

# FERPA and Dual Enrollment: Institutional Practice and Policy Considerations

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*The proliferation of dual enrollment programs throughout the community college sector has blurred the line between high school and college, complicating adherence to the Family Educational Rights and Privacy Act (FERPA) regulations. Drawing on both professional experiences working with dual enrollment programs and the emerging scholarship on dual enrollment, this practice brief provides practical guidance for community college leaders regarding their FERPA obligations with dual enrollment students, offering recommendations for institutional practice and policy.*

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The Family Educational Rights and Privacy Act (FERPA) was enacted to protect students' educational records in both secondary and postsecondary settings and to establish guidelines on when these records can be released to various stakeholders (Cossler, 2010; U.S. Department of Education, 2002, 2018; Weeks, 2001). At the time when FERPA was enacted, secondary and postsecondary education were distinct domains, each with their own

expectations and responsibility for their students' educational opportunities and contexts (Greenberg & Goldstein, 2017; Rainsberger, 2012; U.S. Department of Education, 2002, 2018). While many of these distinct expectations remain in place today, the proliferation of dual enrollment opportunities throughout the nation has blurred this original bifurcation, allowing high school students to access college curricula at different stages of their high school careers (An &

Taylor, 2019; Ison, 2022; Ison & Nguyen, 2021). Specific models of dual enrollment, such as models that allow high school students to access college coursework directly within the high school environment, blur this demarcation between high school and college even further, making it difficult for both secondary and postsecondary institutions to adhere to specific FERPA requirements required by their domain of education (Ison & Nguyen, 2021).

Community colleges are the higher education institutions most affected by the blurring of the traditional demarcation between secondary and postsecondary education as community colleges award approximately three-fourths of all dual credit (Fink et al., 2017; Ison, 2022; Marken et al., 2013). This practice brief should guide community college administrators and leaders who direct dual enrollment programs on their campuses. Drawing on professional experiences working with dual enrollment in a singular state policy context, as well as the emerging scholarship on dual enrollment outcomes, we share research and experience that can help institutional leaders create equitable institutional policy within divergent state policy landscapes. The brief begins with a short history of FERPA, followed by a synthesis of literature surrounding dual enrollment within the community college context. Having established a historical understanding of FERPA obligations and expectations, we then offer practical advice for community college administrators and other leaders as they work to grow dual enrollment

opportunities at their institution while managing the legal expectations mandated by FERPA within secondary and postsecondary environments.

### **History of the Family Educational Rights and Privacy Act**

Community college leaders must understand the different obligations between secondary and postsecondary institutions regarding accessing and sharing student records and information. FERPA was enacted at a time when elementary and secondary schools would misuse student information, which contained personal opinions and psychiatric and behavioral diagnoses by unqualified persons (Greenberg & Goldstein, 2017; Weeks, 2001). These records were often shared with outside organizations at the discretion of the school, freely and without hesitation; meanwhile, the school could also deny parents/guardians access to their children's records without any justification (U.S. Department of Education, 2002, 2018; Weeks, 2001). FERPA called on elementary and secondary institutions to protect students' records from outside organizations when the permission of the student's parent/guardians is not given and to allow parents/guardians to access student records at any time without the express permission of the student (Davoren, 2007; U.S. Department of Education, 2018).

Parent/guardian access to student records changes drastically with postsecondary institutions. Students have more autonomy over their education records, and parents/guardians can only

access records with the express permission of the student (Rainsberger, 2012; U.S. Department of Education, 2021). Colleges may disclose what is considered directory information, such as the student's name, address, and birthday. However, it is the responsibility of the postsecondary institution to inform students of this possibility and allow students to opt out of this directory disclosure (U.S. Department of Education, n.d.-a). Postsecondary institutions are tasked with adequately securing the students' records and are prohibited from sharing those records with external or internal stakeholders who do not have a "legitimate educational interest" (Rainsberger, 2012). However, the law's provisions allow postsecondary institutions to share educational records with the parents of dependent students, as defined by the IRS. (U.S. Department of Education, n.d.-b). Despite these provisions, the expanded autonomy provided to postsecondary students is grounded in a traditional demarcation between the secondary and postsecondary realms, where postsecondary students, having reached adulthood, are expected to take greater responsibility for their educational opportunities and outcomes. These provisions are discussed later, when we consider institutional practice, but understanding the legal distinction between secondary and postsecondary settings is essential for understanding how dual enrollment programs complicate when and how interested parties, such as parents and secondary schools, can access student records.

