

Legal and Ethical Issues in Teaching
Arts and Sciences New Faculty Meeting, August 17, 2010

SECTION ONE: POLICIES APPLICABLE TO STUDENTS AND TEACHING

- 1. Disruptive Students in Classroom (p. 2 & Handout)**
- 2. Distressed Students (p. 2)**
- 3. Other Safety-Related UA Policies/Resources (p. 3)**
- 4. Discipline for Students through Academic Misconduct Policy (p. 3)**
- 5. Faculty Obligations to Students Per Faculty Handbook (p. 3)**
- 6. Grade Grievance Policy (p. 5)**
- 7. Consensual Relationship Policy (p. 5)**
- 8. Harassment (p. 5)**
- 9. Academic Freedom (p. 6)**
- 10. Reminder of State Ethics Laws and University Policies Regarding Use of State Property/Employees for Personal Benefit (p. 8)**

SECTION TWO: CONFIDENTIALITY OF STUDENT RECORDS & FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

- 1. Compliance with Policy Required (p. 11)**
- 2. Policy and Training Resources On-Line (p. 11)**
- 3. What Educational Records are Covered Under FERPA? (p. 11)**
- 4. Student's FERPA Right to Privacy-Can't Disclose Unless Exception Applies (p. 12)**
- 5. Breach Notification (p. 15)**
- 6. Penalties (p. 15)**

**Legal and Ethical Issues in Teaching
Arts and Sciences New Faculty Meeting, August 17, 2010**

Key Legal Principal: Follow University policy, provide fair notice and opportunity to respond, and courts will uphold administrator's educational judgment.

SECTION ONE: POLICIES APPLICABLE TO STUDENTS AND TEACHING

1. Disruptive Students in Classroom

- **Provisions in Student Code of Conduct give you authority to control disruptive behavior in your class.** <http://policies.ua.edu/studentcode.html>

Tip: Include a statement on your syllabus that describes what you will do regarding your class—an academic matter, and what you will do regarding discipline—a Judicial Affairs matter.

Sample: The Code of Student Conduct requires that students behave in a manner that is conducive to a teaching/learning environment. Students who engage in behavior that is disruptive or obstructive to the teaching/learning environment will be subject to disciplinary sanctions outlined by the Code of Student Conduct. Disruptive/obstructive behavior is not limited to but may include the following: physical abuse, verbal abuse, threats, stalking, intimidation harassment, hazing, possession of controlled substances, possession of alcoholic beverages...(you may also include a statement detailing any behavior that you consider to be particularly disruptive or annoying such as cell phones, beepers, reading the newspapers...) Add what you will do re: in your classroom.

- **Review Disruptive Behavior in the Classroom-Q&A** (attached)

2. Distressed Students

- **Emergencies:** Contact UAPD, 348-5454
- **Student in crisis:** Discuss concerns with Amelia Bomar, Coordinator of Special Services in the Office of the Dean of Students, akbomar@sa.ua.edu, 348-0456, 230 Ferguson Center. If cannot get Amelia Bomar, call Dean of Students Office, 348-3326, and they will contact on-call dean. If significant concerns, they will refer to **Critical Incident Response Team**, which has reps from Residential Communities, Legal, UAPD, Judicial Affairs, Student Affairs. Faculty member will be required to cooperate by providing information to the team. If issues occur at night, call UAPD at 348-5454, and they will contact on-call dean.
- **Strategic Health Teams:** <http://sa.ua.edu/health/index.html>
 - **Mental Health Strategic Team:** <http://sa.ua.edu/health/mental.html> Purpose is to address faculty and staff concerns regarding student mental health issues and their role in referring students for counseling, in preparation for Mental Health Edu and a healthier UA community
 - **MentalHealthedu On-line Training:** <http://www.mentalhealthedu.ua.edu/index.html>, available since July 2008 to provide tools and information to administrators, faculty,

staff, graduate assistants and student workers in hopes that they may be able to identify and refer students who may be distressed to appropriate campus resources.

