESS MANUAL
Revised August 2006

- to parents of a student under the age of 21 regarding a violation by their child of laws or University policy relating to alcohol use or drug use or possession.⁷⁷

Nothing in FERPA prohibits a campus official from disclosing to Federal, State, or local law enforcement authorities information that is based on that official's personal knowledge or observation and not derived from an education record. A campus official may, based on his or her own observations, notify law enforcement officials of suspicious activity or behavior.

The fact that a record, or information contained in a record, may be disclosed without violating FERPA does not mean that the University must disclose that record or that its disclosure would not violate another law. For example, the exception in FERPA for disclosure to parents of drug or alcohol violations by students under the age of 21 specifically states that it does not preempt state privacy laws that bar disclosure.⁷⁸ In California, the Information Practices Act (discussed earlier in this material) bars this disclosure except in very limited circumstances.⁷⁹ Therefore, there may be reasons other than FERPA that justify non-disclosure.

I. Recordkeeping of Disclosures

The campus must maintain a record of every request for access and every disclosure of personally identifiable information from each student's education records.⁸⁰ This requirement does not apply to Federal grand jury or other law enforcement subpoenas where a court or the issuing agency has ordered nondisclosure,⁸¹ nor to court orders that were sought by the U.S. Attorney General (or appropriate designee) based on "specific

⁷⁷ 34 C.F.R. § 99.31(a)(15).

⁷⁸ 34 C.F.R. § 99.31(a)(15)(ii).

⁷⁹ See, e.g., Civil Code § 1798.24(i).

⁸⁰ 34 C.F.R. § 99.32(a).

⁸¹ 34 C.F.R. § 99.32(c)(5).

RECORDS ACCESS MANUAL
Revised August 2006

and articulable facts giving reason to believe that the education records are likely to contain information” relevant to the investigation or prosecution of terrorist acts.⁸²

J. Challenging the Contents of an Education Record

Parents/students are required to have an opportunity for a hearing to challenge the contents of education records in the possession of CSU that they believe are inaccurate, misleading, or the disclosure of which would violate their privacy or other rights.⁸³ If the challenge is sustained, the hearing procedures must include an opportunity to correct or delete the record or to insert a written explanation regarding its content.⁸⁴

K. Remedy for Violation of FERPA

The Secretary of the Department of Education is authorized to enforce FERPA. There is no private right of action for an individual who is aggrieved under the Act, except to file a complaint with the Secretary. Enforcement may include all “appropriate actions,” up to the termination of federal funding for an institution that violates the Act. That sanction is only available, however, where the Secretary has first attempted to secure compliance with the Act through voluntary means.

⁸² 20 U.S.C. § 1232g(j)(4) (added by the USA PATRIOT Act).

⁸³ 34 C.F.R. § 99.20.

⁸⁴ 34 C.F.R. § 99.21.

V.
FREQUENTLY ASKED QUESTIONS

A. California Public Records Act

- 1. Does a campus have to create records that do not otherwise exist in response to a Public Records Act request?**

No. The Act requires only disclosure of documents that are already in existence. Some care should be exercised in construing a request too narrowly, however, as a refusal to produce any records (on the ground that none exist) may provoke a more onerous request. In addition, if records exist in electronic form, even if they have never been printed out in hardcopy form, the agency must provide the records. (See, pages 4-7.) In some instances, it may be more efficient to create a new record, even though the law does not require it.

- 2. What if records contain a mix of public and non-public information?**

CSU must make available “any reasonably segregable portion of a record” after deleting (redacting) the non-public information.⁸⁵ Records cannot be withheld simply because they contain easily segregable information. CSU is required to disclose public records that also contain information that is not public but can easily be redacted (e.g., purely personal information like social security numbers, third party proprietary or trademark information, or other exempt information). Consultation with University Counsel is advised.

⁸⁵ Government Code § 6253(a)

3. Are records of an auxiliary organization or a student body association subject to the Public Records Act?

Records of any legally separate organization, such as an auxiliary organization, are not technically subject to disclosure under the Act. The Act requires disclosure of records held by public entities only. However, there are some instances where an auxiliary is conducting the university's business, in which case disclosure may be advisable, even if not legally required. Moreover, auxiliary organization records that have been, or are being, used by University officials in the performance of their University duties are subject to disclosure. CSU records remain public even when transferred to an auxiliary organization. (See, pages 2-4.) Consultation with University Counsel is advised.

