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**FERPA and distance learning:
Federal educational requirements in the digital age**

Dr. Daniel G. Van Slyke and Dr. Sebastian Mahfood, O.P.

Abstract

This article provides for board members a brief overview of the requirements of the Family Educational Rights and Privacy Act (FERPA) of 1974 as they apply to institutions of higher education in general and considers how FERPA impacts emerging distance learning programs with special attention paid to potential areas of conflict with federal law.¹

What is FERPA?

The Family Educational Rights and Privacy Act (FERPA), which applies to all schools that receive federal funds, protects the privacy of student records and the rights of students and their parents to access those records.² Among the various amendments that Congress has made to the Act since it became law in 1974 is a definition of “attendance” that makes FERPA applicable to the students in online or distance learning programs:

“Attendance” includes, but is not limited to . . . Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom.³

If your institution has been approved for a comprehensive online degree program, then you should ensure that your administration updates and administers its policies concerning the sharing of online students’ records.

¹ Note that this article is merely informational; it is not intended to provide or to replace legal counsel. Laws change and regulations differ depending upon circumstances. This article overviews the general impact of FERPA on online education programs. Consult an attorney for details regarding how FERPA and other laws and regulations directly impact your own institution.

² “Family Educational Rights and Privacy Act (FERPA),” signed into law on November 19, 1974, at U.S. Department of Education, ed.gov. (20 U.S.C. § 1232g; 34 CFR Part 99 and 5-13 EDUCATION LAW § 13.04).

³ 34 CFR 99.3.

Purposes of FERPA

Right of students, spouses, and parents to access student educational records

In post-secondary education, the only non-official persons who can access educational records are the students themselves or persons whom students designate through the completion of a waiver. FERPA gives parents the right to request non-consensual disclosure of their children's records and to request legitimate corrections be made to them only if the student is under 18 or continues to be counted as a dependent on parental tax forms, which may be the case with some graduate theology students.⁴ The spouse of a student may access the student's records only after the student has signed a consent waiver.⁵

Under FERPA, some administrators and other parties may access student records without the student's knowledge or consent, for specific purposes so long as they take proper precautions. Examples include: school officials with legitimate educational interest; other schools to which a student is transferring; specified officials for audit or evaluation purposes; appropriate parties in connection with financial aid to a student; organizations conducting certain studies for or on behalf of the school; accrediting organizations; to comply with a judicial order or lawfully issued subpoena; appropriate officials in cases of health and safety emergencies; and state and local authorities, pursuant to specific state law.⁶

An exception to general rule against disclosure of information is FERPA's provision regarding directory information, which the Act defines as "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student" provided public notice of these categories is made available and a reasonable time allowed for the student to provide consent.⁷ A school may disclose directory information provided that the school notify both students in attendance and eligible students and provide them with a timeframe for submitting a written objection to the disclosure of their directory information.⁸

Students must be notified annually of their rights and responsibilities under FERPA, and the notification must entail the rights they have to:

- (i) Inspect and review the student's education records;
- (ii) Seek amendment of their education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

⁴ US Department of Education. "FERPA General Guidance for Parents." <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html>

⁵ US Department of Education. "FERPA General Guidance for Students." <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/students.html>. For the purposes of the remainder of this article, "student" will also include 'eligible' parents and spouses.

⁶ 34 CFR 99.31.

⁷ 34 CFR 99.3.

⁸ 34 CFR 99.37(a).

- (iii) Consent to disclosures of personally identifiable information contained in the student's education records . . . ; and
- (iv) File with the Department a complaint . . . concerning alleged failures by the educational agency or institution to comply with the requirements of the Act and this part.⁹

The notification must also include

- (i) The procedure for exercising the right to inspect and review education records.
- (ii) The procedure for requesting amendment of records under § 99.20.
- (iii) If the educational agency or institution has a policy of disclosing education records...a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.¹⁰

"An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights."¹¹

Note that the main remedy for violation of FERPA is the withholding of funds.¹² FERPA does not give rise to civil lawsuits, although this does not preclude the possibility of a student suing under different causes of action. As a board member, you expect that your school already has policies governing the dissemination of student information. Nonetheless, you should inquire whether the administration has applied FERPA-compliant policies to its online programs.

FERPA implications for distance learning technology

Because online classes are considered to be in the same category as face-to-face classes with the difference being in mode of delivery alone, they also fall under FERPA. So administrators and faculty must ensure that anything beyond directory information remains confidential. That means that students and eligible members of the administration can see the names of other students in the course, but students cannot be allowed to see the IDs and grades of other students and persons outside the institution cannot be allowed to receive copies of the class rosters.

The implications of FERPA to online learning programs may not at first be obvious, so faculty and administrators must be trained or educated in order to avoid inadvertent violations. Consider, for example, the requests of outside vendors who want to see class rosters to determine eligibility for discounts on educational materials. Before sending a list, educators must carefully review the information to be sure that the students' rights of policy are not violated.

Educators also must carefully consider what information can be shared with the course instructor, online learning support staff, and students enrolled in the same course sections. For

⁹ 34 CFR 99.7(a)(2).

¹⁰ 34 CFR 99.7(a)(3).

¹¹ 34 CFR 99.7(b).

¹² 34 CFR 99.67(a)

example, students can share work completed publicly in a given course – such as what is posted on a discussion board – unless the student has indicated an unwillingness to share his or her work, in which case students are allowed to work out alternative plans for course completion with their program director. But administrators and faculty must take precautions to ensure, for example, that grades or evaluative notes are not shared posted where other students or third parties may view them.

FERPA and advising distance learning students

In face-to-face courses, student advising often entails a student’s physically appearing within his or her advisor’s office; however, online advising is done through technologies of mediated communication, which means the advising process needs to include an added level of student authentication. Policies for advising students from a distance must include the following:

- Clarification of the differences between public and private information; making sure that the advising staff is trained to know these differences.
- Responding only to requests that use institutional e-mail addresses for private information.
- Before responding to a request seeking private information, advisors should use questions to solicit specific personal information for identification. If the questions are not answered correctly, then private information should not be shared.¹³

Since online students are granted the same rights under FERPA as residential students, reasonable precautions must be taken in engaging them to ensure that those rights are not inadvertently violated. With federal funding and possible civil litigation on the line, our theological schools in possession of or in pursuit of online degree programs should develop and observe protocols that ensure the right to student privacy within the online mode of delivery.

¹³ “Advising Distance Learners,” at Clearinghouse Academic Advising Resources, www.nacada.ksu.edu.