



CSI FERPA: Under the Microscope

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Agenda for today

- Welcome and introductions
- FERPA Basics
- Solve identified FERPA scenarios
- Report out

BREAK

- Solve identified FERPA scenarios
- Report out
- Solve FERPA issues you identified
- Questions



Outcomes

- Establish a solid understanding of FERPA
- Further your comfort with the nuances of FERPA
- Expand your skill at applying FERPA
- Create a FERPA network with other AACRAO members

Table work



- Brainstorm FERPA application concerns
 - What gives you pause?
 - What makes you go seek additional advice?
 - What do you hope no one ever asks you regarding a FERPA issue because you don't know how to answer it?
- Determine the “best” issues to share with the group
- Report out issues for further examination



The process for today

- Quick and basic overview of FERPA
- Group discussions related to specific case study
 - Presented with a hypothetical situation
 - How do you collect the evidence to inform your decision
- Group presents findings to entire audience
 - Minority report is encouraged – remember FERPA is nuanced
- The “answer” is revealed

FERPA Basics



- Family Educational Rights and Privacy Act
 - Also known as the Buckley Amendment
- Designed to protect the privacy of education records and to provide to parents (primary/secondary education) or to students (higher education)
- Intended that students' rights be broadly defined and exceptions narrowly construed.

To whom does the Act apply?



- FERPA applies to each educational agency and institution that receives funds under any program administered by the Secretary of Education.
- “Educational institutions” are schools or other entities that provide educational services and are attended by students.
- “Education agencies” are entities that are authorized to direct and control public elementary or secondary, or postsecondary institutions.

Education Records



- “Education records” are those records which...
 - contain information personally identifiable to a student (who is or has been in attendance); and
 - are maintained by an educational agency or institution or by a party acting for the agency or institution.
 - Maintained in any way, including, but not limited to...handwriting, video or audio tape, computer media, film, print and microfilm/microfiche.

Exceptions



- What is NOT an “Education Record”?
 - Sole possession records;
 - Records created and maintained by a law enforcement unit for law enforcement purposes;
 - Employment records (unless contingent on attendance);
 - Medical/treatment records made and maintained in the course of treatment and disclosed only to those individuals providing treatment;
 - Records that only contain information about a student after he or she is no longer a student at that institution (alumni records).

Basic Rights of Students



- Inspect and review “education records”
- Seek to amend “education records”
- Have some control over the disclosure of information from “education records”
- File a FERPA complaint with the DOE

Disclosure of Student Records / Information



- Education records and personally identifiable information from those records may not be disclosed (with limited exception) without the student's written consent.
- Directory Information may be disclosed without student consent, except where such information has been restricted.

Directory Information



- Information not generally considered harmful or an invasion of privacy if disclosed.
- An institution may disclose directory information if it has given notice to students in attendance of:
 - What items the institution has designated as directory information.
 - A student's right to refuse to let the institution designate any or all of the information as directory information.
- Institutions must notify students of their basic rights, including regarding directory information, no less than annually.

Exceptions to Consent



- To school officials with legitimate educational interests (Need-to-know).
- To schools in which a student seeks or intends to enroll, or is enrolled.
- To Federal, State, and local authorities conducting an audit, evaluation, enforcement of education programs; or in conjunction with legislative requirements.
- In connection with financial aid.
- To organizations conducting studies on behalf of educational institutions.
- To accrediting organizations.
- To parents of a dependent student.
- To comply with a judicial order or subpoena (reasonable effort to notify).
- In a health or safety emergency.

Exceptions to Consent, continued



- Directory information.
- To the student.
- Results of a disciplinary hearing to an alleged victim of a crime of violence.
- Final results of a disciplinary hearing concerning a student who is an alleged perpetrator of a crime of violence and who is found to have committed a violation of the institution's rules or policies.
- Disclosure to parent of student under 21 if the institution determines that the student has committed a violation of its drug or alcohol rules or policies.
- Disclosure of information received under a community notification program concerning a student who is required to register as a sex offender in the State.