4. Are course book adoption lists created by the University's bookstore subject to the Public Records Act?

It depends on how the information is gathered, whether it is maintained by the campus, and how the bookstore is structured. If the campus collects book requisition information (order forms or lists), and then transmits a copy to the bookstore, the order forms/lists are public and disclosure is required. If the information is maintained by the bookstore, and if the bookstore is a separate entity, then disclosure is not required, and may in fact contain proprietary financial and/or trademark information. Each campus should confer with the University Counsel assigned to it to determine the proper response for its particular situation.

5. Does a Public Records Act request have to be in writing?

No. A public agency must comply with an oral request for records, although it is probably a good idea for purposes of clarity to either request that it be put into writing or state in the written response what the request is understood to be. (See, pages 4-5.)

6. Are records protected by the Information Practices Act or FERPA subject to disclosure under the Public Records Act?

Yes, as to the Information Practices Act, but no as to FERPA. The Information Practices Act expressly permits disclosure of otherwise protected records in response to a Public Records Act request. Therefore, records protected by the Information Practices Act are subject to disclosure under the Public Records Act if they meet the definition of “public records” and there is no applicable Public Records Act exception. FERPA does not permit a similar disclosure of education records merely because a Public Records Act request has been made. Because FERPA prohibits disclosure of education records, they are exempt from disclosure under the Public Records Act.⁸⁶

7. Are records created in confidence subject to production under the Public Records Act?

If records are protected by a recognized legal privilege (*e.g.* attorney/client communication), they do not lose that protection because they are in the possession of CSU.

⁸⁶ See, Government Code section 6254(k).

Many documents created with an expectation between the parties that they will be held in confidence, or marked “confidential,” are not protected by any recognized legal privilege, however, and must be produced in response to a Public Records Act request.

8. Can a party in litigation with the CSU use the Public Records Act instead of general discovery to obtain information related to the claim?

Yes. The party may use the Public Records Act instead of general discovery unless the records are covered by the pending litigation exemption, which protects them only if they were specifically prepared for use in litigation.⁸⁷ In fact, a litigant may be entitled to receive documents under the Public Records Act even if a court has already denied the party’s motion to compel their disclosure under general discovery procedures, or the civil discovery cutoff date has passed, if the records are public.⁸⁸ Any Public Records Request by a party in litigation with the CSU should immediately be brought to the attention of University Counsel and the litigation attorney handling the lawsuit.

9. Are agreements to settle a lawsuit or claim subject to the Public Records Act?

Yes, after the lawsuit has been dismissed. The “pending litigation” exemption does not apply because dismissal ends the lawsuit. The terms of such an agreement, including the amount of money, if any, paid to the claimant, are subject to disclosure.

⁸⁷ *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1420-1421, 44 Cal. Rptr. 532 (1995). Attorney-client privileged documents are also protected under a separate exception that protects privileged documents. Cal. Gov’t Code § 6254(k).

⁸⁸ *County of Los Angeles v Superior Court (Axelrad)*, 82 Cal. App. 4th 819, 98 Cal. Rptr. 564 (2000).

10. Does the “pending litigation” exemption apply to all documents the University legitimately anticipates will be involved in future litigation?

No. The exemption applies only where litigation, or a formal claim, is on file. It applies only to documents specifically prepared by CSU for use in litigation, which CSU reasonably has an interest in keeping to itself, and only until the litigation has been finally adjudicated or otherwise dismissed/resolved.⁸⁹ The Act provides a separate exemption for documents that are legally privileged, such as those prepared by (or for) an attorney in anticipation of future litigation.⁹⁰ But neither the pending litigation exemption nor the legal privilege exemption protect documents simply because they might be relevant to pending or future litigation.

11. Should a request that references the federal Freedom of Information Act (FOIA), or some other disclosure law, be treated as a request under the Public Records Act?

