

Case Studies with Answers

Pick and choose Case Studies based on your audience and time allotted. Using Case Studies provides an opportunity for hands-on exposure to practical FERPA-related issues. Consider breaking into small groups for discussion of possible solutions, then come back together for analysis and sharing.

Sole Possession Notes

Joe Student is assigned to Annie Adviser. At one point during the year, he asks if he may view his education record, including everything that Annie has written about him. He is concerned about what personal information Annie has included. Does FERPA allow access to all of his record? If not, can he still see his record? A year later, Joe is now assigned to Bill Adviser, who “inherited” Joe (and his record) from Annie. If Joe asks to see his record again, would there be any limitations? How should the institution respond?

Records “within the exclusive control of the maker” do not need to be released, although the concept of “sole possession” records is that they are more memory-jogging types of notes, not a means by which to “hide” important student records information. The rest must be released after removing references to other students. Once given to Joe Adviser, the entire record becomes open.

Talking with Parents

You are an adviser in a college office. You receive a call from Dave and Kathy Smith, the parents of one of your former students. Their son, Kevin, was dismissed over a year ago. Dave and Kathy live in Florida and have been paying Kevin to attend your college for every term during the last three years, including room and board and out-of-state tuition. They called to see how things were going since they don’t hear much from Kevin about school. How do you handle this conversation?

Prior consent is required to release anything but directory information. So, does your institution consider enrollment information as directory information? For example without saying that he had been dismissed, you would be able to state that he had not been enrolled for the past year. Also, consider practical tips for talking with the parents. Find out what they already know and then build from it. If appropriate, discuss use of the dependency exception for providing access to Kevin’s record.

Access by Divorced Parents

Frank’s parents are divorced. By agreement, his mother claims him as a dependent, but his father is required to pay his way through college. Frank and his mother have both refused to tell Frank’s father anything about his academic progress at State College. Frank’s father turns to the institution for help. Can the institution give him the information?

The regulations allow release of information to either parent if the student is dependent on either parent and there is no judicial exclusion. You will need to decide what you will accept from the father to validate the dependency status if you can’t get a copy of the actual tax documentation from the mother.

Parents who are Employed at the Institution/“Legitimate Educational Interest”

Stephanie Student attends Cole College as an undergraduate. Her father is a faculty member in the medical school there. He wants to find out how Stephanie is doing in school, so he calls the Registrar’s Office to find out. How should the office respond?

The father does not have a legitimate “need to know” Stephanie’s record even though he is on the faculty. You need to get permission from her or show dependency.

Talking with Parents or Third Parties

Following commencement, you are helping to distribute diplomas to students who did not attend the ceremony. Cindy Student and her parents come up to get her diploma. You check the student’s record and discover that Cindy was dismissed a year ago. How would you handle this situation in light of FERPA?

It would be advisable to receive formal consent from the student or agree to meet with the student and parents together. If the student refuses, you can only release directory information.

Responding to Subpoenas

State University in Michigan received a subpoena for Gene Student's academic record. The subpoena is from a state court in California and the materials are due tomorrow. How should the institution respond? What if the subpoena specifically stated that the student is not to be informed?

Since the court is in California, and does not have jurisdiction over your institution, do you care? If you decide to comply, then make sure that you follow the procedures in 99.31 (see page 140). You always need to provide time for the student to get included in the "loop," unless the subpoena specifically states otherwise.

State Data Bases

Your state Board of Higher Education is establishing a centralized data base for student data, and your institution is a state school. They are asking for detailed records information concerning every student enrolled at any state institution. This data will be used to review academic programs across the state, conduct studies regarding educational trends, and provide data regarding articulation among the institutions. You work in the enrollment services office and have been asked to prepare this data for the Board. Should you have any FERPA concerns?

As it relates to analysis within the state agency, the regulations provide for the release of personally identifiable information to a state or federal agency for this purpose. It is the responsibility of the agency to take the appropriate steps to protect the integrity of the data once received, and ensure that it is used solely for the purposes intended. In general, data should only be publicly released by the agency in the aggregate, and once no longer needed, the personally identifiable information should be destroyed. However, as this request applies to release of student information to other institutions, that would need to be limited to directory information. For example, it would be appropriate to share the names of students who have transferred, but not their Social Security Number.

Admissions Records

Jan Student applied to be a graduate student at State University and was denied. She demands to see her admissions file, including all her reference letters. Should the university give her access? What are the issues to address in making that decision? What if later she enrolls to audit a course since she had been denied regular admission? Same result? Could State University have destroyed her admission file, thus denying her access? What if she attended State University as an undergraduate? How should the institution respond?