## Dual Enrollment

While the broad notion of dual enrollment has various meanings and connotations throughout the higher education landscape (An & Taylor, 2019; Borden et al., 2013; Schaller et al., 2023), the salient understanding of dual enrollment, or dual credit, refers to the programs and policies that allow high school students to take college-level classes before graduating from high school (An & Taylor, 2019; Ison et al., 2022). Envisioned initially as additional academic opportunities for advanced students (Lichtenberger et al., 2014), dual enrollment opportunities have proliferated across the country through state policy initiatives designed to expand access to higher education and lower the overall cost of pursuing a college degree (Cowan & Goldhaber, 2015). More than 80% of U.S. public high schools offer some form of dual enrollment program to their students (Institute of Education Sciences, 2020), with approximately one out of every four students who matriculated into an institution of higher education after high school graduation having indicated that they took college-level courses while in high school, according to the most recent Baccalaureate and Beyond survey (National Center for Education Statistics, 2016).

States have control over their dual enrollment programs, establishing participation standards and funding mechanisms based on their particular higher education, economic, and political considerations. However, two

features of dual enrollment programs are common throughout the country. First, most dual credit is awarded via a community college. Virtually every U.S. community college offered some version of dual enrollment in 2003 (Cohen et al., 2014), while 15% of all community college enrollment comprises high school students taking college courses (Fink et al., 2017). Dual enrollment has seen continued growth within the community college sector over the past few years, despite overall enrollment declines observed within public community colleges (National Student Clearinghouse Research Center, 2023). A second feature of dual enrollment programming observed throughout the country is the modality in which the course is taught. While different states may use different terms interchangeably, most states differentiate between dual credit taken in the college environment and dual credit taken within the high school environment (Ison & Nguyen, 2021). The latter, which we refer to as *concurrent enrollment* in keeping with definitions established by The National Alliance of Concurrent Enrollment Partnerships (n.d.), conceptualizes dual enrollment programs in which a higher education institution credentials a high school instructor to teach a college curriculum directly in the high school environment. This model has facilitated the rapid growth of dual enrollment throughout the country, with approximately 75% of all dual credit awarded within the concurrent enrollment model (Borden et al., 2013; Marken et al., 2013).

Understanding that dual enrollment growth has been precipitated by the community college sector and the concurrent enrollment model, community college administrators and leaders are tasked with the onerous responsibility of monitoring and securing student academic records in postsecondary and secondary environments. Simultaneously, community college leaders must fulfill their ethical and legal obligations for privacy and reporting in these different educational contexts while also meeting the needs and expectations of both parents/guardians and secondary school administrators. In what follows, we offer practical advice for community college administrators tasked with navigating FERPA requirements in these different educational contexts and demands. Recommendations are organized into two sections: parents/guardians and the secondary school environment.

## **Recommendations**

### **Parents/Guardians**

To better facilitate dual and concurrent enrollment programs, community colleges should work to standardize and digitize their FERPA waiver processes, allowing a student's record to be shared with any individual granted permission via the waiver. This waiver allows the institution to share a student's academic record with the relevant party and does not require the institution to seek permission from the student on every occasion the record needs to be shared. Depending on the state's governance

structure, this process could become standard throughout an entire public higher education system, although states with more institutional autonomy may need to develop their own processes. As technology continues to evolve, online processes for these waivers can be created to allow students to select which portions of their records can be shared with various entities, particularly parents/guardians. The online process of granting individualized access plans is becoming more commonly known as *proxy access*. These proxy access technologies are increasingly used to allow parents/guardians to assist in and monitor their student's academic progress. While these technologies sometimes inhibit the autonomy and development of students, as parents sometime abuse this access by making substantial changes to the student's account (i.e., course schedule, major, unpaid fees or balances), ensuring that these proxy access technologies are available to dual enrollment students will help community colleges maintain their enrollment of high school students.

The purpose of these technologies and processes should not only be a means for the institution to communicate and meet its legal mandates under FERPA, although that is undoubtedly an important responsibility, as we communicated above. Institutions should also use these processes to better educate students and their families about the expectations of being a college student and how these expectations differ from the secondary environment. College students need to understand that their enrollment in

college courses before high school is not compulsory and that by doing so, they willingly agree to assume the responsibilities of being a college student. This means their academic record is their own, not their parents'/guardians'. Students and their parents/guardians must understand that parent/guardian access to records only comes with the student granting them access. While in practice we can understand why parents/guardians would be hesitant to allow their student to take a college course without being granted access to the records, informing both students and their parents/guardians of the difference in FERPA obligations between secondary and postsecondary environments would help to establish a broader understanding of and expectations for the college context when/if the student matriculates to college after high school graduation.

It is also essential for parents/guardians to understand that being granted access to their student's record via a FERPA waiver release does not grant them access to similar in-progress reports or instructor access they may be accustomed to with their student's high school environment. In most circumstances, a FERPA waiver would allow parents/guardians to gain access to their student's records after the course has been completed (i.e., the transcript with the course grade). Parents/guardians who are used to a greater number of in-progress reports from secondary teachers or other school officials when their student's academic performance is concerning will not find similar

institutional practices at the postsecondary level. A FERPA waiver does not entitle a parent/guardian access to specific faculty deliberations concerning specific assignments or grades, nor does it obligate a faculty member to disclose a student's progress as the course unfolds. Informing parents/guardians of these secondary–postsecondary differences will help community college administrators grow their dual enrollment programs while helping students develop the necessary skills and expectations required to be successful college students.

