FERPA Issues for Princeton Administrators

Office of General Counsel
Princeton University

18282.1
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.
University Policy Expectations

• The University’s Information Security Policy states that all personally identifiable information in Princeton University’s possession is considered ‘confidential’ unless otherwise specified. . . .”
  http://www.princeton.edu/itsecurity/policies/

• 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”? 

FERPA defines “Education Records” as those records, 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.
- Test instruments, question booklets, answer sheets, evaluations, surveys, inventories, and other materials that identify a student (by name, number, etc.).
- Student discipline records, including written allegations and audio recordings.
- 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.
Personally identifiable student information maintained by Princeton

Does it fit into an exclusion from Education Records?

Yes. Can be disclosed.

No.

Does it fit any exception allowing for the disclosure of Education Records?

Yes. Can be disclosed.

No. Requires consent before disclosure.
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.
Personally identifiable student information maintained by Princeton

Does it fit into an exclusion from Education Records?

Yes. Can be disclosed.

No.

Does it fit any exception allowing for the disclosure of Education Records?

Yes. Can be disclosed.

No. Requires consent before disclosure.
Students are Entitled to Inspect Their Education Records

- Eligible students have the right to inspect and review their Education Records.
  - Limitations on the right to inspect:
    - Parent’s financial information.
    - Confidential letters and recommendations to which student waived the right of inspection.
    - Education Records with information about more than one student.
  - “Inspect” does not require the University to provide copies.
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.
More Special Circumstances Warranting Disclosure without a Student’s Consent

- To an educational institution in which student is seeking to enroll.
- In connection with receipt of financial aid.
- To organizations conducting studies to develop predictive tests, administer student aid and improve instruction.
- To accrediting organizations in carrying out accrediting functions.
- 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).
An institution may disclose personally identifiable information to “appropriate parties” in connection with an emergency if the information is necessary to protect the students 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.
Thank you for your time.

- Presented by

  Hannah S. Ross, Esq.
  Office of the General Counsel

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