School Official



- Definition of “school official”:

“A school official is a person employed by the University in an administrative, supervisory, academic/research, or support staff position; contractors, consultants, volunteers and other non-employees performing institutional services and functions; and a person serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.” (AACRAO)

FERPA – FPCO



- **For technical assistance and advice to school officials:**

Family Policy Compliance Office

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202-8520

(202) 260-3887 (telephone)

(202) 260-9001 (fax)

FERPA@ed.gov

<http://www.ed.gov/policy/gen/guid/fpc/index.html>

FERPA – AACRAO



AACRAO has many FERPA resources:

- <http://www.aacrao.org/professional-resources/compliance/ferpa>
- LeRoy Rooker, Senior Fellow: FERPA@AACRAO.org
- 2012 FERPA Guide
- 2013 FERPA Quick Guide

FERPA Scenarios

Collecting the evidence



Each table has a reference document titled “COLLECTING THE EVIDENCE”. Examples....

- Is the item in question a student education record and therefore covered by FERPA?
- Is the person a student: does FERPA apply?
- Is written consent required prior to disclosing student information?
- If written consent is not needed, what exception in FERPA allows for this release?



Let's try one for practice



The ever vigilant parent

The Dean of Students at your institution is contacted by the mother of an incoming freshmen. The mother requests a meeting with her daughter's academic adviser and specific student services staff prior to the start of new student orientation. She wants to go over certain issues, including her daughter's medical history, allergies, disability information, dietary information, high school records and recommendations. She also wants to talk about the courses her daughter "should" take the upcoming semester and to verify that she will be informed of her daughter's academic progress or issues.

You are contacted by the Dean of students who is wondering what can be shared with the mother.

What can he/she share? What information was key to making your decision?

ANSWER



- You need to consider when your institution defines an individual as a student? After classes start? When money has been sent in? When they say they are coming?
- You also need to be aware of any state open records laws that may govern your institution as this could also have an effect.



It's your turn



Speaking out of class

You have overheard a conversation between two faculty members about a student on your campus. One faculty member shared that she has spoken with this student's pastor regularly about some of her concerns. You are troubled by this as you believe the faculty member might have violated the student's FERPA rights.

Are your concerns legitimate?

ANSWER



- FERPA is a privacy law not a confidentiality law.
- Personal observations are not covered by FERPA.
- Information maintained by the institution such as classroom performance, attendance (if maintained) cannot be shared without written permission from the student to do so.

New ways of meeting



A department chair at your institution was involved in a technology training on campus where it was stated that using Skype or Google Groups was not FERPA compliant and that certain topics should not be discussed via this medium. The department chair asked if this was indeed the case as they were hoping to hold some evening advising sessions this way in the future.

What is your response?

ANSWER



- FERPA requires education records be protected from improper disclosure.
- You need to look at the contracts for these tools in terms of who can/does have access to the information.
- In general, social media is not a good way to work with student records as you are not certain who else is with the student (or if it even is the student).
- Skype and Google + can be great tools for mass sessions about general information but are not good for relaying private student information.

Withholding grades at the end of the semester



Your campus recently implemented on-line course evaluations. In order to encourage students to submit their course evaluations (response rates were low the first semester in use) your campus has begun withholding final grade viewing until the evaluations are complete.

You wonder if this is acceptable or if it is a FERPA violation?

ANSWER



- The institution is not denying the student access to his/her information, it just isn't as instantaneous as it would be otherwise.
- Grades are education records.
- If grades were withheld indefinitely (beyond the 45 days allowed in FERPA) this would be a FERPA violation.



Plagiarism police

A staff member at your institution heard that the process of professors submitting student's words from a paper into Google or a plagiarism detection site (i.e., Turn-it-in) violates students' FERPA rights. Your faculty are currently discussing using some mechanism to detect plagiarism and you want them to consider all the implications of doing so.

What do you tell your faculty? Does submitting student work to one of these sites violate FERPA?

