



# CAS DEPARTMENT HEAD AND MANAGERS PRESENTATION



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General Counsel



# Grievance contact information

- UA grievances, Unrepresented faculty grievances and OA grievances call Bill Brady at 6-2305
- GTFF grievance call Peter Fehrs 6-2998
- SEIU grievance call Wes Fowler 6-2965
- Information regarding prohibited discrimination call Penny Daugherty if the accused party is an employee and call Darci Heroy if the accused party is a student. Penny can be reached at 6-2971 and Darci can be reached at 6-8136.
- What happens if you can't get a hold of anyone or if you just don't know who to contact regarding an employee issue, call 6-3082 and ask to speak with Missy or Sam.



# Important information

- If an employee or student wants to confidentially discuss his or her options, the employee can contact the ombudsperson at 6-3691.
- If students want to confidentially discuss their options relating to an incident of sexual misconduct they can contact the ombudsperson at 6-3691, the Sexual Violence Support Services center at 6-8194, the Counseling Center at 6-3227 or the University Health Center at 6-2770.



# Safety Concerns.

- What should I do if I believe that one of my employees is a safety threat to myself or others?
- First, call human resources and ask to speak with the person listed on the first slide as the point of contact for the relevant employment group. If you cannot reach someone, you can always call 6-3082 and ask to speak with Missy or Sam.
- Human resources can help assess appropriate next steps, which may include immediate measures like putting an employee on administrative leave or may include corrective measures like issuing a letter or reprimand. Human resources may also decide to ask the BETA team to perform a risk assessment regarding the underlying behavior.



# ADA concerns.

- Once you are aware that an employee has a disability and is experiencing workplace problems because of that disability, you should contact AAEO so that the university can initiate the interactive process under the ADA. You should also contact AAEO if an employee requests an accommodation due to a disability. AAEO can be reached at 6-2971.
- If you have any questions regarding whether AAEO should start the interactive process, call 6-2971.
- Common requests that may implicate the ADA process: requests for a new chair, requests for time off, or requests for an alternative schedule.



# Pregnancy Discrimination Act

- Pregnant women are entitled to accommodations to the extent those types of accommodations are available to other employees.
- Some pregnant women may also be disabled for purposes of the ADA.
- If a pregnant woman asks for a workplace accommodation, contact AAEO so that it can work with the employee to determine what accommodations are appropriate. These requests include but are not limited to requests for an alternate work schedule, work from home, light duty and time off.
- Do not deny a pregnant women a workplace accommodation without contacting AAEO.



# Fair Labor Standards Act (FLSA)

- What is it?
  - The law that governs minimum wage and when employees are entitled to overtime for hours worked over forty in a workweek
  - What is the test for determining whether an employee is entitled to overtime?
    - Two prongs: duties and salary
- What are the anticipated changes:
  - Change to the salary test
  - Salary test will now change every year
- How will this impact my employees?
- How will this impact my budget?
- When will these changes take effect?



