FERPA: What to Say and What Not to Say

Nebraska Methodist College
Omaha, NE
August 24, 2019

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Presenter Background

• Dr. Will Roberts has worked in higher education student affairs for 18 years.
• All roles have included access to student records and ensuring that staff handle these records in accordance with federal law and college policy.
• Has served as Dean of Students at Nebraska Methodist College for the last 3 years.
What is FERPA?

- FERPA protects the privacy of students’ education records.
- Under FERPA, students have a right to review and request amendments to their education records.
- At age 18, FERPA rights transfer from parents to students.

What is FERPA?

- Think of FERPA as the student version of HIPAA.
- Whereas HIPAA protects the privacy of patients, FERPA protects the privacy of students.
- The regulations are not identical but have similarities.

What are students’ rights under FERPA?

The right to:

I. Review and inspect their education records.
II. Seek amendments to their education records.
III. Consent to the disclosure of education records.
IV. Be notified of their rights under FERPA.
V. File a complaint with the Family Policy Compliance Office in Washington, D.C.
Why should I be concerned about FERPA?

- As an academic instructor, clinical instructor or preceptor, or clinical coordinator, you are legally and morally responsible for the protection of student privacy.
- We are all responsible for proper handling and protection of student records that we access in our daily job functions.

I don’t deal with student records much, why should I care?

- Even if you do not work directly with student record information, there may be times when you come across such information. For example, seeing protected student education information displayed on a bulletin board or placed in a location of public observation.
- Knowing what to do or at least being aware of FERPA can make a difference.

How to protect the privacy of student records

- Each student record is private. Private information about one student cannot be discussed with another (i.e. faculty member, third-party, student) unless there is written permission to do so OR the receiving party has a “legitimate need-to-know” basis for the information.
- Appropriate measures should be taken to protect student records that are stored on personal computers, in file cabinets or other forms of storage.
- Student records should NEVER be left out in open spaces.
How to protect the privacy of student records

• If you come across records that you believe are not being handled/protected in a manner consistent with FERPA and College policy, you are not expected to confront another employee/office. Rather, you are asked to contact the Compliance Director or Registrar, as soon as possible.
• Shred any documents that includes student information rather than throwing them away.

Education Record v. Directory Information

• **Education Record**: Any record that is directly related to a student (i.e. personally identifiable information) and maintained by the school or a party acting on its behalf.
• **Directory Information**: Information contained in a student’s “education record” that would not generally be considered harmful or an invasion of privacy if disclosed.
• FERPA allows disclosure of “directory information” without a student’s written consent, but you are not required to disclose. Before sharing any directory information, contact NMC Registrar’s Office to ensure student has not filed a Non-Disclosure Form.

Protected Education Records:
- Grades
- Test scores
- Evaluations
- Student ID
- Gender
- Race, ethnicity, religion
- ID photos
- Course work including: papers and exams
- Course schedules, class rosters
- Disability Accommodations
- SSN
- Written, email, or recorded communication that are part of the academic process
- Letters of Recommendation

Directory Information:
- Student’s Name
- Addresses
- Telephone numbers
- E-mail addresses
- Dates of attendance
- Enrollment status
- Major field of study
- Most recent educational institution attended
- Degrees, honors, and awards received
What is NOT part of an Education Record?

I. Law enforcement records (i.e. traffic violations)
II. Employment record (unless employment is contingent on student status (e.g. student worker))
III. Sole possession records: record kept in sole possession of the maker and (i) used only as a personal memory aid and (ii) not accessible or revealed to any other person.

How to Treat Education Records or Non-directory Information

Never disclose non-directory information unless:

1. “Recipient” of information has a “legitimate education interest” or “need-to-know” basis.
   a) Recipient = person employed by school or under contract with the school in an administrative, supervisory, academic, or support staff position
   b) Legitimate interest =
      i. Performing a task that is specific to their position description
      ii. Performing a task related to a student’s education or discipline
      iii. Providing a service or benefit to the student
      iv. Maintaining safety and security on campus
2. A legitimate health or safety emergency exists.
3. Student has provided specific written consent.

In What Forms Can Education Records Exist?

- Education records include any information recorded in any way, including, but not limited to:
  - Handwriting or paper files
  - E-mail
  - Print
  - Computer media
  - Film, video or audio tape
  - Computer files kept by authorized individuals
What can happen if I choose to ignore FERPA?

- Removal of federal funding from the Department of Education affecting the institution's ability to continue its operations.
- Formal complaints may be filed, which could result in sanctions from the Department of Education.
- Institution may be required to self-report FERPA violation and be subject to an investigation/penalty.
- Disciplinary action up to, and including, dismissal from employment.

IMPORTANT NOTE: Before disclosing any of the information listed as Directory Information, check with the institution's Registrar Office to find out if the student has signed a Non-Disclosure Form. (If the student has, the information listed as Directory Information CANNOT be disclosed).

REMEMBER: When in doubt, don’t give it out! Ask for assistance.

References


QUIZ: Question #1

Jane Smith's mom called to ask if Jane is coming to class.

I don't know if Jane has signed a FERPA waiver for mom.

Can I tell Jane's mom I haven't see Jane in class in a month?

QUIZ: Question #1 Answer

NO!

Both Class Registration and Class Attendance are considered Non-Directory Information and cannot be released.

What to do:
Explain to Mom that you cannot release that information without confirming with the Registrar's office that the student has signed a waiver allowing her to access to her Education Record.

QUIZ Question #2

I am an instructor and have been tasked with developing a new minor about Christian beliefs and healthcare.

I'd like to contact all students who identify as Christian.

Can the Registrar's Office give me their email addresses?
QUIZ Question #2 Answer

Yes and No.

Student email addresses are Directory Information that can be released. But religious affiliation is not.

What to do:
Craft the email to be appropriate for the entire undergraduate population rather than sending it only to students of a particular religious affiliation.

QUIZ Question #3

The position you just started in has been vacant for a while. While getting settled into your new role, you decide to tidy up and throw away some old papers. Which of the following items are education records protected under FERPA and should be treated with care?

A) A list of students’ email addresses.
B) A note from a student asking my predecessor for a book.
C) A course grade roster from 1984.
D) A list of students’ phone numbers.

QUIZ Question #3 Answer

C

A course grade roster is considered an education record, regardless of its age. It contains non-directory information and therefore must be protected.

Contact the Registrar’s office for assistance in archival or destruction procedures (given its age, NMC policy would be to shred it).
QUIZ Question #4

A student has won an award for my program and will receive it at the annual Student Awards Night.

I have been asked to say some words about the student.

Can I include in my speech that the student has a 3.95 GPA?

QUIZ Question #4 Answer

NO!

GPA is Non-Directory Information.

However, if the student gives written permission to allow her GPA to be made public, the GPA may be read.

Sharing Time

Turn to someone sitting near you.

Discuss/share:

• 3 main take-aways from this presentation
• How does this presentation apply to you in your context?