- AlcoholEDU On-line Training: <http://www.alcoholedu.ua.edu/>

3. Other Safety-Related UA Policies/Resources

- Emergency Preparedness: <http://beready.ua.edu/>
- Campus Violence Policy http://hr.ua.edu/empl_rel/policy-manual/campus-violence.htm
- Guide to UA Security Policies and Procedures <http://safety.ua.edu/guide.html>

4. Discipline for Students through Academic Misconduct Policy

- Policy: <http://facultysenate.ua.edu/handbook/append-c.html>
- Academic Honor Code. “All students in attendance at The University of Alabama are expected to be honorable and observe standards of conduct appropriate to a community of scholars. The University of Alabama expects from its students a higher standard of conduct than the minimum required to avoid discipline. At the beginning of each semester and on tests and projects, **at the discretion of the course instructor**, each student will be expected to sign an Honor Pledge which reads as follows: *I promise or affirm that I will not at any time be involved with cheating, plagiarism, fabrication, or misrepresentation while enrolled as a student at The University of Alabama. I have read the Academic Honor Code, which explains disciplinary procedures that will result from the aforementioned. I understand that violation of this code will result in penalties as severe as indefinite suspension from the University.*”
- “A course instructor, or any other person(s), who has **reasonable cause to believe a student has engaged in an act of academic misconduct** shall report, immediately upon discovery, the matter to the divisional academic misconduct monitor of the division within which the alleged misconduct occurred. The matter must be reported by the course instructor or department chair in a **timely manner**. In most cases the academic misconduct monitor should receive the report within 2-3 weeks of the student’s alleged act of misconduct. **The instructor will take no other action in the matter until a decision has been reached by the monitor or the dean.**
- “If any electronic device is confiscated by an instructor as part of the package of evidence presented to the monitor, the device will be returned promptly once pertinent information related to the accusation has been documented.”

5. Faculty Obligations to Students Per Faculty Handbook

- a. Faculty Handbook: <http://facultysenate.ua.edu/handbook/word/handbook-word.html>

- b. Adequate Syllabus

Chapter Five, IV, A.: “Faculty members are required **at the beginning** of each course to provide their students with an **accurate syllabus**. Items to be covered in the course

syllabus include: prerequisites, course description, objectives, outline of topics covered during the semester, attendance policy, **the planned number and timing of major examinations and assignments**, grading policy, the policy for making up missed course work (including examinations), and required texts and other course material. **Students will be given timely notice of any changes in the syllabus.** Any special considerations (e.g., opportunities to earn extra credit) offered to a student shall be available to all students in the class.”

b. Prompt Assessment

Chapter Five, V: Faculty members are required to make appropriate assignments, and to make periodic assessments of the progress of their students. *Systematic evaluation of students' work is an important part of the teaching-learning process.* Evaluations may take many forms, and may vary in number and scope, depending on the objectives and purpose of the course. **Faculty members must inform their classes in writing at the beginning of the semester as to the nature and timing of major evaluations, including the final evaluation. Faculty members must give students timely information about the results of evaluations, and must give students an opportunity to review their progress and to discuss their evaluations.**

c. Attend Class as Scheduled

Chapter Five, III. B: Attendance states that faculty members are to “conduct their classes as scheduled.” “A faculty member normally must receive prior approval from the department chairperson before missing or rescheduling classes. The faculty member must arrange for a suitable substitute for missed classroom time and must discuss such arrangements with the department chairperson to ensure that the plan is acceptable.”

d. Maintain Office Hours

Chapter Five, Section II B: “All faculty members must maintain **regular and reasonably convenient** office hours to answer questions from students and to advise students. In addition, faculty members are expected to schedule individual appointments as needed. The schedule of office hours must be posted and must be available in the departmental/program office.”

e. Maintain Confidentiality of Student’s Records (See Section 2 of this Handout)

- Chapter Five, VI, B: “Only faculty, administrators, and staff with a legitimate need for information from student records are permitted access to such records. Faculty, administrators, and staff dealing with student records **are expected to know the University's policy on confidentiality of student academic records** and to observe appropriate precautions when handling student information (e.g., letters of recommendation, grade reports, computer terminal screen display information, grade point average, quality points earned).