It certainly can be, in which case the written response should notify the requester that the other statute does not apply but that, as a courtesy, CSU is treating the request as having been made under the California Public Records Act.

12. How extensive a search must be made to locate records in response to a Public Records Act request?

CSU has an obligation to make a reasonable search for all records in its possession. What is reasonable under any particular set of circumstances may vary, and consultation with University Counsel in response to a

⁸⁹ *Board of Trustees of the California State University v. Copley Press*, 132 Cal. App. 4th 889, 34 Cal. Rptr. 3d 82 (2005).

⁹⁰ Civil Code 6254(K).

specific request is encouraged. In addition, CSU has an obligation to assist members of the public in making public records requests. Specifically, to the extent reasonable, CSU must: (1) assist a member of the public to identify records and information that are responsive to his/her request or to the purpose of the request, if it has been identified; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.⁹¹

13. How should a campus respond if some records are located on the campus and others are located in a systemwide office?

As a technical matter, CSU is one legal entity, and a Public Records Act request is directed to that entity, including records both on the campuses and the systemwide office. As a practical matter, however, there may be circumstances where it is appropriate to direct the requester to another office within the CSU. Discretion is required, and CSU will be held to a standard of “reasonableness.” Consultation with University Counsel in response to a specific request is encouraged.

14. What is "proprietary information" which, under case law, does not need to be provided in response to a Public Records Act request?

Records that contain information that might compromise a legitimate protected interest – e.g., trademarks – or unfairly disadvantage a third party’s bargaining power or financial position are “proprietary” and not subject to disclosure. Consultation with University Counsel with respect to any specific request is encouraged.

⁹¹ Government Code § 6253.1

15. At what point does contract bid information become subject to a Public Records Act request?

After the contract has been awarded.

16. Should a campus inform students or employees if a request is made for records pertaining to them?

Yes. While the Public Records Act does not impose such a requirement, the Information Practices Act requires state agencies to make a reasonable attempt to notify individuals before disclosing “personal information” pursuant to a “compulsory legal process.”⁹² Since the Public Records Act could be construed to be a “compulsory legal process,” it is prudent to notify the individual whose records are requested before releasing those records pursuant to the Act. If the request seeks records that are exempt from disclosure and therefore will not be produced, there is no obligation to notify. In addition, please refer to FAQ No. 1 in Subsection C, below, regarding the treatment of student records under FERPA. Consultation with University Counsel in response to a specific request is encouraged.

17. Are calendars of public officials subject to the Public Records Act?

No. The public interest served by withholding these records outweighs the public interest to be served by disclosure.⁹³ However, in some limited circumstances disclosure may be warranted. Consultation with University Counsel is encouraged.

⁹² Civil Code § 1798.24(k).

⁹³ *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 283 Cal. Rptr. 893 (1991).

18. Are telephone records of public officials subject to the Public Records Act?

Yes, if the telephones are provided and paid for by CSU – e.g., cell phones issued to managers for business purposes. However, all personal information should be redacted based on the deliberative process privilege⁹⁴ and for protection of third party privacy. This generally means deletion of the last four digits of all phone numbers listed, so that it is not possible to determine the actual phone numbers dialed.

19. Are names and qualifications of applicants for a public position subject to the Public Records Act?

No. Information provided by job applicants who are not hired by CSU is not subject to disclosure. The public interest in protecting the privacy interest of third parties by withholding these records outweighs the public interest to be served by disclosure.⁹⁵

20. Is the University required to produce records pertaining to uncashed warrants or checks in response to a Public Records Act request?

Yes, although the warrant or check numbers may be redacted to prevent counterfeiting, as well as purely personal, private information such as Social Security Numbers and information protected by FERPA.⁹⁶

⁹⁴ *Rogers v. Superior Court*, 19 Cal. App. 4th 469 (1993).

⁹⁵ Government Code § 6254(c), 6255;

⁹⁶ *Connell v. Superior Court* (1997) 56 Cal. App. 4th 601, 65 Cal. Rptr. 2d 738.

