

STATEMENTS

Student Privacy: Implications for Pharmaceutical Education

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Students are granted various rights under numerous federal laws, including the right to privacy of their educational records. Certain information, known as “directory information,” can be released without student consent, whether express or implied. Excluding a few exceptions, other educational records are considered private and may not be disclosed. Recent legislation allows governmental review of educational records without a student’s consent or documentation of the fact that the record was reviewed by a governmental agency. Students, and their parents, under certain circumstances, have the right to review their educational records and institute hearings to correct record errors. While the issue of fairness regarding student grades may not be challenged under the provisions of the Family Education Rights and Privacy Act (FERPA), the accuracy of these records may in fact be contested under this federal law. Courts have ruled that students cannot bring a private action to seek damages against colleges for violating FERPA; however, students may raise claims of violation of their rights to privacy under state privacy laws or states’ constitutional law. To date, no college has been penalized through the loss of federal funds for breaching this privacy law.

The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal law which was enacted to allow students to access their educational records, while at the same time limiting the

ability of others to access those same records, except as otherwise authorized by the law (20 USC §1232g).

The law applies to all schools that receive any federal funds under an applicable program of the US Department of Education. FERPA gives parents certain rights with respect to their children’s education that transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level (otherwise known as an “eligible student” and hereinafter referred to as “student(s)”).

The purpose of this article is to inform pharmacy administration and faculty of their responsibilities and student rights under FERPA and to provide direction with regard to requests for information from students, parents, and third parties.

History of FERPA

FERPA was enacted in 1974 as a new Section 438 of the General Education Provisions Act (GEPA) called “Protection of the Rights and Privacy of Parents and Students,” codified at 20 USC, Section 1232g (1974). It was also commonly referred to as the “Buckley Amendment” after its principal sponsor, Senator James Buckley of New York. FERPA was offered as an amendment on the Senate floor and was not the subject of Committee consideration. Accordingly, traditional legislative history for FERPA as first enacted is unavailable.

The purpose of FERPA was threefold: (1) to keep student records confidential, (2) to allow lim-

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ited access to student records by third parties, and (3) to allow a challenge to the accuracy of student records if those records are misleading, inaccurate, or in violation of students' rights. Congress has amended FERPA no less than 8 times; most recently in October 2001 following terrorist attacks on the United States.

No specific federal funding is attached to FERPA. However, FERPA requirements are conditions attached to the receipt of federal education funds (20 USC §1232g(a)(1)(A), (B)). FERPA, as part of the Federal General Provisions Concerning Education is in fact a set of unfunded conditions upon which the receipt of federal education funds may be altered (20 USC §1221). Furthermore, if one part of an educational institution receives such funds, FERPA applies to the entire institution.

While FERPA has never taken much of Congress' time or energy, its coverage is exceedingly broad.¹ FERPA covers the vast majority of American schools, including colleges and universities, that receive federal educational funds (including federally guaranteed student loans). Such provisions would include virtually all pharmacy schools in the United States, whether free standing or a college within a larger educational institution. Under FERPA the term "educational agency or institution" means "any public or private agency or institution which is the recipient of funds under any applicable program" (20 USC §1232g(a)(3)).

FERPA Overview and Guidelines

FERPA is a piece of federal legislation that provides rights to parents and students related to educational records. These rights are applicable to students in kindergarten through high school and beyond. As parents automatically transfer their rights under the Act to students when students reach the age of 18 years or enroll in a post-secondary institution, this article will focus on the rights afforded under the Act to adult college students, as virtually all pharmacy students will fall in this age classification (20 USC §1232g(d)).

For the purpose of this Act a student is defined as any person "with respect to whom an educa-

tional agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution" (20 USC 1232g(a)(6)). For the purposes of this statute, an applicant is not considered "in attendance" when applying for admission to a program of study.