6. Grade Grievance Policy

- University-Wide Academic Grievance Policy:
<http://facultysenate.ua.edu/handbook/append-d.html>
- If grade grievance, must allege either arithmetic or clerical error; arbitrariness, possibly including discrimination based upon race, sex, religion, or national origin of the student; personal malice
- Can also be “complaint regarding an academic action taken by instructional or administrative personnel”
- Student presents grievance to Department Chair, who attempts to reach a resolution
- If no resolution, goes to Dean to resolve.
- Appeal to Office of Academic Affairs

7. Consensual Relationship Policy

- <http://facultysenate.ua.edu/handbook/append-j.html>
- “Persons who have an instructional or supervisory role over family members or those with whom they have consensual-sexual or personal relationships may be subject to charges of bias or coercion brought by the persons directly involved or by third parties who perceive that their own legitimate interests have been compromised. **Every effort should be made to avoid having faculty members teach or supervise members of their immediate family or anyone else with whom they have a relationship that could interfere with impartiality.** Such an undesirable situation should occur only with approval of the departmental chairperson or the dean, and only when alternative arrangements are unreasonable. Otherwise, amorous or sexual relationships between instructors or supervisors and persons over whom they have professional authority are prohibited and may result in disciplinary action against the instructor or supervisor.”
- If violate policy, and harassment charge is made arising out of the prohibited relationship, UA provides no legal defense to faculty member who violated this policy.

8. Harassment

- Policy: <http://eop.ua.edu/harrassment.html>
- PLEASE COMPLETE On-Line Training tutorial: <http://training.newmedialearning.com/psh/ua/>
- Applies to harassment based on “protected status” (gender, age, disability, race, national origin, religion) and based on sexual orientation
- Complaints made to designated harassment resource persons:
<http://eop.ua.edu/persons.html> has the list: For A&S, its Kathryn Oths, 24D Ten Hoor , Box 870210 , 205-348-1957, koths@tenhoor.as.ua.edu
- Confidentiality on Need to Know Basis
- Assurance Against No Retaliation
- Supervisory personnel’s duty to educate, sensitize, prevent and stop harassment
- TRAINING is not a Sanction! It is our legal responsibility!
- AAUP Statement of Professional Ethics (see below)

9. Academic Freedom

c. Faculty Handbook provisions on Academic Freedom

<http://facultysenate.ua.edu/handbook/chapter-3.html#i> “The academic freedom of the faculty is indispensable to the University in fulfilling its obligations to students, the community, and the state. The University endorses the statement on academic freedom as expressed in the American Association of University Professors’ statement, Academic Freedom and Tenure, 1940 Statement of Principles, and explained in their 1970 Interpretive Comments:

1. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.
2. Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights to the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

Faculty members are entitled to full freedom in research and publication. However, publication of research results may be subject to requirements of individual research contracts and patent and copyright limitations. ***Faculty members are free to present relevant material in the classroom without prior censorship, but are expected to meet the highest standards of professional integrity.***

Any faculty member may speak freely as a private citizen, but should make it clear that the views stated represent personal opinions and do not necessarily represent the position of the institution. In expressing opinions in public, faculty members should realize that the public may judge the teaching profession, as well as the University, on the basis of statements made by individual faculty members.”

b. Harassment v. Academic Freedom—Harassment Policy Statement

- <http://eop.ua.edu/harrassment.html> “Free speech rights apply in the classroom and in all other education programs and activities of public institutions, and First Amendment rights apply to the speech of students and teachers. Great care must be taken not to inhibit open discussion, academic debate, and expression of personal opinion, particularly in the classroom. ***Nonetheless, speech or conduct of a sexual or hostile nature which occurs in the context of educational instruction may exceed the protections of academic freedom and constitute prohibited sexual harassment if it meets the definition of sexual harassment noted above and 1) is reasonably regarded as non-professorial speech (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process or legitimate objectives of the course), or 2) lacks accepted pedagogical purpose or is not germane to the academic subject matter.***
- *Bonnell v. Macomb Comm. Col.* (6th Cir. 3/1/01; US cert. denied). Professor suspended from teaching (English Language and Lit.) after previous warning about vulgar classroom speech. In

discussing sexually explicit literature, he expressed personal sexual escapades; repeatedly ostracized students who expressed offense or disgust; frequently used obscene and vulgar language. Court held: Students are “captive audience” “paid to be taught and not vilified in indecent terms,” particularly when no academic purpose or justification. Academic freedom cannot compromise student’s right to learn in hostile-free environment. **Must be germane to course content as measured by professional standards.**