21. Are all personnel records subject to the Public Records Act?

Not every record, but in many instances, yes. The public has a right to know who it employs/hires and on what terms. Appointment letters, employment contracts, employee qualifications (e.g., resumes, employment applications), general non-personal employee benefits information, and salary information are all subject to disclosure. Purely personal information contained in those records – e.g., social security numbers, individual taxes/withholding, individual selection of benefits, personal retirement plan information, home/personal address and telephone numbers – is exempt and should be redacted.⁹⁷ Performance evaluations,⁹⁸ and discipline records (based on a sliding scale of considerations)⁹⁹ are not subject to disclosure.

22. Are records of ongoing personnel investigations required to be disclosed?

No. Records or reports of ongoing, incomplete investigations are not required to be disclosed because no decision has yet been reached and the information is therefore protected by the deliberative process privilege.¹⁰⁰ Pre-decisional investigation records are also protected by the privacy rights of the individuals named or involved in the investigation.¹⁰¹

23. Are records and reports of final investigations subject to disclosure under the Act?

Not every record, but in many instances, yes. Disclosure depends on a number of factors. The investigation records/reports pertaining to the final

⁹⁷ Govt. Code § 6254(c) and § 6255; see also *Braun v. City of Taft*, 154 Cal. App. 3d 332 (1984).

⁹⁸ *Versaci v. Superior Court*, 127 Cal. App. 4th 805 (2005).

⁹⁹ Personal privacy and balancing test exemptions, Govt. Code § 6254(c) and § 6255.

¹⁰⁰ Government Code § 6255.

¹⁰¹ Government Code § 6254(c).

investigation outcome should be disclosed if there is reasonable cause to believe that: (1) the charges are well founded; and (2) the charges are substantial in nature.¹⁰² However, if the investigated charges are found to be trivial, baseless, unsubstantiated, or unfounded, then none of the records or reports should be disclosed.¹⁰³ Note: Before releasing any reports or records of substantiated investigations, the following information must be redacted: (1) all purely personal information;¹⁰⁴ (2) the identity (names and titles) of all whistleblower and third party witnesses; and (3) information protected by FERPA (education records/student information).

24. Are lists of employee names, email or business addresses, and/or phone numbers required to be disclosed under the Act?

If a request is for *lengthy, broad or voluminous* lists of names, phone numbers, business addresses, and/or email addresses only – e.g., that are not combined with requests for other information – disclosure is not required, as such lists do not contribute to the public’s understanding of how the university’s business is conducted.¹⁰⁵ A request for the business address, phone number and/or email address of a particular CSU employee or for a *small, focused group* of CSU employees, such as those in a particular academic department or administrative group, is more likely subject to disclosure under the Act. These requests require consideration on a case-by-case basis, and consultation with University Counsel is

¹⁰² *AFSCME v. Regents*, 80 Cal. App. 3d 913 (1978).

¹⁰³ Government Code § 6254(c) and § 6255.

¹⁰⁴ “Purely personal information” includes social security numbers, and information regarding individual taxes, personal retirement plan choices, home/personal address/telephone numbers. *Braun v. City of Taft*, 154 Cal. App. 3d 332 (1984).

¹⁰⁵ Government Code § 6252(e) and § 6255; see also, *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1019 (1999), *citing inter alia*, *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1345-46 (1991); *U.S. Dept. of Justice v. Reporters Committee*, 489 U.S. 749, 774-75 (1989); *Wilson v. Superior Court*, 51 Cal. App. 4th 1136, 1141 (1996).

encouraged. The personal/home address and telephone numbers of CSU employees are not public records and are not open to public inspection.¹⁰⁶

25. Are lists of names, addresses, email addresses and/or phone numbers for students, alumni or donors subject to the Act?

Generally, no. Student, alumni and donor contact information is not public information because it does not contribute to the public's understanding of the university's business. Education records are protected from disclosure by FERPA and under Article I, Section 1 of the California Constitution.¹⁰⁷ Even where students or alumni have consented to their university contact information being categorized as "directory information" under FERPA, disclosure is permitted but not required. Such directory information may be withheld from disclosure under the Act's test balancing the public's right to know with the interests in non-disclosure.¹⁰⁸ The right of privacy established in the California Constitution, Article I, Section 1 protects alumni contact information. Donor information is similarly protected.