In the above scenarios, parent/guardians can secure their student's academic record because the student first gives their permission. This is not to say that parents/guardians cannot access records independently of their student's knowledge, only that their ability to do so is possible because the student first gives their permission for the institution to release their records to their parent/guardians. However, there are provisions within current FERPA statutes that could allow a postsecondary institution to release academic records directly to the parent/guardian without the express permission of the student. Current law allows postsecondary institutions to adopt policies that allow the institution to release academic records to parents/guardians who claim their students as dependents on their federal tax returns (U.S. Department of Education, 2021). It is important to note that postsecondary institutions do not have to adopt a policy allowing the institution to share records of dependent students, merely that they

can. Thus, community colleges must consult the necessary stakeholders to adopt a policy on when and if the institution will share the records of dependent students without the student's expressed permission. Based on professional experience, we feel it best that colleges refrain from being silent on this issue and instead put into policy whether they will release the records of dependent students. By making this explicit decision, the institution can better communicate expectations to parents/guardians and ensure that decisions are made equitably regarding the release of transcripts.

### **Secondary Institutions**

Under most dual enrollment programs, students can take college credit to fulfill high school requirements. Thus, the postsecondary institution needs to create robust policies and practices that allow the college to securely transfer the necessary student records to the specific secondary school or district so the appropriate grade can be awarded. These processes typically involve the college sending end-of-term grades directly to the high school. Most community colleges note this practice as part of a Memorandum of Understanding made with each secondary partner (a practice we strongly recommend institutions undertake when specific policies and practices are not specified by their state) and utilize this practice each term without the express permission of the student. This practice aligns with the current FERPA statutory framework

understood as “legitimate educational interest” (Rainsberger, 2012; U.S. Department of Education, n.d.-b). This doctrine allows one department to share academic records with other areas of the institution when deemed necessary by the institution, so long as the student’s privacy rights are not violated. This process allows the postsecondary institution to release grades to the secondary school, as these secondary partners have a legitimate educational interest when these grades fulfill high school requirements.

While this sharing process is necessary (and ubiquitous) with dual and concurrent enrollment programs throughout the country, action should be taken to educate students on the methods taken to protect their records and how their records may be shared with the secondary school or district. Currently, postsecondary institutions must post annual notifications of rights for those students whose academic records fall under the FERPA legislation. This notification does not have to be a direct communication to each individual student of record. Instead, the annual notification can be published in student handbooks and/or presented at new student orientations where the institution provides student information (U.S. Department of Education, 2018). Rainsberger (2012) recommended that secondary institutions include a statement in their annual FERPA notifications that outlines how a student’s postsecondary record could be shared within the secondary environment.

Postsecondary institutions traditionally have established practices that

allow them to share academic records with the appropriate office under the legitimate educational interest doctrine without violating students’ privacy rights. However, secondary institutions do not have the historical organization infrastructure necessary to make these judgments as it pertains to postsecondary responsibilities under FERPA. Community colleges, as the institutions awarding the credit and monitoring the instructor of record in the high school, should train their high school partners (both the instructors and staff who work with the postsecondary record) on the privacy rights students have under FERPA in a postsecondary environment. For example, a high school instructor teaching dual enrollment courses for a local community college may become aware of a student behavior issue at the postsecondary institution that is not germane to the specific college classes they teach. While that teacher may have the right to discuss such issues with parents when they arise in the secondary environment, these specific issues might not meet the requirements of the legitimate education interest provision.

It is difficult for high school instructors teaching college courses to navigate the different privacy and reporting obligations between secondary and postsecondary institutions under FERPA. Postsecondary institutions need to establish policies and practices on how the institutions will share educational data and records with identified secondary partners and, subsequently, how secondary partners use and share these data. These policies and practices must

address all facets of the student experience (e.g., student conduct, grades, attendance, and progress toward a degree). Institutions may determine various levels of data sharing and methods to communicate the required data. In this way, community colleges should devote resources to training their high school partners and supporting them in navigating these new and challenging policy terrains.

### Conclusion

Access to college and college affordability will continue to be major higher education policy concerns in the future. These issues are often cited as a major impetus for dual enrollment programming and growth (Cowan & Goldhaber, 2015; Ison et al., 2022; Smith, 2007). Given the history of dual enrollment within the community college sector and the specific growth of the concurrent enrollment model (Ison & Nguyen, 2021), community colleges will continually be tasked with maintaining academic records within both secondary and postsecondary educational contexts while meeting the needs and expectations of both secondary school administrators and parents/guardians. While not exhaustive, we hope this practice brief can help community colleges navigate the complicated nature of FERPA expectations and requirements within different educational contexts and can lead to critical institutional conversations that precipitate equitable institutional policy and practice.

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