- **Academic Freedom PROTECTS** right to engage in **academic** debates, pursuits, and inquires to discuss ideas, concepts, and opinions--scientific, political or aesthetic. **DOES NOT PROTECT** casual, idle, flirtatious chit-chat or calculated speech designed to further professor’s private interests or which has no pedagogic purpose.

c. AAUP Statement on Professional Ethics

<http://facultysenate.ua.edu/handbook/chapter-3.html#i>

1. The professor, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognizes the special responsibilities placed upon him. His primary responsibility to his subject is to seek and to state the truth as he sees it. To this end he devotes his energies to developing and improving his scholarly competence. He accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. He practices intellectual honesty. Although he may follow subsidiary interests, these interests must never seriously hamper or compromise his freedom of inquiry.

2. As a teacher, **the professor encourages the free pursuit of learning in his students.** He holds before them the best scholarly standards of his discipline. **He demonstrates respect for the student as an individual, and adheres to his proper role as intellectual guide and counselor.** He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of students reflects their true merit. He respects the confidential nature of the relationship between professor and student. **He avoids any exploitation of students for his private advantage** and acknowledges significant assistance from them. He protects their academic freedom.

3. As a colleague, the professor has obligations that derive from common membership in the community of scholars. He respects and defends the free inquiry of his associate. In the exchange of criticism and ideas he shows due respect for the opinions of others. He acknowledges his academic debts and strives to be objective in his professional judgment of colleagues. He accepts his share of faculty responsibilities for the governance of his institution.

4. As a member of his institution, the professor seeks above all to be an effective teacher and scholar. Although he observes the stated regulations of the institution, provided they do not contravene academic freedom, he maintains his right to criticize and seek revision. He determines the amount and character of the work he does outside his institution with due regard to his paramount responsibilities within it. When considering the interruption or termination of his service, he recognizes the effect of his decision upon the program of the institution and gives due notice of his intentions.

5. As a member of his community, the professor has the rights and obligations of any citizen. He

measures the urgency of these obligations in the light of his responsibilities to his subject, to his students, to his profession, and to his institution. When he speaks or acts as a private person he avoids creating the impression that he speaks or acts for his college or university. As a citizen engaged in a profession that depends upon freedom for its health and integrity, the professor has a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

d. Facebook Issues/Disparaging Comments

TIP: Communications or pictures that could be deemed to violate UA's harassment policy or Statement on Professional Ethics or are otherwise inappropriate for the workplace should not appear on Facebook if you are teaching and your students are encouraged to visit your website.

e. Political Activity <http://facultysenate.ua.edu/handbook/chapter-3.html#i>

- ***“No University employee shall use or permit to be used University resources, time, or property for or on behalf of any political candidate, campaign, or organization or for any contribution or solicitation of any contribution to a political campaign or organization; nor shall any University employee lend or appear to lend the support of the University in connection with any contribution or solicitation of any contribution to a political campaign or organization.*** (Nothing in this rule is intended to discourage the impartial use of University facilities as a public forum, however)....It is incumbent upon employees of the University to make clear in any political activity whatsoever that they are acting in a private and individual capacity and that their activities have neither University sponsorship nor support. It is also incumbent upon employees of the University to avoid any private actions of a collective nature that may lend or appear to lend the support of the University to political activity. ...No University employee may seek or hold public office and remain in the employ of the University if such activities could or would result in a conflict of interest or interfere with the employee's carrying out his University responsibilities. University employees who intend to seek election to public office must first obtain written consent from the Chancellor through appropriate reporting channels. In cases where the workload of the employee is the primary concern, Leaves of Absence during periods of running for office or serving in public office may be considered.”