ANSWER



- Personally identifiable information must be removed first OR students can submit the words themselves.

To MOOC or not to MOOC is that even the question?



Your campus is about to embark on its first MOOC. Registration for the course will be handled outside of your SIS. The students who enroll in the MOOC are not admitted to the University, though they do receive grades and might receive a certificate of participation from the entity offering the MOOC.

What are the FERPA implications of offering a MOOC? Does FERPA apply to the students enrolled in the MOOC?

ANSWER



- Yes, these records are covered – technically – but how they are covered is questionable. The crux of FERPA is “maintained by the institution” – so, if your institution is not actually offering the course you are not responsible for the FERPA part.
- If your institution maintains the records for these courses, then yes.
- I suppose that the second question relates to the relationship established between the institution and the MOOC organization. For example, with Udacity, the contract is ONLY with the faculty directly - no institutional alignment per se. But, with Coursera, there is actually a contract with the institution, alignment with the institution (e.g. marketing), etc.

Access for the Foundation?



Your institutional Foundation wants access to the campus student information system. They plan to use this information to better connect donors with scholarship recipients, show that donor money is being used wisely, and to work with students to write thank you letters to donors.

Can you grant them access to the student information system and all its information?

ANSWER



- Key to this is the Foundation must be considered part of the institution to share non-directory information.
- If part of the institution, then limit the information shared only to that which they have a legitimate educational interest.

What is considered “reasonable methods” to identify?



Your campus is rolling out a new student portal. It will contain a great deal of student-specific, non-public information about students. Your campus information technology office plans to require students to login with their institution-provided username and self-selected password (these are the credentials they use to register, etc.).

Do they need different or stronger credentials to access this information?

ANSWER



- It depends.
- If the password is randomly generated and securely transmitted to the student, then it is fine.
- But, many times the initial password may be set to a SSN and/or the student ID number. In this case, giving the student the ability to change the password should be implemented.

Kind of big data



- Due to a change in legislation within your state, students receiving state grants must maintain a specific GPA in order to renew their grant in subsequent years. Therefore, your state will be requiring your institution to report the GPA's of all students who are residents of your state, regardless of whether or not they receive the state grant. Is this okay?
- What about a statement on the FAFSA where it states the student wants to be considered for state aid and agrees to submit the information to their legal state of residence. Does this constitute “application” and therefore qualify as an exception?

ANSWER



- Part 1 – no, this doesn't fall under the financial aid exemption for students who have not applied for or received financial aid from the state agency providing the financial aid.
- How would you handle parsing this data? How would you handle informing your state agency that you aren't going to provide all the information they are requesting? Because this would not be possible, it is not okay.
- Part 2 – it depends on the wording on the FAFSA. This could work for those who have indicated they would in fact like their information forwarded on. Obviously, if a student has not filed a FAFSA or indicated on the FAFSA that they wanted their information shared, it would not work.



Non-credit students and FERPA

- Is it okay to email student schedules and bills to those students who are enrolled in non-credit courses (and do not have access to your portal and in turn do not have a secure log-on to your institution generated email account) to their personal email address such as gmail or yahoo?

ANSWER



- You must use “reasonable” methods to authenticate the identity of the student (what do you use? Triangulation? – do you get pushback).
- If the email address being used has been provided by the student, sending info this way CAN be done. Be careful what you include – no PIN numbers, passwords, CC infor, SSN, etc.

You used that photo?



- Currently your institution produces a yearbook. If a student doesn't provide a yearbook photo, their Student ID photo is used. Is this a FERPA concern? Does your institution need to have student consent allowing the use of the photograph?

ANSWER



- Yes, unless your institution includes photos as directory information. If this is the case then you only need to obtain consent from those who've opted out.
- If your institution does not include photos as directory information, you need written permission from any student whose photo is being added to the year book.
- You do not need to remove a photo after permission has been granted.