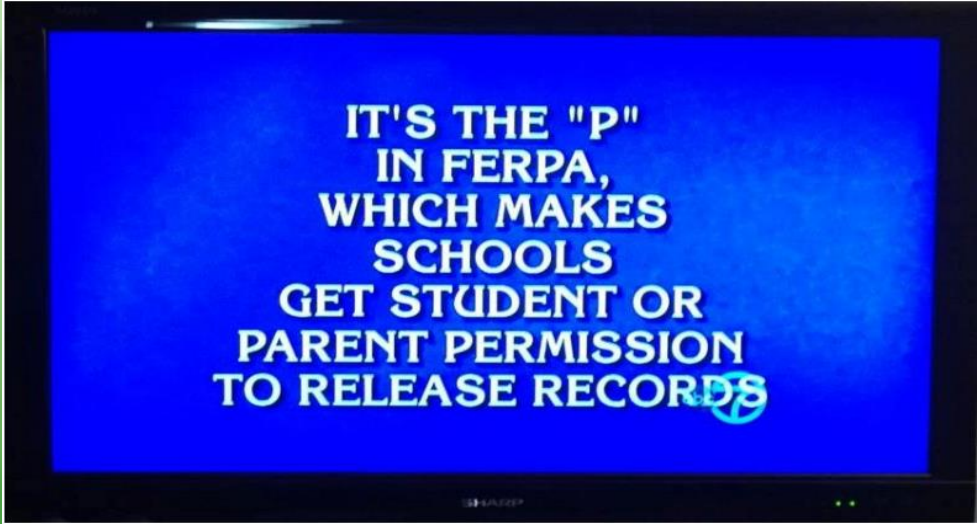


## Laws Relating to Records:

- FERPA
- Oregon Public Records Law
- Subpoenas (ORCP, FRCP)



# FERPA



IT'S THE "P"  
IN FERPA,  
WHICH MAKES  
SCHOOLS  
GET STUDENT OR  
PARENT PERMISSION  
TO RELEASE RECORDS

- *What is Privacy? ...*
- **F**amily **E**ducational **R**ights and **P**rivacy **A**ct of 1974
- Protects privacy of students' education records.
- Applies to educational institutions that receive federal money under Title IV.



## FERPA's Big Four

- UO students have the right, *in general*, to:
  - (1) **Control** disclosure of their “education records”
  - (2) **Inspect and review** their “education records”
  - (3) **Seek to amend** their “education records”
  - (4) **File complaints** with U.S. Dep’t of Education concerning alleged failures by institutions to comply with FERPA.



# FERPA “Education Record”

- “Education record” is broadly defined by FERPA
- Includes all records that are:
  - (1) Directly related to a student; *and*
  - (2) Maintained by UO (or by agents o/b/o UO)
- “Record”
  - Any information recorded in any way, including handwriting, print, electronic media, video, audio tape, film, and microfilm/fiche.
  - But not information that is not “recorded” (i.e., personal knowledge), or sole possession records.
- “Student”
  - Any individual who is or has been **in attendance** at UO
  - Applicants aren’t students until they accept and “attend”
  - ‘Til death do us part.



# FERPA Disclosure Rules

- “**Directly related**” = **personally identifiable**
- “**Disclosure**” = to release, transfer, *permit access to*
  - Does not include providing to author
- Education records shall not be disclosed absent
  - (1) **prior written consent** by student
  - OR
  - (2) under an **exception** to FERPA
- **Consent** must be signed, dated, and specify:
  - (a) the records that may be disclosed;
  - (b) the purpose for which they may be disclosed; and
  - (c) the persons to whom they may be disclosed.



# FERPA Exceptions

- **Exceptions to prior written consent (examples):**
  - Directory information (UO Policy 571-20)\*
  - School Officials
  - Health & safety threats
  - Law Enforcement records
  - Exclusive employment records
  - To comply with judicial orders and lawfully issued subpoenas
- **Cannot re-disclose without meeting independent exception!**



## FERPA: Remember...

- **If you forget everything, remember:**
  - (1) Education Records are **broadly defined**;
  - (2) Err on the side of **protecting the record**;
  - (3) When in doubt, **seek consent of student**;
  - (4) When you believe you need to disclose:
    - **Seek prior written consent** of student; or
    - Ask OGC whether an exception applies.
  - (5) You and your UO colleague may be a “**school official**” under FERPA who is permitted to access/use the record. Ask OGC.
  - (6) Prohibitions on re-disclosures.



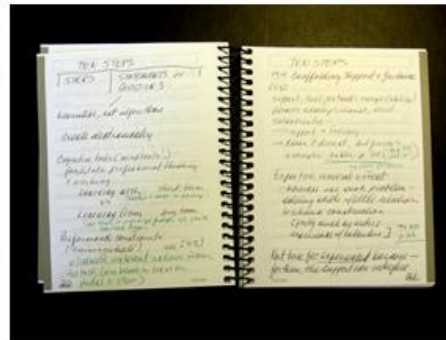
## FERPA: When in Doubt...