Tarka v. Franklin (5th Cir., 1989). Student was not admitted as a regular student and the University of Texas did not have to release the information under FERPA since the student was not "enrolled." Enrolling as an auditor was also not sufficient to provide access to the admissions record related to the graduate school. Since there is no records retention plan within FERPA, the institution could have destroyed the record within its established records retention plan. However, note that the record, once requested, cannot be destroyed. In addition, since you have, in effect, determined that no FERPA record yet exists for non-admitted students or for students who have been admitted, but not yet enrolled, the records may be accessible by the student under the state's Open Records Law. In fact, that happened with this case in Texas.

Private Cause of Action Under FERPA

Ralph Student feels that his college records have been released inappropriately. Can Ralph use FERPA to bring a suit against the college? Why or why not? What other options might he have as well? How should the institution respond?

There is no private cause of action under FERPA. This issue was recently confirmed by the U.S. Supreme Court in Gonzaga University and Robert S. League v. John Doe, a 2002 decision. The student might want to pursue action under a Common Law remedy, such as libel or slander.

Use of Technology in Transferring Education Records

Sally Student has applied to your institution as a transfer student and you want to receive a transcript of her previous education record. Your institution wants to use XML (EDI) to transfer student record data. Do you need to get written permission from the student in order to receive Sally's transcript from her previous school?

FERPA does not address how a record is transmitted, so you just need to address the procedural and security issues that you always have with the release of transcripts. The regulations provide the opportunity for an institution to release student records information to another institution when their student has enrolled or

applied to enroll at the second institution. However, the fact that the initial institution follows this approach must be clearly stated in the institution's FERPA policy so that students have reasonable notice of this procedure. It should also be noted that many applications for admission include a statement for the student to sign which permits the first institution to send the student record, upon request, to the second institution.

Sending Transcripts

Debbie Student needs transcripts sent immediately to a prospective employer in Illinois. She is currently attending graduate school in Michigan, but graduated from a university in Ohio last year. She calls you in the registrar's office at the Ohio school. What are your options?

Option 1: Debbie could fax written consent for you to release a transcript.

Option 2: Suggest that the Michigan institution send both the current and previous transcript.

Option 3: Use express mail.

Option 4: Electronic request, utilizing an e-signature.

Posting Grades

John Faculty is tired of taking phone calls from students to find out their grades after every examination, so he decided to post their grades on the wall outside his office door. Should he do this? If yes, are there any limitations to the manner in which he posts them?

Yes, the grades can be posted, in such a way that they are personally identifiable only to each individual student and the instructor. For example, a code established at the beginning of the term could work. It is also discouraged to post information in the same order as a class roster.

Students as Student Employees/Disciplinary Records

Sue Student works in the registrar's office. She has an ax to grind with her ex-boyfriend, Ken, so she tells his fraternity brothers that he was recently placed on academic probation and is in danger of being dismissed. She knows that Ken cannot continue to hold his office position in the fraternity if they know that his grades are bad. She viewed Ken's grades while working in the registrar's office. Obviously, Ken and his parents are very upset, and have hired an attorney to address this situation. Can Ken's attorney use FERPA or the state's Open Records Law to determine if any disciplinary action has been taken by the university against Sue? Would it make a difference if the university was private or public? Would it make a difference if Sue was a regular employee rather than a student? How should the institution respond?

FERPA precludes release of the information because, as a student, Sue's employment records are "education records." FERPA trumps the typical state's Open Records Law, and thus a state's Open Records Law might well not be applicable. However, even if it were, a state's Open Records Law would probably apply only to state (public) institutions, rather than to private ones. If Sue was a regular employee, then FERPA would not apply and the typical state Open Records Law might require release of the information. The institution should take disciplinary action. Once a disciplinary decision has been reached, it could be reported to Ken.

Disciplinary Records, Scenario 1

Paul Student was assaulted on campus a few weeks ago. Campus security was able to track down the alleged assailant based on Paul's description. It turned out to be another student. Paul filed charges with the local police department, and also with the campus judicial system. He knows that a hearing was held on campus, but he hasn't been able to find out what the outcome was because the hearing was confidential. Does Paul have the right to know what happened at the hearing?

Recent amendments to FERPA allow release to the victim the results of any disciplinary hearing regarding the circumstances and the alleged assailant. In addition, since this was a "crime of violence," the institution may release the hearing results to the general public.

Disciplinary Records, Scenario 2

"University Gossip," the student newspaper at State University in Ohio asks the judicial affairs office for details about judicial cases on campus. They feel it is their First Amendment right to have access to the information and students across campus want to know about campus crime and other judicial actions. Is this a FERPA issue? What should be released to them?