26. Are records of donors or potential donors subject to the Public Records Act?

No. Where it can be shown that traditional donors expect their names and information about their contributions to be held in confidence, and that they would not otherwise be willing to make a donation, the information should be exempt from disclosure under the exception applicable where the public interest served by withholding the information outweighs the public interest to be served by disclosure.¹⁰⁹ If, however, a "donation" is

¹⁰⁶ Government Code § 6254.3.

¹⁰⁷ See Government Code § 6254(k).

¹⁰⁸ Government Code § 6255.

¹⁰⁹ Government Code § 6255.

more in the nature of a contract for services – such as where the donor receives something of value in return for the donation – production of donor records may be compelled under the Public Records Act.¹¹⁰

27. What about campus directories containing student or employee contact information?

The existence of CSU campus directories in hardcopy or on the web should not preclude use of the above guidelines. Hardcopy directories intended for campus use only should not be disclosed, nor should the information in them. However, if hardcopy directories are readily available to the public or web-based directories disclose contact information for a broad range of campus groups in response to a single inquiry, then the contact information in those directories is subject to disclosure by reference to the website.¹¹¹

28. Are NCAA EADA worksheets, filed by individual campuses for Title IX compliance purposes, subject to disclosure under the Act?

Yes.

B. California Information Practices Act

1. Does the Information Practices Act prohibit a campus from providing for commercial purposes any lists in its possession, including alumni lists?

Yes.¹¹² It is also impermissible to provide such lists to an affiliated organization, where that affiliated organization, in turn, intends to use the

¹¹⁰ *California State University v. Superior Court*, 90 Cal. App. 4th 810 (2001).

¹¹¹ See Government Code § 6254.5.

¹¹² Civil Code § 1798.60.

lists for commercial purposes. Under the Information Practices Act, “commercial purpose” means any purpose that has financial gain as a major objective.¹¹³

2. Does the Information Practices Act require disclosure of communications with the Office of the General Counsel?

No. The Information Practices Act does not override the attorney/client privilege.

C. FERPA

1. Does FERPA protect education records from subpoena?

No. But FERPA does require that, before any records are produced in response to a subpoena, an effort be made to contact the student affected so that s/he may have an opportunity to object to the subpoena. If records are produced, the institution must keep a record of the disclosure. A court or may order that the existence of the subpoena, its contents, or the institution’s response not be disclosed. In such cases, the institution is neither required to notify the student, nor to keep a record of the disclosure.

2. Is it possible to prepare a student directory without violating FERPA?

Yes. Information about students can be compiled in a public directory so long as annual notice is given to the students/parents as to the categories of information to be included in the directory, and a reasonable period of time is provided for any student/parent to respond that such information

¹¹³ Civil Code § 1798.3(j).

for that particular student should not be included in the directory. (See, pages 15-16.)

3. Does FERPA protect the records of deceased students or alumni?

No, as to deceased students. The privacy rights established by FERPA die with the student. Yes, as to the records of alumni, except for directory information. But alumni who opted not to have their directory information disclosed while they were attending the university should not be included in an alumni directory. (See, FAQ No. 2, above.)

4. Who has a legitimate educational interest in records otherwise subject to FERPA?

Persons who require the records to perform the functions of their job. Discretion should be exercised in arriving at this determination, and consultation with University Counsel is encouraged.

5. Are student complaints subject to FERPA?

Yes, assuming that they contain information about a student.

6. If a student sues the University, may the University disclose relevant records of that student to its counsel or the court in order to defend itself?

Yes.

7. Does FERPA protect records or information?

FERPA protects records and the information contained in them. If the same information is independently obtainable from another source not protected by FERPA, however, the fact that the information may also be in a record protected by FERPA does not make the information itself confidential.