- **Obtain written consent of student!**
  - Registrar has multiple draft consent forms
  - OGC can augment if necessary
  - We can help!
- **Ask for help!**
  - Registrar and OGC can provide assistance
- **Err on the side of protecting!**



# Public Records

## A Public Record Is...



... and more!



# What is a Public Record?

- **Definition of a Public Record**
  - Any writing that contains information relating to the conduct of the public's business . . . **prepared, owned, used, or retained** by a public body regardless of physical form or characteristics.
- **“Writing”**

Handwriting, typewriting, printing, photographing, and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles, or electronic recordings.



# Who is Subject to the PRL?

- “Public Bodies,” -- including UO and YOU!
- Public Bodies must respond to public records requests by either complying with or denying the request.
- How quickly? Depends on factors like specificity of the request, volume of records requested, staff available to respond to the records request, and difficulty of determining whether any of the records are exempt from disclosure.



# Exemptions in the PRL

- **Conditional Exemptions**
  - Exempt certain types of information from disclosure “unless the public interest requires disclosure in this particular instance” - Examples:
    - Trade Secrets
    - Test and Examination Materials
    - Faculty Research
- **Unconditional Exemptions**
  - Confidentiality interests outweigh public disclosure interests. Examples:
    - Internal Advisory Communications
    - Personal Privacy
    - Confidential Submissions



# PRL Exemptions: Applicable Laws

- **State Law Examples**
  - Privileged information
  - Certain UO Policies (formally OARs), including personal faculty records (may carve out)
- **Federal Law Examples**
  - FERPA
  - Health Insurance Portability and Accountability Act (HIPAA)
  - Federal Privacy Act; FOIA



## *Help!:* Someone Wants My Records!

**Communicate!** If you are contacted by someone wishing to make a public records request, direct them to the Public Records Office **ASAP**.

- If you receive the request via email, forward the email to [pubrec@uoregon.edu](mailto:pubrec@uoregon.edu)
- If you receive the request via US mail, please scan the request and email it to [pubrec@uoregon.edu](mailto:pubrec@uoregon.edu) and send the original via campus mail to the PRO.
- Do not contact or provide documents to the requester directly. Follow the process!
- If you have further information regarding what is being requested, please let the office know.



## *Help!:* The PRO Wants My Records?!

### **If you are contacted by the Public Records Office:**

- Communicate! Talk with the PRO about what records you have — and what records you don't have
- Estimate your time in hours;
- If you have questions, or concerns, let the office know!
- Your work is front-end work: You are only being asked to gather records, not review them, the PRO and OGC will determine what is exempt.
- Err on side of more: If you think it might be responsive, send it. When in doubt send it anyway, the PRO can make that determination.
- Duty: It is our statutory duty as a public body to make public records available to the public. The default is disclosure.



# Subpoenas

- A subpoena is a writ or order commanding a person to do or refrain from doing a specified act.
- The form, content, service of, and responses to subpoenas are governed by state or federal rules of civil or criminal procedure.
- If you are served in your capacity as a UO employee, we can help!
- You may have to help us search for and provide responsive records.



# Subpoenas

- **Types of Subpoenas**
  - Subpoena *Ad Testificandum*
  - Subpoena *Duces Tecum*
- **Disobedience → Contempt**
  - Disobeying a subpoena may be punished as contempt of court, dismissal of one's case, or striking of defenses.
- **UO Subpoena Rule:**
  - If you receive a subpoena relating to your duties or activities at UO you must send it to OGC as soon as possible.
  - You should not respond or turn over any documents prior to consulting OGC.
  - Do same for subpoenas for UO student records (FERPA request)
- If the matter is unrelated to work at UO, you should contact your personal attorney.



# Questions and Feedback

We are currently developing our website and would appreciate your comments and feedback:

- What are the most common questions your department receives?
- What are the most common issues that you face?
- What topics or issues would you like to receive more information or training on?

Feel free to contact our office at 6-3082, or by email at [generalcounsel@uoregon.edu](mailto:generalcounsel@uoregon.edu) to let us know. Thank you!