10. Reminder of State Ethics Laws and University Policies Regarding Use of State Property/Employees for Personal Benefit

1. UA property, including equipment, supplies, tools, and building materials are to be used for conducting official business of UA. Private or personal use of UA property without proper authorization is prohibited. (*Staff Handbook provisions*) Faculty and staff shall not: a) make use of property or personnel of UA for the purpose of obtaining compensation from sources external to UA, except when such use is permitted by law and is a normal part of the individual's professional academic activities, or b) use or permit the use of the name of UA in a way that would suggest that the activity is sponsored or endorsed by UA, without prior authorization of the President. (*Faculty & Staff Handbooks-Supplemental Compensation*)

2. Intellectual property generated during the course of your employment may also be owned by UA. (*See UA Patent and Copyright Policies*)
3. In addition, all electronic media systems, including but not limited to voice mail, text messages, e-mail, the Internet, fax machines, hardware, software, local area networks, files and all information composed, transmitted, accessed, received or stored in these systems are the property of UA. Those systems are to be used for conducting UA business, although limited incidental personal use is permitted provided it does not consume a significant amount of computing resources, does not interfere with job performance or work of other employees and does not violate laws, rules, policies or licenses. However, the use of this equipment for personal commercial purposes or for personal financial or other gain is strictly prohibited. (*Staff Handbook and Electronic Media Policy*)
4. Employees are prohibited from engaging in the conduct listed below and may be disciplined up to and including dismissal: dishonest acts; appropriating state or student equipment, time, or resources for personal use or gain; misusing or neglecting UA property, funds, materials, equipment or supplies; or stealing or possessing without authority any equipment, tools, materials or other UA property or attempting to remove them from the premises without approval or permission from the appropriate authority. (*Staff Handbook*)
5. As a state-funded entity, employees are prohibited from throwing away or discarding UA property. When things are no longer useful to a department, they can be sent to Surplus Property and then sold to the public. The only way an item that was purchased with State funds can be sold is to offer it to the general public through a public auction. (*Property and Inventory Management*)
6. It is a violation of the State Ethics Code (felony or misdemeanor, depending on facts) for a UA employee to use or cause to be used equipment, facilities, time, materials, human labor, or other UA property under his/her discretion or control for the private benefit or business benefit of that employee, except as otherwise provided by law or pursuant to a lawful employment agreement. It is also illegal for a person to solicit a UA employee to do these things for that person's private or business benefit, except as otherwise provided by law. (*See Alabama Code Sec. 36-25-5*). This includes using students and/or employees to perform personal errands or favors for non-work related purposes.
7. It is a violation of the Code of Conduct for a faculty member to exploit students for his/her private advantage. A faculty member should also acknowledge significant assistance from students, demonstrate respect for the student as an individual, and assure that evaluation of that student reflects their true merit. (*Faculty Handbook, Chapter 3, Section II, B*)
8. It is a violation of the State Ethics Code (felony or misdemeanor, depending on facts) for a UA employee to use his/her position with UA to obtain personal gain for themselves, a family member or any business with which the employee is associated. (*See Alabama Code Sec. 36-25-5*).

For more information, review *Alabama Ethics Training Video* at <http://ethics.alabama.gov/training/Intro.aspx> ; *Handbook for Public Employees*, http://ethics.alabama.gov/forms/2010/Handbook_Employees_Public_Rev_09.pdf ; and *Top Ten List to Avoid Violating State Ethics Law* at <http://ethics.alabama.gov/forms/TopTenList9-1-09.pdf> . If

you see or suspect unethical or illegal behavior, you may report your concerns anonymously through our Compliance and Fraud Hotline: <http://financialaffairs.ua.edu/compliance/>

Ala. Code § 36-25-5 Personal use of office

(a) **No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain** for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(c) **No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee,** any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

(f) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.

