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Sonja G. Cantrell

Marshall University in Huntington, West Virginia

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BEST PRACTICE

In most higher education institutions, by default or by choice, the Registrar's Office is expected to be the university's Family Educational Rights and Privacy Act (FERPA) expert. FERPA is also referred to as the Buckley Amendment, which was originally created in 1974, and named after one of the proponents of the law, former New York Senator James. In my university's Registrar's Office, we receive requests to release non-directory student information almost daily, such as student class schedules or the grade received in a certain class. Requests come from a range of sources, including prospective employers, family members of elderly alumni, branches of the military, subpoena by courts or attorneys, and organizations seeking membership. Nevertheless, wherever these requests are generated, employees in my field must follow FERPA law scrupulously because every student's privacy must be protected in regard to their academic records. In my current position, I am regularly faced with moral and ethical decisions regarding the release of student information. However, according to FERPA, institutions of higher education are not permitted to release non-directory

student information without written consent from the student.

In essence, FERPA covers the overall privacy of a student and his or her educational records. But with any law, new regulations must be passed to stay current with the changing times. The U.S Department of Education's newest changes to FERPA regulations went into effect January 3, 2012. Those changes left students' rights and privacy intact, but allow more flexibility in terms of sharing school data that can be helpful in determining the success of the government's educational programs and initiatives. The new regulations, therefore, expand the list of authorized representatives who are permitted access to data for evaluation or auditing purposes. An authorized representative is defined as "any entity or individual designated by a state or local educational authority or an agency headed by an official listed in §99.31(a)(3) who is involved in Federal- or State-supported education programs." For example, a higher education institution may now release data to K-12 constituents to determine how well students were prepared for college. The amendment also elaborates on the term "education

program” relative to evaluation and auditing to include early childhood education, career and technical education, adult education, and job training.

Even with the new amendment, it is still the case that school officials may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. Nevertheless, institutions must inform parents and students about directory information and allow them a reasonable amount of time to request that the school not disclose their directory information. Furthermore, schools are required to notify students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

Although students must be given the option of opting out of the release of directory information, opting out and selecting confidentiality can be a double edged sword. If a student selects confidentiality, which prevents an institution from releasing directory information, the institution will not be able to release any information at all. For example, if a student is on the Dean's List or receives a scholarship or other notable academic achievement, that student's name will not be released to a newspaper or other outlet, nor will it be included in any commencement booklet, or similar publication. It is ironic that some students will get extremely upset because their name appears in the campus directory but will also post much more personal information about themselves on their Facebook accounts. In spite of this, what students choose to make public about themselves has no bearing on the information institutions may release.

Recently, changes in technology resulted in a need to update the definition of "directory information." In addition to traditional contact information, the definition now includes email addresses. An instructor may post a picture of each student on the class roster for an online course. However, the student must have the option to opt out without a grade penalty. Another point of irony is the fact that some students are enraged by having their photographs displayed, even though their physical presence in a classroom would also reveal their faces to their classmates. But once again, it is the student's responsibility to make those decisions, not faculty, administrators or staff at the university. Another new regulation to keep in mind relates to subpoena requests. The institution must notify the student by alerting him or her that the student's academic record has been requested. This notice must be sent via certified mail to the student's permanent address. The student must be given sufficient time to respond to the request. Most institutions allow the student ten business days to respond or the record will be released.

For professionals who are new to higher education or working with student records, the following suggestions may be helpful: (a) Become educated about FERPA; (b) Read the FERPA Act; (c) Become familiar with the U.S. Department of Education's website; (d) Join registrar affiliated list serves for situational discussions; (e) Learn from experienced colleagues, and (f) attend FERPA seminars. Remember that it is essential (and, by default, a higher education professional's responsibility) to educate the campus community – faculty, staff and students—about FERPA. Be aware that as with other laws, FERPA laws are always updated and amended. Therefore, it is best to stay abreast of changes. Those who deal

directly with students must take their FERPA responsibility seriously, and must make sure others also understand the laws. If higher education professionals allow sufficient time to understand and scrupulously follow FERPA guidelines, the best possible decisions can be made, based on the regulations. Consequently, the answer to the moral dilemma that I mentioned earlier is “When faced with a

decision about whether or not to release sensitive student information and privacy issues are involved, always behave in an ethical and FERPA-compliant manner.”

References

Family Education Rights: Privacy Act (FERPA) of 1974. (2012) 20 6.S.C. § 34 CFR Part 99.

About the Author

Sonja G. Cantrell serves as the Associate Registrar at Marshall University in Huntington, West Virginia. She earned both a B.A. and M.S. from Marshall University and is currently pursuing an Ed.D; also at Marshall University. Ms. Cantrell's research interests include issues in higher education affecting first generation students and other under-represented populations as well as areas of concern related to registrar operations, including compliance with federal regulations.