The signature provides access

- When athletes arrive on campus they sign a “waiver” which allows those in the Office of Athletic Services to see academic information concerning that student athlete and to speak with faculty about the student athlete’s class attendance and grades. But, the staff within the Office of Athletic Services claim they have a right to order official transcripts for the student athletes (without the student’s knowledge) to be sent out to various third parties for good reasons such as a scholarship nominations or awards. Is this okay?

ANSWER



- The waiver these students signs allows that information to be shared with the Office of Athletic Services; NOT for them to re-release the information .
- In order to obtain and send in a transcript for these students you can do a few things:
 - Request students grant permission each time one of these comes up.
 - Require the student submit the scholarship award/nomination him/herself.
 - Add language to the waiver that specifically permits the release of transcripts for awards/honors/scholarships.
 - Would you charge for these official transcripts?
 - Is there a recordation requirement?



Computing activity revealed

- The Information Technology area at your institution would like to know if login information for students (when they logged on to the computer, how long were they on the computer, what IP address, etc...) is covered under FERPA? You have a policy of not giving this information out when questioned, but wanted to know if there is a specific rule in FERPA that covers this information.

ANSWER



- It depends on whether it meets the FERPA definition of an education record. If the information is personally identifiable and maintained by the institution, then yes.
- This information needs to be treated like any other non-directory information and cannot be released without permission of the subject OR by meeting one of the exceptions to consent.
- Of course, exceptions such as a subpoena or the need to know by someone on campus may apply.



Sharing the costs

- Your institution has been contacted by a father who claims to have been alienated from his son (the student) since his son was 1 year old, and the parents were divorced. The father did not claim the son as a dependent last year but wants to support his son and help pay his tuition even though it has not been court ordered. Because of this, he is not asking you for any personal information regarding his son but simply wants you to accept his credit card number for half the payment of his tuition. Is this possible? Can you charge half of the tuition to the father's credit card as requested? Should the student be notified?

ANSWER



- This is a tough one...
- You cannot just allow this to happen, even though it seems like a “good” thing.
- Contact the son to see if he wants this to happen.
- Check to see if there is a current tax return from the mother claiming the student as a dependent – if so, the non-custodial parent MAY have information...



Recommendation retention

- Currently your institution requires all faculty members who write a letter of recommendation for a student to submit a copy of that recommendation to the Office of the Registrar for imaging and inclusion in the student's record.
- Is a letter of recommendation an educational record, and if so, must it be maintained?

ANSWER



- FERPA has no retention requirement (other than you cannot destroy information if it's been requested by the student)
- You do not need to maintain it (but you can if you choose)
- You do want to keep the signed consent from the student requesting the letter of recommendation be created and provided in the first place.



Opt-in v. Opt-out

- Your institution would like to implement a system within their SIS that allows “guest access” to be granted to others designated by the student. You are considering an “opt-in” approach similar to other schools where the student logs in to their SIS system and provides names and email addresses, signs a “consent” statement, and designates what type of access they want the guests to have. It is being questioned whether or not an “opt out” approach could be taken. This would involve first determining who the supporting individuals are in regards to financial aid (in other words, who the student is dependent of as defined under FERPA). Once this information is obtained, the individuals they are dependent on would automatically have access to the FERPA protected information and would only be restricted if the student “opted out” of this through the SIS. Is this possible?

ANSWER



- There are a lot of “it depends” in this one
- If the student is a dependent – then you may release information with out permission
 - You will have to change the “opt-out” if the dependency status changes; what about non-traditional students.
- Opt-in, places the ownership on the student to make the choice .



Federal request trump FERPA?

- Your institution has been chosen for participation in the Group Quarters part of the US Census. Because of this, you are being asked for information on five students. Their names have been provided but the other information has not been provided because the elements are not designated as directory information (gender, age, date of birth, race and ethnicity). Because the sample size is so small, your institution cannot provide this information in a way in which the students wouldn't be identifiable.
- Can/must your institution release this information to the US Census Bureau?

ANSWER



- No, absolutely not.
- Disclosure of information such as race, gender, ethnicity from education records generally requires prior written consent.
- Census Bureau is no exception.
- DOE released a letter regarding what information can be released to the Census Bureau.