SECTION TWO: CONFIDENTIALITY OF STUDENT RECORDS & FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

1. COMPLIANCE WITH POLICY REQUIRED

- a. “Only faculty, administrators, and staff with a legitimate need for information from student records are permitted access to such records.” ...“Faculty, administrators and staff dealing with student records are ***expected to know the University’s policy on confidentiality of student academic records*** and to ***observe appropriate precautions when handling student information*** (e.g., letters of recommendation, grade reports, computer terminal screen display information, grade point average, quality points earned)” **Page 68 of UA Faculty Handbook**
 - i. **Observe appropriate precautions:** don’t leave confidential info on typing stands, on top of in baskets, unlocked office, etc.
- b. “Employees should prevent and not participate in the unauthorized access, use, review, disclosure, dissemination, alteration, or destruction of confidential information regarding students, employees or patients. Such confidential information includes, but is not limited to: Information from student records in violation of the University's Policy on Confidentiality of Student Records and/or the Family Educational Rights and Privacy Act (FERPA).” **Page 32 of UA Staff Handbook**

2. POLICY AND TRAINING RESOURCES ON-LINE

- a. *UA’s Policy on Confidentiality of Records*
http://registrar.ua.edu/policy_confidentiality.html
- b. *Tips for Faculty and Staff*
http://registrar.ua.edu/tide_faculty_staff.html
- c. *PowerPoint Training Presentations for Students, Faculty, Administrators, Deans*
<http://registrar.ua.edu/privacy.html>
- d. *NEW: Family Educational Rights & Privacy Act (FERPA) FINAL REGS effective 1/8/09*
http://www.nacua.org/documents/FERPA_FinalRule.pdf

3. WHAT EDUCATIONAL RECORDS ARE COVERED UNDER FERPA?

- a. RECORDS a) that directly relate to a student (have personally identifiable information about a student) *and* b) UA or its contractor/vendor maintains that record
 - i. Personally identifiable info includes info, alone or combined w/other info (local communications, other community info) , that would allow reasonable person in school community, w/o personal knowledge of the relevant circumstances, to identify student w/reasonable certainty

- ii. Does not have to be “academic” in nature to qualify as covered record (may contain information about disability, disruptive conduct, health information)
- b. Exception for *Sole Possession* records, *Employment* records of UA employees who might be enrolled in school (but not student employment records), *law enforcement* records, *alumni-type* records
- c. IMPORTANT: ***Does not cover personal observations/impressions/conversations from direct, personal experience with a student***
- d. NO RIGHT FOR OTHERS TO INFORMATION. Holder of the Right to Privacy is the Student. Others don’t have a RIGHT to the information. UA permitted to release if exception applies.

4. STUDENT’S FERPA RIGHT TO PRIVACY—CAN’T DISCLOSE UNLESS EXCEPTION APPLIES

- a. **Exception # 1: Written Consent**—dated, signed by student, identifies records to disclose and whom to disclose to
 - o http://registrar.ua.edu/doc/FERPA_Release_Form_3.doc is sample form
- b. **Exception # 2: Directory Information** -UA has to give student an opportunity to opt out, and if student does not, then we *may* release following information:
 - i. Name, Class/Level, Local Address, UA School/College(s), Local Phone Number, Major(s)/Degree Program(s), Permanent Address, Degree(s) Earned and Date(s), Permanent Phone Number, Academic Awards and Honors, UA email address, Prior Postsecondary Institution(s) Attended, Dates of Attendance, Full-/Part-Time Enrollment Status, Participation in officially recognized activities & sports (or in intercollegiate athletic teams), Weight and height of members of intercollegiate athletic teams.
 - ii. We are not REQUIRED to give out any of this directory information to anyone. It is permissive if we think it is in the best interest. Be careful and make sure you know why you are giving it out.
- c. **Exception # 3: School Official with Legitimate Educational Purpose**
 - i. **School Official:** includes employees of UA; persons/companies with whom UA contracted or delegated education-related functions to provide service (collection agency, attorney, outsourced service company, etc); Board of Trustees; student on official committee or grievance/ disciplinary committee or assisting another school official in performing tasks