Students have the right, upon request, to access their own educational records within a "reasonable" time, and no later than 45 days, after the request (20 USC §1232g(a)(1)(A), 34 CFR §99.10(b)). Withholding such records by an educational institution would be a violation of FERPA. "Access" generally refers to in-person inspection of the original records, but in most cases does not entitle students to obtain photocopies of the records unless, for reasons such as great distance, it is impossible for students to review the records (34 C.F.R. §99.10(d)). Universities may charge a fee for copies.

Students have the right to request that a school correct a record that they believe to be inaccurate or misleading (20 USC §1232g(a)(2)). If the school decides not to amend the record, the student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the student has the right to place a statement with the record setting forth his or her view about the contested information (20 USC §1232g(a)(2)).

In general, third parties cannot access student records, otherwise known as education records, without written student consent. Personally identifiable information contained in those records cannot be disclosed in any fashion—oral, written, or electronic—without student consent. If a student record that is to be disclosed contains information about other students, those other students' names should be redacted before disclosing the records.

Releasing information without reference to a particular student's name may be considered a violation of FERPA if the information is "easily traceable" to a student. The regulations define "personally identifiable information" as not only that which includes a student's name, but also as records which include the student's parent's name, the family's address, and ID number such as social security numbers or any other information that

makes the student's identity "easily traceable" (34 CFR §99.3).

"Education records," documents students are entitled to view, contain information directly related to a student and are maintained by an educational institution or by a party acting for the institution. "Education records" are defined as "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a party acting for such agency or institution" (20 USC §1232g(a)(4)(A), 34 CFR §99.3). These education records may include, but are not limited to, interview documentation, transcripts, grades, degree plans, and correspondence.

Exempted Records:

Not all documents within a university's grasp are considered education records, Exceptions to the "education records" include:

1. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
2. Records created and maintained by a law enforcement unit for a law enforcement purpose (records of a law enforcement unit which are kept apart from "education records," are maintained solely for law enforcement purposes, and are not made available to persons other than law enforcement officials of the same jurisdiction, provided that personnel of a law enforcement unit do not have access to "education records"); [At the request of the Secretary of Education, Congress amended the "law enforcement unit exception" in 1992 to eliminate the unworkable and unintended results of the prohibition on sharing education records with the law enforcement unit. The exclusion now applies to "records maintained by a law enforcement unit of the educational agency or institution that were created by

that law enforcement unit for the purpose of law enforcement."]

3. Employment records of the student employed by the university that are kept in the normal course of business, exclusively related to that student and that are not available for any other purpose;
4. Medical records made and maintained in connection with treatment and disclosed only to individuals providing treatment (such as from physicians', psychiatrists', or psychologists' treatment records for students)
5. Records, according to regulations, that only contain information about an individual after he or she is no longer a student at that institution (ie, alumni records) (34 CFR §99.3(b)(5)).

Maintaining Records Under FERPA

An educational institution is required to maintain a record of each request for access to, and each disclosure of, personally identifiable information from the education records of each student (20 USC §1232g(b)(4)(A)). For each request or disclosure the record must include the parties who have requested or received the personally identifiable information, as well as the legitimate interests the parties had in requesting or obtaining the personally identifiable information. The record-keeping requirement is not required if the request was from: (1) the student, (2) a school official, (3) a party with written consent from the student, or (4) a party seeking directory information (34 C.R.F. §99.32(d)).

Exceptions to FERPA

FERPA allows for many exceptions to the student consent requirement to release information. Disclosures to other school employees may be permitted. Nonconsensual disclosure of the record may be made to "other school officials, including teachers," within an educational institution with a legitimate educational interest in a student's educational records. It is, however, the responsibility of the university to set out a written standard for

determining when there is a legitimate educational reason for inspecting student records. Legitimate educational reasons might include disclosure to special officials for audit or evaluation purposes, appropriate parties in connection with financial aid to a student, or organizations conducting certain studies for or on behalf of the school or accrediting organizations (34 CFR §99.31(c)(3)). Another example might be where a professor is comparing and analyzing college grades to national standardized exams (such as ACT, SAT and/or PCAT) for research purposes. In this type of situation, the Protection of Human Subjects Committee would necessarily legitimize the approval for use of protected information for a school official.

