FERPA Issues for Princeton Administrators

Office of the General Counsel
Princeton University
Overview of Privacy Concerns

- The University maintains information that is sensitive and valuable, which may be protected by federal and/or state laws that govern its use and disclosure.
- A number of special considerations govern the University’s handling of student information, which is our focus today.
- Your work entails significant use of student personal information, which may include academic information, health or medical information, financial information, and information about almost any aspect of student lives.
- There are legal obligations, the primary one being FERPA, policy requirements, such as the University’s Information Security Policy, as well as ethical considerations.
The University’s Information Security Policy states that all personally identifiable information in Princeton University’s possession is considered ‘confidential’ unless otherwise specified. 


Confidential information may only be shared on a “need to know” basis with authorized individuals.

It is University policy to deal directly with students about their academic, personal, and medical records, although we encourage students themselves to communicate with others about these matters. Information Policy for Undergraduate Student Files.
What is FERPA?

The Family Educational Rights and Privacy Act (“FERPA”, also known as the Buckley Amendment) is a federal law enacted in 1974 facilitating two purposes:

• Students’ Access to “Education Records”
• Privacy of “Education Records”
Princeton’s Responsibilities under FERPA

• The University must notify students of their FERPA Rights (*Rights, Rules, Responsibilities*).

• Students must be able to access their “Education Records” and challenge information they believe is inaccurate.

• The University may not disclose information from a student’s “Education Record” unless it obtains written permission from the student or a particular exception applies.
What is an “Education Record”? 

“Education Records” are files, documents and other materials [paper and electronic] that both

(i) contain information directly related to a student (i.e. name, social security number, address of family)

and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Education Records could take the form of a file, tape, disk, film, microfiche, email, voicemail, etc.
Included in “Education Records” are:

- Student social security numbers, identification numbers and driver’s license numbers.
- Tests, question booklets, etc.
- Student discipline records.
- Attendance and absence records.
- Citizenship or immigration records.
- Records relating to a student’s eligibility for financial aid.
- Any other data your department might maintain, from which a student can be personally identified.
- Application materials submitted by a student.
The Following Categories are Expressly Excluded from the Definition of “Education Records”:

- Directory Information
- Sole Possession Records
- Law Enforcement, Medical & Employment Records
- Alumni & Non-Enrolled Students Records
Excluded: Directory Information:

- Information that is not typically regarded as private or confidential.
- The educational institution must give advance notice to students regarding the institution’s policy for dissemination of such information (*Rights, Rules, Responsibilities*, p. 76-78).
- “Opt-out”: Students must be given the opportunity to request that their directory information not be released (Contact the Registrar’s Office).
Princeton’s directory information includes:

- Name;
- Address (but not disclosed unless compelling reason);
- Telephone number;
- E-mail address;
- Photograph;
- Dates of attendance;
- Major field of study;
- Participation in officially recognized activities, organizations, and athletic teams;
- Height and weight of members of athletic teams;
- Degrees and awards;
- Academic institution attended immediately prior to Princeton University.
Was the record created outside of the student’s enrollment?

- Yes → Alumni & non-enrolled student records can be disclosed
  - Yes → FERPA applies. Is the record Directory Information?
    - Yes → Does an exception apply? (Call OGC)
    - No → Disclosure is permitted as specified by the regulations
  - No → De-identified information can be disclosed, including outside the University.
- No → Does the record contain identifiable information?
  - Yes → FERPA applies. Is the record Directory Information?
    - Yes → Does an exception apply? (Call OGC)
    - No → Disclosure is permitted as specified by the regulations
  - No → Directory Information can be disclosed
  - No → Has the student opted out?
    - Yes → Disclosure requires consent in advance.
    - No → No
Education Records Can Be Disclosed with the Written Consent of the Student

• The student’s written consent for the disclosure of Education Records should:
  – Indicate the records to be released.
  – Identify the purpose of the disclosure.
  – Name the party or parties to whom disclosure may be made.
  – Include student’s signature and date.

• An email from a student’s Princeton University email account specifying this information is acceptable.
Special Circumstances Warranting Disclosure without a Student’s Consent

The request is from a “University Official” who has a legitimate educational interest in the information.

Who is a “University Official”? (From RRR, pg. 77)

- Employees in administrative, supervisory, academic, research, or support staff positions (including law enforcement and health staff).
- Consultants to the University (such as an attorney, auditor, or collection agent).
- Board of Trustees members.
- Students serving on an official committee (such as a disciplinary or grievance committee) or assisting another University Official in performing his or her tasks.
When Does a University Official Have a *Legitimate Educational Interest* in Records?

- “[I]f the official needs to review an education record in order to fulfill his or her professional responsibility.” (FERPA Final Rule, Fed. Reg. Nov. 21, 1996).

**Example:** Academic departments may communicate with the Registrar about whether individual students have completed the course prerequisites necessary to enroll in upper level courses.
Special Circumstances Warranting Disclosure without a Student’s Consent (cont’d)

- To an educational institution in which student is seeking to enroll.
- Health or safety emergency.
- Lawfully issued subpoena or court order (contact the Office of General Counsel).
- The outcome of certain disciplinary proceedings (Drug/Alcohol/Violent Crimes).
Health & Safety Emergency

An institution may disclose personally identifiable information to “appropriate parties’ in connection with an emergency if the information is necessary to protect the student or others.
More Special Circumstances Warranting Disclosure without a Student’s Consent

• To the parent or legal guardian of a dependent student (IRS definition).
  – Parents may obtain non-directory information (e.g. information that their student is failing a class) in the University’s discretion when the student is their dependent.
  – Parents may also obtain non-directory information by obtaining signed consent from the student.
  – FERPA permits but never requires disclosure to parents.
Recordkeeping Requirements

All institutions are required to maintain records of requests and disclosures of personally identifiable information, including the name and address of the requesting party and the purpose of the disclosure.

This applies to any release of non-directory information made to a third party who is not a school official.
Risks of a FERPA Violation

• There is no private cause of action under FERPA, meaning that a student cannot sue the University for disclosing records protected by FERPA.

• FERPA provides for a complaint procedure to the U.S. Department of Education (“DOE”). The Family Policy Compliance Office (“FPCO”) will investigate these complaints and make recommendations to the DOE.

• Although FERPA does not describe potential penalties in detail, the statute is clear that an ultimate sanction is the revocation of any/all federal funding.
Other Legal Issues

- Responsibilities for student safety
  - “Reasonable person”
  - Acting within the scope of your employment

- Charitable Immunity Act

- Related organizations
FERPA FAQs

You receive a phone call from Career Services requesting a student’s information. Can you give this information to Career Services? What if this request is from an employment search firm? What if it is from the F.B.I.?
FERPA FAQs

You receive a call from a business seeking to confirm that a student they are interviewing received a degree. Are you allowed to give that information?
FERPA FAQs

You receive an email from an alumna requesting a list of students who participated in the same internship with her in 2005. Can you provide her this information?
FERPA FAQs

The Chinese Student organization requests a list of all new Chinese students so they can welcome them and send them an invitation to an event. How should you respond?
FERPA FAQs

A mother calls and says a family emergency has occurred and she needs to go find the student at their next class. What information can you provide?

A parent calls and says their student called the night before and doesn’t understand a form your office sent out and the parent is trying to complete the form. What can you share?
Thank you for your time.

- Presented by
  Hannah S. Ross, Esq.
  Office of the General Counsel

Phone: 258-2500
Email: hross@princeton.edu