

FERPA – Is Cal Poly Being Overly Cautious?

There has been talk that Cal Poly is being overly cautious with its application of the Family Educational Rights and Privacy Act (FERPA); that Cal Poly vehemently adheres to the letter of the law. Is this statement justifiable?

For starters, let's look at FERPA (the Act). The Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 444 of the General Education Provisions Act, in summary, affords students the right to inspect and review their educational records; seek to amend those records; limit disclosure of information from those records; and to file a complaint with the US Department of Education concerning alleged FERPA violations. (*Authority: 20 U.S.C. 1232g*) At Cal Poly it seems that the students' right to review and seek to amend their educational records is fairly straightforward; however, limiting disclosure of information from those records is said to be overly protective.

Now let's see what the Act really tells us...

"Disclosure" means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means. (*Authority: 20 U.S.C. 1232g(b)(1)*)

"Education records" - (a) The term means those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

"Record" means any information recorded in any way, including, but not limited to, hand writing, print, computer media, video or audio tape, film, microfilm, and microfiche. (*Authority: 20 U.S.C. 1232g*)

"Personally identifiable information" includes, but is not limited to: (*Authority: 20 U.S.C. 1232g*) (a) The student's name; (b) The name of the student's parent or other family member; (c) The address of the student or student's family; (d) A personal identifier, such as the student's social security number or student number; (e) A list of personal characteristics that would make the student's identity easily traceable; or (f) Other information that would make the student's identity easily traceable.

"Directory information" means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. (*Authority: 20 U.S.C. 1232g(a)(5)(A)*)

Ok, the definitions appear to be pretty straight forward; what do we do with them? The Act states:

§99.30 Under what conditions is prior consent required to disclose information?

(a) ... eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31 (summarized below).

(b) The written consent must: (1) Specify the records that may be disclosed; (2) State the purpose of the disclosure; and (3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section: (1) If a ... eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and (2) If ... a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that- (1) Identifies and authenticates a particular person as the source of the electronic consent; and (2) Indicates such person's approval of the information contained in the electronic consent.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

And those exceptions provided in §99.31? Well, that section is 15 sub-sections long, but in summary, includes: Other school officials, Valid Subpoenas, Search Warrants, Ex Parte Order (Patriot Act), and Emergency/Crisis Situations.

§99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to ... eligible students in attendance at the agency or institution of: (1) The types of personally identifiable information that the agency or institution has designated as directory information; (2) ... eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student designated as directory information; and (3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g (a)(5) (A) and (B))

And how is FERPA applied at Cal Poly?

As required under §99.37 (a)(1), Cal Poly designates Directory Information as: Name, E-mail Address, Photograph, Place of Birth, Previous Institution Attended, Major Field of Study, Local Address, Local Telephone Number, Degrees & Awards Received, Dates of Attendance, Height & Weight of Athletes, Participation in Officially Recognized Activities & Sports. By omission, all other information contained in the students' educational records is defined as "non-directory"/confidential.

Students are then given a means to protect all Directory or a subset of directory information (called Locator) as required under §99.37 (a)(2). This gives students the "right to refuse to let the agency or institution" disclose such information. As such, if a student has protected directory information, the University may not "disclose" name, e-mail address, etc.

To clarify further, grades, GPA, class schedules, etc. are part of students' educational records and are not considered directory information. Therefore, under §99.30 (a), written authorization is required to disclose such records to anyone other than the student. This means returning graded papers, labs, exams, etc. to students without ensuring confidentiality of the students' personally identifiable information is a violation of §99.30 (a),

But we hear there are some concerns...

"How can I do my job if Cal Poly won't let me use students' full names?" "I don't have time to return papers, labs, and exams during class time – there are too many... If I can't leave them outside my office for pickup, how do you propose I return all of those documents?" "Students want their grades now – how am I supposed provide students with progress information if I can't post the grades outside my office?" "What about references for my students? If I can't release information, then I can't help them find jobs."

To help with these concerns, we offer several suggestions and guidelines:

- If students have set their FERPA flags to "yes", then they are exercising their right to refuse disclosure and you should not give out their names to the class. So until you have an opportunity to speak with those "yes" students and to work with them, on the FIRST day of class, take role by: using First Name and Last Initial or vice versa; don't call the names of FERPA "yes" students and have them see you after class; OR, circulate a sign in sheet, letting students know that they can come to you after class if they do not wish to list their names on that sheet.
- Graded documents with students' names cannot be left outside an office for pickup. Instead, use Blackboard for posting grades and leave the unmarked documents for pickup; assign a random number to students and post grades and return papers

using only those numbers; OR have students provide an envelope with their name, or a pseudo name, on it and leave that envelope in a box for pick up.

- For lots more information, suggestions, and guidelines, please view the FERPA Faculty and Staff Presentation at http://www.ess.calpoly.edu/records/stu_info/ferpa.htm.

So, given the restrictions mandated by FERPA, as outlined above, is it justifiable to say that Cal Poly is being overly cautious with its application of FERPA? In the past, as much as 15% of the student population felt that they wanted more protection than the standard Privacy Protection offered at Cal Poly at that time –those students set their FERPA flags to “yes”. Today, only 4.6% of currently enrolled students have set their FERPA flags to “yes”. Could this decrease in “yes” students be due to Cal Poly’s current application of FERPA?

Now going back to the original question – Is Cal Poly being overly cautious? If you answer no, Cal Poly is not being overly cautious – great. If you answer yes, then consider the one student in a thousand at Cal Poly who has asked that her directory information be protected because she is being stalked by her father? Now wonder what her father could do to her if he finds out that his daughter is in your class because you called her name in role and another student passed that information along. Do you want to be responsible for that student’s safety and welfare because you weren’t being cautious enough and you gave her name out? And by the way, that one student in a thousand does exist at Cal Poly and could be one of your students today.

Again, more information and guidelines can be found at http://www.ess.calpoly.edu/records/stu_info/ferpa.htm.