A university may also release records to a school in which the student seeks to enroll (34 CFR §99.34(b)). This may be necessary when a pharmacy student seeks to complete a particular class at a different pharmacy school or when a student leaves the pharmacy school to enroll in another course of study at another university.

Some disclosure of certain less-private information is also permitted by FERPA. Schools may disclose, without consent, “directory” information (Table 1) (20 USC §1232g(a)(5)(A)). However, the school must give the student the right to “opt-out” of disclosure of this information upon inquiry by third parties. In other words, students must affirmatively advise the institution that they *do not* wish to have the institution disclose what otherwise would be determined to be “directory information.” If they do not, then the information can be disclosed.

Each educational institution is required to define for itself what will be included as directory information. While the statute lists certain information that may be included as directory information, it is not an exclusive or exhaustive list. Other items that may be considered as directory information may include both the local or permanent address of the student, academic classification, membership in recognized organizations, full- or part-time enrollment status, photographs, and e-mail address.

Table 1. Directory Information That May Be Disclosed Under FERPA Without the Student’s Consent

Directory information
Student’s name
Address
Telephone listing
Date and place of birth
Major field of study
Participation in officially recognized activities and sports
Weight and height of members of athletic teams
Dates of attendance
Degrees and awards received
Most* recent previous educational agency or institution attended

*The school must give the student the right to “opt out” of disclosure of this information upon inquiry by a third party.

Generally, universities must have written permission from the student in order to release any other information from a student’s education record. However, FERPA allows schools to disclose education records, without consent, to certain parties or under certain conditions (Table 2) (34 CFR §99.31).

Amendments of the Act also limit the right to inspect and review records so that university students do not have access to (1) financial records of their parents, and/or (2) confidential letter(s) of recommendation if the student has voluntarily waived access to these letters, provided the waiver cannot be required as a precondition of admission, employment, or receipt of an honor or honorary recognition (34 CFR §99.12(a)(3)(i)(C)).

In order to ensure that a rejected applicant was not given the right to challenge letters of recommendation or the institution’s admission decision, the definition of “student” does not include a person who has not been in attendance at such agency or institution (20 USC §1232g(a)(6)). This would include any student not yet admitted to the professional pharmacy program. In general, a student who is a student at an educational institution and

Table 2. Situations in Which Disclosure in Connection With Litigation and Law Enforcement Is Permitted Under FERPA Without the Consent of the Student

Situation
In response to a federal grand jury or other subpoenas.
When the student and institution are in litigation against each other, records may be released to the court.
To parents of adult students if the student was declared by the parent as a dependent on the most recent federal income tax return.
Even if the student is not a dependent, a university may inform parents that their under-21-year-old child has violated school policy regarding drug or alcohol use.
If it is necessary to protect the health or safety of the student or others, the institution may release records to "appropriate persons." Limited disclosure of disciplinary results and sex offender status is permitted.
Universities can release records to student victims of a crime of violence or nonforcible sex offense regarding the final results of any disciplinary proceedings against the alleged perpetrator.

who applies for admission to another component of that institution (eg, the pharmacy school) does not have rights under this part with respect to records maintained by the other component (the pharmacy school), including records maintained in connection with the student's application for admission (34 CFR §99.5(c)). Similarly, a student who is admitted to a separate component of an institution does not have FERPA rights with respect to the records of that component until he or she enrolls and becomes a student in attendance there. Each institution may determine when a student is in attendance in accordance with its own enrollment procedures.

Disciplinary Documentation

If a school is taking disciplinary action against a student on the basis of information provided by a law enforcement unit, the school's records are education records and subject to FERPA.¹ However, law enforcement unit's records are not subject to FERPA and thus may be independently disclosed. Under these circumstances a student's discipline records are records under FERPA and thus subject to its confidentiality requirements. In effect, a student can view them, but third parties may not.