The Department of Education and the federal courts have generally considered disciplinary records to be education records, and therefore covered by FERPA. State Supreme Court decisions in Georgia and Ohio have held otherwise. In 2000, the Federal District Court in Columbus, Ohio held that disciplinary records were, in fact, education records and permanently enjoined the institutions involved not to release personally identifiable information. That decision was affirmed on appeal by the 6th Circuit Court of Appeals. However, note that under the Warner Amendment, FERPA now allows release of the outcome of disciplinary hearings related to “crimes of violence.”

Access by Campus Law Enforcement Officials

Detective Sanders from Campus Security calls your office to get the address for a student. In the same conversation he asks for the class schedule for that student. Do you give it to him? What if Detective Sanders says that he has a warrant for his arrest?

FERPA regulations consider campus security as employees with a “need to know” if they are operating within the scope of their employment. The warrant would not be necessary.

Alumni Records

Tom Terrific graduated from State University several years ago. He has been very involved as an alumnus. A journalism student wants to write a story about his involvement at the university, both as a student and as an alumnus. What can be released to the student?

Alumni records are generally open to the public because they are not “education records” under FERPA. Since this is a state school, the state’s Open Records Law may apply if FERPA does not. Unless you have consent from the student, you can only release directory information regarding material from when Tom was a student (assuming the student has a “Y” release).

Student Loan Clearinghouse/Agents

Your institution is very excited about the possibility of participating in the National Student Clearinghouse (NSC). Rather than your institution having to verify enrollment information separately to each lending agency, most of this process would occur through the one, centralized clearinghouse. To participate, your institution would need to provide enrollment information about all its students to the Clearinghouse. What FERPA considerations are there?

The Department of Education says that the Clearinghouse is acting as a legal agent of the institutions contracting with the NSC. Therefore, you may release information about non-loan students. The financial aid exception in the regulations allows access for all the students receiving aid.

Communication with International Students

In the admissions office, you receive an e-mail from Wong, an applicant in China. You observe that the e-mail address is a public e-mail address and is therefore likely shared by many people. The applicant asks you to respond to the e-mail by simply using his name in the subject heading. That way the message will be directed to him. Wong has questions regarding financial documents which he has previously submitted and the status of his application. How do you respond?

It is reasonable to assume that Wong understood the public nature of the e-mail request to your institution. Therefore, responding via e-mail is reasonable. In general, you should treat e-mail as much as possible as you would regular mail. In fact, for some students, it may be a much faster and more reliable means of communication. This student is asking about his own record. Your institutional policies need to address how you want to respond to e-mail for all students.

Records of Deceased Former Students

George is doing some family background research. He discovers that his deceased great grandmother attended Goodman State University many years ago. He asked the registrar’s office at Goodman State for whatever records they have for his great grandmother. What should they provide?

FERPA rights, and, in general, the right to privacy, end at death. State law may dictate some parameters for dealing with records for deceased persons, but this is fundamentally an institutional policy decision. Many institutions tend to treat records for deceased students as they would living students, except that the “next of kin” is viewed as the “owner” of the record since the student is deceased. It is also appropriate to ask for proof

of death if not already recorded in the institution's data files.

Violation of Substance Abuse Records (Foley Amendment)

John Student was caught smoking marijuana in his residence hall room at State University. The residence hall director wonders whether or not it is appropriate or even allowed for him to contact John's parents since John is 20 years old and is no longer dependent on his parents.

A recent amendment to FERPA provides flexibility for the institution to contact parents of students under the age of 21 — regardless of whether or not they are dependent for tax purposes (and therefore within the FERPA definition) — if a student has violated institutional or other laws/regulations related to substance abuse. Note that there is no affirmative requirement for the institution to do so.

Class Web Sites

Fred Faculty set up a Web site for the students in his computer science class to have online discussions. It contains directory information about the students and other non-directory information as well. Are there any FERPA issues? The site can be viewed by anyone who can find it on Google or other search engines.

First of all, only directory information is releasable to the general public, and only for those students who do not have an "N" release on their records. It may or may not be practical or easy for a faculty member to know who has an "N" release, so it would be recommended that this type of Web site be behind a security wall, and contain only directory information items. Only the students and instructors affiliated with the course should have access. Even with such a security wall, the students with an "N" release on their record should ideally provide written permission to have their information included on the Web site.

Grades and Honors

Prestigious Engineering Firm has asked you, the Registrar, for a list of the engineering students in the top 10 percent of the senior class and their addresses so that they can send them some information regarding a tremendous employment opportunity. How should you respond?

The institution should establish a policy about release of information to third parties. Grades/GPA can never be directory information. It is OK to release directory information, but the designation of top 10 percent is not typically directory information, and is more likely to be considered "too close" to releasing actual grades information. However, it should be OK to release the "Dean's List" without consent, if that honor is included in your directory information.