Dual-enrolled students

- Currently enrolled high school students are also enrolled at your institution. The local school district has asked you to share student information such as name, date of birth and number of credits earned.
- Can you share this information with the local school district?

ANSWER



- Yes, you can share them under 99.34.



Group sole possession?

- You have a central advising office which consists of a group of advisers who see students on a first-come, first-serve basis. Therefore, students are not assigned to a specific advisor. Because of FERPA's sole possession exception, the advisers are not maintaining advising notes, believing that by sharing the notes with one another, the information would be covered under FERPA and accessible to the students. Is this true?
- Is it possible to keep advising notes as sole possession records but still share information without the notes becoming part of the education record?

ANSWER



- Yes, these are educational records and covered under FERPA.
- Yes, it's possible. The adviser could discuss the essence of the note, and still retain the sole possession status.



Emergency situation?

- Mom calls the Registrar's Office, looking for information about her son, Travis. She has not heard from him in three days and he doesn't answer his cell phone. She is genuinely worried. She wants the names, phone numbers and emails of her son's instructors to verify with them that he has been attending class.
- Should you provide that information?

ANSWER



- Under routine circumstances, you would not release course information to Mom since that information is not likely directory information.
- You could contact the faculty members on Mom's behalf, or send someone to find the student in class and let him know that Mom is trying to contact him.
- If you felt that this was a genuine health or safety emergency, you would have more flexibility to release information – particularly if you don't have other reasonable alternatives (which you do here).
- Of course, you could also have Mom work through the dependency exception – but that takes more time.



Use of agents/contractors

- You are very excited about using All-Knowing, a third-party vendor, to provide your enrollment verification information to requestors. It should save you a good deal of staff time and money. To participate your institution would need to provide enrollment information about all of your students to the company.
- Is this OK?

ANSWER



- Yes, it is OK if you establish a written, legal agreement/contract with the company, including appropriate expectations about their access to and use of student data. They would then be considered a “school official” and could have data access under that exception.
- You should also make sure “contractors/agents” is included in your annual notice to students about the definition of “school officials.”



Summary

- FERPA has many more “mays” than “musts” and the “mays” aren’t always black and white
- Competence and comfort FERPA comes with practice
- Ask others how they interpret the question/issue
- Develop a strategy for determining if key elements of FERPA are met or need to be met



Conclusion

The best FERPA protection for education records is FERPA knowledge and training.

Understanding FERPA is not just an obligation, it is the right thing to do.

Some resource reminders



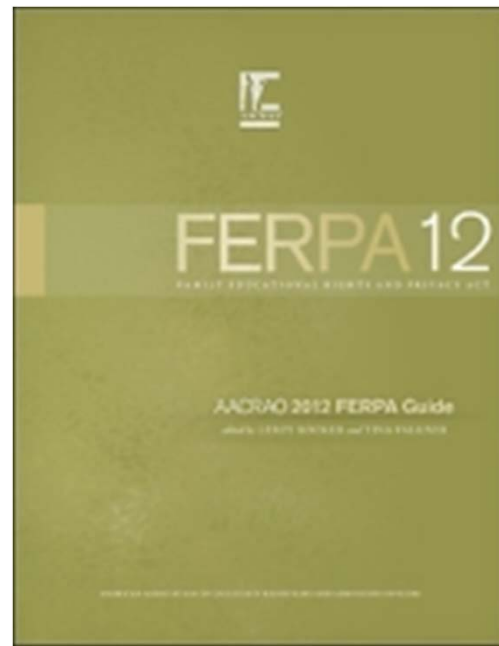
AACRAO website: <http://www.aacrao.org/compliance/ferpa/index.htm>

AACRAO FERPA Guide 2012

FERPA Quick Guide 2012 - www.aacrao.org/publications/

FPCO website: <http://www.ed.gov/policy/gen/guid/fpc/index.html>

AACRAO FERPA Guide



AACRAO FERPA consulting



QUESTIONS?



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