In situations where the school is relying on their own information, FERPA does allow a college or university to disclose the results of certain disciplinary proceedings to alleged victims and in some cases make the outcome public. Under limited circumstances, the law does allow the disclosure of the results of a disciplinary hearing, for instance, to an alleged victim of any crime or a non-forcible sex offense (which includes actions of incest or statutory rape). The results of disciplinary hearings could be conveyed, as well, to other local school officials and officials from other schools who would have a legitimate educational interest in the behavior of the student (20 USC §1232g(a)(6)(A), 20 USC §1232g(h)(1)-(2)). However, just disclosing this information for the sake of protecting the public in the opinion of the person releasing this information would not be appropriate under all circumstances.

Student Tutors

Many colleges and universities routinely use students as peer tutors. In some situations these tutors may have access to grades, PCAT scores, and other information about their tutees. Such programs of using tutors are premised on the assumption that, with respect to FERPA, these student tu-

tors are agents of the school and are thus bound by FERPA to keep information about their tutees confidential to the same extent faculty and other pharmacy school employees are required to do so. Pharmacy schools have likewise utilized pharmacy students as laboratory assistants and graders, in effect, assessing other pharmacy students' performance. A recent ruling by the Supreme Court held that peer grading does not violate FERPA.²

Universities may also use work-study student employees in positions involving access to student records. Students may also serve on judicial panels to resolve Honor Code or disciplinary violations and sometimes even to impose disciplinary sanctions. Overall, student status does not prevent a student from being a school's agent under FERPA and thus this is permitted, under appropriate circumstances, even if it involves the student having access to FERPA protected information. However, it would be wise for pharmacy schools to require all such students involved in any of the above mentioned activities to sign an "agreement to maintain confidentiality" document.³ Such a document puts the student on notice of their responsibility and indicates the seriousness of possible breaches (20 USC §1232g(a)(2)). Even with such a document in hand, institutions should make it clear to student employees that even if something is highly publicized but may involve FERPA protected information, the student employee should maintain confidentiality. Privacy is primary even in situations where adverse publicity could affect the institution's reputation. People need to understand that disclosure of FERPA-protected student information is a violation of student's rights.

Contesting Student Grades

FERPA's legislative history explicitly refutes the idea that a FERPA hearing would be utilized as a means for students to challenge the fairness of a grade given in class.⁴ While the fairness of grades (eg, the student's grade of "C" in a pharmacology class), the fairness of the grading process (eg, that medicinal chemistry grades were based solely on scores on the final exam) or the substantive accuracy of academic evaluations can-

not be challenged in FERPA hearings, the accuracy of grades may be cause for a FERPA provided hearing. It is the responsibility of the school to inform and grant, when appropriate, the student their right to seek an internal hearing to challenge the records as provided for by statute.

The purpose of such a hearing would be to allow the student to contest records that the student believes to be inaccurate, misleading, or invades their right of privacy. Therefore, the accuracy of the grading process (that a student's B in Pharmaceutics was inaccurately recorded as a C, or was incorrectly calculated due to a math error) is a permissible subject for a FERPA hearing. The pharmacy school can decide, based on a professor's recommendation, not to amend records.

Institutions may also have their own procedures to permit grade appeals or challenges based upon fairness or other factors, the results of which may become separate education records subject to FERPA protection.

FERPA Hearings

Any individual, including a pharmacy school employee, may conduct the internal hearing if they do not have a direct interest in the outcome (34 CFR §99.22). If the student loses at the hearing level, no appeal is permitted by the regulations. However, students may have a statement placed in their record explaining what the student finds to be inaccurate, misleading, or violative of the privacy rights of the student. The university is then obligated to maintain the statement that is to be released concurrently whenever the challenged records are released (20 USC §1232g(a)(2)).