Financial Aid Issues

You work in the financial aid office. You are talking with a member of an alumni group. They are establishing a new scholarship to be offered to students from their local area who are attending your institution. The evaluation of the applications will be done by a scholarship board from the alumni group. The alumnus has asked you for the names, addresses and GPA's for all the currently-enrolled students from that area. What should you give them?

Since the alumni are not employees of the institution, they do not reasonably have a legitimate "need to know" details of student records. Therefore, you should only release directory information to them. Alternatively, if your FERPA policy states that such scholarship committees are considered to be "school officials" for the sole purpose of evaluating scholarship recipients, that could provide an opportunity for access. Also, if students applying for financial aid have given written permission to release information to third parties in reviewing all their financial aid opportunities, those students would be covered.

Class Announcements

You hear that George Professor requested aloud to his class that any disabled students in the room identify themselves, by holding up their hands, if they need special accommodations for the class or for tests. Was this approach appropriate according to FERPA? What suggestions would you give to the faculty member?

This is certainly not an ethical approach, even if it doesn't directly violate FERPA. Consider options, such as, asking the student to call, visit during office hours, or meet after class.

Change in Record

Jeff Student graduated from State University last year. It was recently discovered that he plagiarized some of the work on his dissertation and his Ph.D. was revoked. You receive an inquiry over the telephone from a potential employer about his academic record. What should you say? Should you do anything else since his degree was revoked?

Degree information would typically be considered directory information. Don't say that the Ph.D. was revoked; simply that he has not received one from your institution. You might want to consider contacting others who have requested an official transcript since the Ph.D. was awarded to give them a "corrected" copy.

Emergency Situation

Martha calls the registrar's office, looking for her husband, a student at your institution. She says that it is an emergency to contact him immediately. She would like to know where he is right now. How should you respond? Does it make any difference if the student has a "No Release" posted on his record?

Use your professional judgment. Consider establishing a protocol for handling emergency situations. A schedule has not traditionally been considered directory information, so the "No Release" doesn't make any difference.

Implied Consent and FERPA

Ted Student is a very outspoken and well-known student-athlete at Barrett University. In a recent news conference he discussed a great deal of information about his academic and disciplinary record. Nosy Reporter calls you in the registrar's office to confirm the information and to get some more details. What should you tell him?

You can only give out directory information (assuming Ted does not have a "No Release."). Just because the information has been made public, you still need a student release. There is no implied consent with FERPA.

FERPA and the Solomon Amendment

You are new in the registrar's office and are responsible for responding to data requests. You just received a request from the local Marine recruiter, asking for a long list of information about most of your students. He claims the right to the data based on the Solomon Amendment. What should you give him?

The Department of Education has determined that the Solomon Amendment supersedes most elements of FERPA. An institution is therefore obligated to release data included in the list of "student recruiting information," which may or may not match the FERPA directory information list you have published for your students. However, it has also been interpreted that the "No Release" code placed on student records for FERPA directory information can also be applied to release of information under the Solomon Amendment because the student has asked that no information be released to any third party. Therefore, data regarding those students should be suppressed from the data released to the recruiter.

Consortia/Exchange Programs

You have developed an exchange program with an institution in Russia. The president of this Russian university wants to stay current with the academic progress of all the Russian students, so would like to receive their grades each term. As the students' advisor, you hear that some of the students would prefer that you not forward the grades to the Russian school authorities. What do you do?

Two possible solutions to consider:

- 1. Is the program realistically considered a joint-enrollment program between both institutions? If so, then does the president of the Russian school have a legitimate "need to know" the student information? If yes, then the information can be forwarded, even without the students' consent. If this will be the normal course of business for the program, you may want to consider notifying participants of this in advance.*
- 2. Consider asking the students when they apply or register for the program for permission to exchange this information with the "home" school. That way, they have not only been notified in advance, they have authorized the release of the data.*

Research Exception for Disclosure to Another Institution

A high school guidance counselor at a local high school contacts your office seeking student level course and grade

information on students who previously attended her high school and are now enrolled at your institution. The counselor goes on to say that the reason she wants the data is to evaluate the success of the college prep and advanced placement courses that are taught at the high school. She was assigned this research project by the principal of her high school. How do you respond?

The research exception within FERPA applies only to studies or research done on behalf of the institution where the student is currently enrolled. Since this is not the case here, then the information cannot be released. The only option available would be for the counselor to obtain releases from each student whose record she wishes to evaluate. Assuming the number of students is large enough, you might be able to at least provide some non student identifiable summative outcome information.

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