8. Does FERPA protect student disciplinary records?

Yes. However, FERPA does allow disclosure of certain student disciplinary hearing records in specific circumstances. If the student's wrongful acts are "crimes of violence" or "non-forcible sex offenses" (the former includes date rape), FERPA allows for – but does not require – disclosure of the "final results" of the discipline, including the charged student's name, the violation and the sanction. Disclosure may be made to the alleged victim in all instances, but may be made to others who might request the information (including the media) only if the charges were sustained. (See, page 20, footnote 68 for the definition of "crime of violence," and page 21, footnote 69 for "non-forcible sex offenses.") Whether or not this kind of disclosure may also violate the IPA is a determination that will depend on the situation; whether a student has a reasonable expectation of privacy in the matter may turn on whether there has been a criminal conviction or other publication of the underlying facts. Consultation with University Counsel is necessary prior to any such disclosure. The campuses may also want to consider adding language to their student disciplinary procedures explaining that a disclosure of the final results of the process, to the alleged victim or to the general public, may occur.

9. Does FERPA preclude a sexual harassment victim from gaining access to the results of an investigation into his/her complaint?

If the student's actions do not rise to the level of a "crime of violence," then records that indicate the results of the discipline process are protected by FERPA. Similarly, in those instances where a sexual harassment complaint does not lead to institution of formal student discipline, access to the written investigation results, without the alleged harasser's consent, is barred by FERPA. The complainant is not, however, barred from access to the information contained in an investigative report, including the investigation results, if it is available from an independent source not protected by FERPA, e.g., the investigator.

10. Does FERPA preclude disclosure to parents of violations of Federal or State laws or University policy regarding drug/alcohol use or possession by students under the age of 21?

No. However, in California, the Information Practices Act bars this disclosure, except where the university determines that compelling circumstances exist that affect the health or safety of the individual to whom the information pertains and, upon disclosure, the university transmits notice of the disclosure to the individual at his or her last known address. Consultation with University Counsel prior to such a disclosure is encouraged.

11. Does FERPA allow a campus to disclose information from education records directly to a student based on the student's electronic request?

Yes, so long as the institution uses a PIN combined with the student's ID number to authorize the disclosure, and only if the eligible student is the

only one with access to that PIN. If anyone else has access to the PIN, including administrative staff, there's no assurance that disclosure will be made only to an authorized party as required by FERPA.

12. Does FERPA permit a campus to honor a student's electronic request to have his or her transcript sent to another school?

Yes.¹¹⁴ The FERPA regulations allow a college to send a student's education records to another school in which the student is seeking enrollment if the student initiates the request. It doesn't matter whether the request to have a transcript forwarded is made in person, in writing, on the telephone, or by electronic transmission. But if the student makes the request by telephone or email, the school should be reasonably sure that the student actually made the request.

¹¹⁴ Letter dated June 30, 1994, to Dr. David S. Yeh, contained in *NACUA Family and Educational Rights and Privacy Act, A legal Compendium*, 2d Edition, edited by Steven J. McDonald, at p. 229.

Schnetzler, Greta

From: Cindy Caprasecca [cindyc@berkeley.edu]
Sent: Friday, October 19, 2007 3:53 PM
To: Schnetzler, Greta
Subject: Alta Bates Summit Medical Center affiliation agreement
Attachments: Alta Bates Medical Student Rotation - UCB 2007.doc; Affiliation Short Form MEDICAL rev June 2005 SPH Jt Med Program only.DOC

Greta:

Thank you so much for agreeing to assist us with the affiliation agreement with Alta Bates Summit Medical Center, for our UC Berkeley students enrolled in the Joint Medical Program (JMP) shared by UCSF & UCB. I'm sorry I missed Dan Stein's call earlier this afternoon while he was meeting with you.

Dan's message indicated that UCSF may already have an approved agreement in place with Alta Bates for JMP students, did I understand that correctly? If yes, would it cover the JMP students while they are at Berkeley completing the preclinical science curriculum prior to taking the US Medical Licensing Exam? We would of course prefer to use UCSF's existing approved agreement, if at all possible and appropriate.