- ii. **Legitimate Educational Interest:** authorized University activity in which access to record is necessary or appropriate to proper performance of job—cannot be used for purpose extraneous to UA job
 - 1. Faculty members/staff do not need to know diagnosis of student registered with ODS—they only need to know what reasonable accommodations are provided
 - iii. **Contractor as School Official?** Must be under direct control of UA w/respect to maintenance and use of info from education records (ex: describe their responsibilities in written agreement since UA must ensure compliance by contractor w/FERPA). Must perform type of services/functions for which UA would otherwise use its own employees
 - iv. **Duty of UA To Protect Records:** School has duty to use reasonable methods to ensure employees limited to access for job purposes. Policy for controlling access must be effective. Need appropriate physical, technical, administrative and operational controls which will allow access to be limited. High risk records (credit card, SSN, CWID, health, special ed, transcripts/grades) get more protection than lower risk (directory information)
- d. **Exception # 4: Parents Who Claim Student as Dependent on Tax Return**
- i. Parent no longer holder of privacy right once 18 or enrolled at UA. Parent has no RIGHT. UA **may** release if parent produces redacted tax return (or student agrees claimed as dependent) (can't presume it). (Freshmen Orientation forms)
 - ii. If dependent, non-custodial parent also has access in most cases
 - iii. Dual enrolled students: UA can share w/HS-parent still holder of right at HS if child under 18 yrs of age
 - iv. Another exception allows UA to tell parent (regardless of whether claimed as dependent) about alcohol/controlled substance violation of law or UA policy for students under age 21 at time of disclosure
- e. **Exception # 5: Health & Safety Emergency (Preventing Harm takes Precedence over Privacy)**
- i. Can release in connection w/emergency to protect (keep from harm, attack, injury) health or safety of student or other persons
 - ii. Final Regs: School must record “articulable & significant threat to health or safety of students or others” w/in a reasonable amount of time after disclosure, identifying to whom disclosure was made, & keep in student’s record

- iii. DOE will not substitute its judgment for school's if, based on info available at the time, School had rational basis that emergency exists (minimal threshold)
- iv. What DOE thinks is Emergency? Related to threat of an actual, impending or imminent emergency (terrorist attack, natural disaster, campus shooting, outbreak of epidemic like e-coli). Or, student gives sufficient, cumulative warning signs to lead school to believe student may harm himself or others at any moment.
 - 1. Ex: student sends email to RA saying has contagious disease, then we can tell roommate & others to urge them to seek medical care
 - 2. Student's statements about suicide, unusually erratic and angry behaviors or similar conduct that others would reasonably see as posing risk of serious harm.
- v. Who is appropriate person to release to? Anyone if knowledge is necessary to protect health/safety of students or others (helps school gather info necessary to provide protection)
 - 1. Current or prior peers of student; Mental health professionals who can provide info to help protect against threat; Law enforcement officials; Potential victim and parents of potential victim; Other schools which student has previously attended (can rely on current school's emergency decision); Threat Assessment Teams; PARENTS

f. Exception # 6: A Lot More Exceptions!!

- i. **Accrediting Organizations** (adequate safeguards to prevent re-disclosure)
- ii. **"Final results" of disciplinary proceedings against alleged perpetrator of crime of violence or nonforcible sex offense and UA determines student responsible (and to victim, final results regardless of whether find responsible)**
- iii. **Can share info with other institution at which student seeks or intends to enroll or where student enrolled, if related to enrollment or transfer**
- iv. **Info about students who are Registered Sex Offenders**
- v. **Court Order/Subpoena**—send to UA Office of Counsel. In most cases we must notify the student of the subpoena (unless federal grand jury subpoena or other subpoena issued for law enforcement purpose & instructed not to notify)
- vi. **Financial Aid, Certain Research Studies on behalf of UA, Certain Federal & State Officials Ensuring Compliance with Some Laws**

5. BREACH NOTIFICATION

- a. FERPA does not require that UA notify the student of a disclosure, but “may be advisable” if could lead to identity theft. But, UA must record unapproved disclosure
- b. Immediately contact UA Office of Counsel & Ashley Ewing, aewing@ua.edu, Chief Information Security Officer, when discover breach of electronic records (particularly if contains CWID, SSN#) to whether need to take steps to mitigate the risk to students.

6. PENALTIES

- a. Discipline under UA Policies; Complaint filed with Family Policy Compliance Office (can revoke federal funding); No cause of action under FERPA, but state privacy laws apply