

Week X Lecture: FERPA and Student Affairs in Georgia

The Family Educational Rights and Privacy Act, also known as the Buckley Amendment was enacted in August of 1974 in response to a growing concern among legislative leaders about the perceived abuses by school administrators regarding student records. The act was designed to give students, and their family if the student is under 18 years of age, 1) the right to review their own educational records, 2) the right to request corrections to errors in the record, and 3) to prevent the release of identifiable information without their consent.

FERPA prohibited educational institutions from releasing “personally identifiable” information without the written consent of the student or the student’s parents, but it did provide exceptions to that ban. Institutions were able to release records for the following reasons:

- 1) To other school officials with a legitimate educational interest,
- 2) To other schools to which the student intends to enroll,
- 3) To education officials for audit and evaluation purposes,
- 4) To accrediting organizations,
- 5) To parties in connection with financial aid to a student,
- 6) To organizations conducting studies on behalf of the school,
- 7) To comply with a lawfully issued subpoena,
- 8) In the case of health and safety emergencies, and
- 9) To authorities within a juvenile justice system.

In addition, FERPA also exempted four kinds of records from the protections it offered to students: 1) records in the sole possession of school officials; 2) records maintained by a law enforcement unit of the educational institution; 3) records of an educational institution’s non-student employees; and 4) records on a student, who is 18 years of age or older or who attends a post-secondary institution, that are maintained by a health professional. FERPA does allow institutions to release “directory” information, but does

not require it. Institutions found to be in violation of FERPA's rules and guidelines could face penalties and action by the department of education including the loss of all federal financial funding, regardless of the source of the funding.

The law passed rather quickly with little to no time for interested parties to voice concerns. Education advocates quickly expressed serious concerns about the status of their current records, including letters of recommendation that were originally guaranteed confidentiality. In response, the act was amended in December 1974 to exempt financial records of the student's family and the confidential letters of recommendation placed in files prior to January 1, 1975. Recommendation letters after January 1, 1975 that apply to admission, employment or honors that the student has waived the right to see are still protected from student review. The amendment also increased the student's right to address perceived errors in the record and to include a written statement explaining issues of contention.

FERPA has been amended several times since then including August 1979 where it clarified that state agencies were exempt from FERPA rules of releasing information. In 1990 it was amended to allow colleges to disclose to victims of violent crimes the results of any judicial or disciplinary proceedings against the accused person regardless of the outcome of the hearing. Law enforcement records, created and maintained by a law enforcement agency on the college campus, were exempted from FERPA protections in the 1992 Amendment. 1994's Amendment extended the right to look at any educational records kept by institutions that were not specifically covered by FERPA protections.

In 1993, the student newspaper, The Red & The Black of the University of Georgia sued the Board of Regents of Georgia to access the record of the university's student organization court, <http://www.securityoncampus.org/lawyers/uga1.html>. In this case, the Supreme Court of Georgia held that the disciplinary records sought by the media were not protected by FERPA disclosure requirements. This effectively meant that in Georgia, any media or person could request access to those records and the school would have to release them. The current status of this ruling is dealt with below in a letter to Kennesaw State University. Before proceeding, read the case above to identify the grounds and holding in *Red & Black v. Board of Regents*.

In 1998, FERPA was again amended to allow schools to release information about the disciplinary results of violent crimes or non-forcible sex offenses when a finding of responsibility was made. While this information is not required to be released under FERPA, many states, including Georgia, have open records laws that do make this information available to the public. Schools were also allowed to notify parents of student violations of alcohol and drug offenses where the student was less than 21 years of age, regardless of the dependant status of the student. Again, this did not require the schools to do so; rather it allowed them to without fear of penalty from the Department of Education.

The most recent amendments includes an amendment in 2000 that exempts information about registered sex offenders from FERPA protections and a 2001 amendment that allows the Attorney General to access records in pursuit of terrorist activities. There is currently some debate about a new amendment to allow individuals to pursue a right of action under FERPA. Currently, a student who shows a violation of

FERPA's rules has occurred does not have legal standing to do anything other than file a complaint with the federal Department of Education. The Department of Education will investigate and take whatever actions it deems appropriate, but FERPA requires a pattern or procedure of violations and is not really looking for single violations. This change, if it occurs, would allow a student to bring an institution into court for damages resulting from the release of their information. Currently no institution has lost funding for a FERPA violation.

Exercise 1 Using your own office or department, identify all student records that are kept by your staff. Identify the following about those records:

- 1) What records are covered by FERPA protections and why?
- 2) What records are not covered by FERPA protections and why?
- 3) What records are confusing or you are not sure?
- 4) How will you resolve the uncertainty?

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/kennesawuniversity.html?exp=0>

In the letter written above, Education officials responded to a request for a FERPA ruling about disciplinary proceedings. In this letter, we saw that the main case in Georgia, the *Red & Black v. Board of Regents*, was shown to have several flaws that seriously alter its value, even here in Georgia.

Exercise 2 - What is the main difference, as mentioned in the Kennesaw State Letter, between the *Red & Black v. Board of Regents* and *Gonzaga University v. Doe*?

Looking at the two opinions about media access to disciplinary records, how are your records, identified in Exercise 1, affected. What other kinds of records are similar to the ones made available in *Red & Black v. Board of Regents*? Looking at your campus, identify the records that you are not sure of and design a plan to resolve their status.

Exercise 3 - Using the link below, go to the Department of Education's FERPA Website. Review the conditions for releasing information to see if your department/office follows them. Also how does your institution notify parents and eligible students about their FERPA rights?

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

If you want to read the actual FERPA law, you can go to the website below to see the full write up <http://www4.law.cornell.edu/uscode/20/1232g.html>. Understand that laws are rarely written to be easily understood, so using the DOE FERPA page will provide you a better understanding of the requirements without all of the specific provisions of the law.

In the state of Georgia, there is an Open Records Act that governs the operations of state agencies, including colleges <http://www.sos.state.ga.us/Archives/rms/ora.htm> Read section 50-18-70 (a) to see the scope of the law. Section 50-18-71 allows for copies of records to be made, and in Section 50-18-72(a)(1) a provision is made to exempt those records required by the federal government to be kept confidential. This is the place where the issues become confusing to many in determining which records are covered by FERPA and thus exempt from public access, and which records are not protected and are able to be released. Creating a plan for dealing with open records requests is a necessary activity for any custodian of records in the college environment.

This week's chat room discussion will be about the impact of the legal environment on the work we do in student services.