The initial inquiry sent to OGC is also shown below (with attachments), for your background information. As promised per my voicemail message a few minutes ago, here is my contact information:

Cindy Caprasecca
Phone (510) 642-0972
Email cindyc@berkeley.edu
Fax (510) 642-8604

Thank you,
Cindy

-----Original Message-----

From: Joanna Beam [mailto:Joanna.Beam@ucop.edu]
Sent: Friday, October 12, 2007 2:24 PM
To: Cindy Caprasecca
Subject: Out of Office AutoReply: Alta Bates Summit Medical Center affiliation agreement

I will be away from the office on October 3-24, 2007. If you have an urgent matter, please ask to speak with Lloyd Lee at (510) 987-9740 or any available health attorney at (510) 987-9800. Clients in need of legal advice for mental health matters may contact Dan Willick at (213) 612-7814.JMB

From: Cindy Caprasecca [mailto:cindyc@berkeley.edu]

10/19/2007

Sent: Friday, October 12, 2007 2:23 PM
To: joanna.beam@ucop.edu
Cc: Brian Donohue
Subject: FW: Alta Bates Summit Medical Center affiliation agreement

Joanna:

I am writing to ask if you received the 8/28/07 email (copy below) that Dan Stein forwarded? The subject is the attached Alta Bates Summit Medical Center affiliation agreement, for a UCB student enrolled in the Joint Medical Program.

Our office has done the initial revision of the agreement to align it more closely with UC's form of agreement, however there are still some questions.

Should UCSF also sign off on this agreement? Is it OK to have the student signing this agreement? We are not sure how the Article 5.1 "Approved Medical School" applies to UCB as a partner in the JMP - do we need to clarify that UCSF is the medical school (not UCB)?

We have received many anxious inquiries from our School of Public Health, asking for status on this. Is there any other information that we may furnish you?

Thank you,
Cindy Caprasecca

-----Original Message-----

From: Dan Stein [mailto:Dan.Stein@ucop.edu]
Sent: Tuesday, August 28, 2007 11:40 AM
To: Joanna Beam; ann.sparkman@ucsf.edu
Cc: cindyc@berkeley.edu
Subject: FW: Alta Bates Summit Medical Center affiliation agreement

Cindy:

I am forwarding your request to Joanna Beam and Ann Sparkman (at UCSF) for their input, as I generally only handle the VA and government affiliation agreements. They should be in a better position to advise on how UC handles non-standard affiliation agreements.

Thanks,

Dan Stein
University Counsel

-----Original Message-----

From: Cindy Caprasecca [mailto:cindyc@berkeley.edu]
Sent: Fri 8/24/2007 5:08 PM
To: Dan Stein

Cc: Brian Donohue
Subject: Alta Bates Summit Medical Center affiliation agreement

Dan:

Our Business Contracts Office received a request from UCB's School of Public Health for an affiliation agreement with Alta Bates Summit Medical Center for a UC student enrolled in the Joint Medical Program ("JMP").

The JMP is shared between UC Berkeley and UC San Francisco. The JMP is a 5 year Master of Science/M.D. Program, during which a student spends the first 3 years at Berkeley completing preclinical science curriculum required for M.D. Licensure & elective coursework in support of a health-related master's thesis. Upon successful completion, the student takes the U.S. Medical Licensing Exam, Step I and transitions to UCSF to complete 2 years of clinical clerkships. The JMP website is: <http://jmp.berkeley.edu/>

Alta Bates does not wish to use the approved UC form of agreement for students in the SPH Joint Medical Program, which was last revised in 2005 in collaboration with UCB and UCOP Risk Management (copy attached).

A copy of Alta Bates' form of agreement is also attached. Brian and I have been reviewing it and have several questions to check with you.

We have done some initial revisions to try to bring it a bit more in alignment with our UC form of agreement, especially in the areas of indemnification and insurance. We have also added some description about the JMP, and that it is a shared program between UCB and UCSF. *Our request comes from the UCB. Should UCSF also sign off on this agreement? Is it OK to have the student signing this agreement?*

We are also not sure how the Article 5.1 "Approved Medical School" applies to UCB as a partner in the JMP - do we need to clarify that UCSF is the medical school?

Any guidance you can furnish would be very much appreciated.

Thank you,
Cindy

Cindy Caprasecca, Contract Specialist
Business Contracts Office
University of California, Berkeley

(510) 642-0972 Phone
(510) 642-8604 Fax