FERPA Notice of Student Rights

FERPA also requires that institutions notify students of FERPA rights annually, such as the right to file a complaint with the federal Department of Education's Family Policy Compliance Office (34 CFR §99.7).⁵ A Model Notice is available from the FERPA Compliance Office.⁶ Likewise, universities must give students the opportunity annually to object to release of some or all directory information (20 USC §1232g(a)(5)(B)).

Schools must provide students a reasonable amount of time to request that the school not disclose directory information about them. To provide such notice, the school may utilize “any means that are responsibly likely to inform” (34 CFR §99.7(b)). The actual means of notifying students (special letter, inclusion in bulletin, student handbook, or newspaper article) is left to the discretion of each school. FERPA requires that, for students who are disabled or unable to speak English, special provisions must be made to notify them of the protections of the statute (34 CFR §99.7(b)(2)).

USA Patriot Provisions

In response to the terrorist attacks on September 11, 2001, on the United States, Congress made changes to FERPA. Those changes became effective on October 26, 2001, when President George W. Bush signed into law the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.”⁷ This new Act permits educational institutions to disclose—without the consent or knowledge of the student—personally identifiable information from the student’s education records to the Attorney General of the United States or to his designee in response to an *ex parte* order in connection with the investigation or prosecution of terrorism crimes (18 USC §2332b(g)(5)(B) and §2331). An *ex parte* order is an order issued by a court of competent jurisdiction without notice to or contestation by an adversely affected party, who in this case would be the student.

In addition to allowing this disclosure of formerly restricted information without written consent or prior notification, the recording keeping requirements of who accessed the information is also amended (20 USC §1232g(b)(4); 34 CFR §99.32). As a result the Act does not require a school official to record a disclosure of information from a student’s education record when the school makes that disclosure pursuant to an *ex parte* order. Liability is also waived for the institution that, in good faith, produces information

from education records in compliance with the *ex parte* order.

Could pharmacy schools be affected by these new provisions? Absolutely. It has been reported by the American Association of Colleges of Pharmacy that 88.3% of graduate students are non-US educated.⁸ If foreign terrorists should strike with biologicals, governmental officials may very well ask whether pharmacy students had access to these biologicals. Students who are United States citizens could likewise be the subjects of an inquiry by governmental authorities, as this new law does not provide for an exemption based on United States citizenship.

Of course, a school official, based on his or her own observations, may notify law enforcement officials of suspicious activity or behavior. Nothing in FERPA prohibits a school official from disclosing to federal, state, or local law enforcement authorities information that is based on that official’s personal knowledge or observation and which is not necessarily information from an educational record.

It should be noted that the Immigration and Naturalization Service (INS) requires all foreign students attending an educational institution in the United States under an F-1 visa to sign a form (Form I-20) that contains a consent provision allowing for the disclosure of information to determine non-immigrant status. Such consent is sufficiently broad to permit an educational institution to release personally identifiable information for the purpose of allowing the INS to determine student status.

Other Subpoenas and Orders

FERPA permits an educational institution to disclose, without consent of the eligible student, information from the student’s educational records in order to comply with a “lawfully issued subpoena or court order.” These documents may appear in one of 3 contexts: (1) grand jury subpoena, (2) law enforcement subpoena or (3) other court-ordered or lawfully issued subpoenas. In the case of the grand jury or law enforcement subpoena, an order may be issued, and must be followed by the institution, not to inform or disclose to anyone the

existence or contents of the subpoena. Furthermore, recordation requirements, in this situation, would also be void.

However, with regard to subpoenas other than those issued by a grand jury or law enforcement agency, disclosure is permitted, but only if the institution makes a reasonable effort to notify the eligible student of the order or subpoena in advance, so that the student may seek protective action. With this in mind, pharmacy administration should realize that all subpoenas should not necessarily receive equal treatment. For example, the attorney who issues a subpoena in a civil action requesting a student's educational records might find that the student opposes the release of such information after notice of the requested release by the institution. Additionally, institutions must comply with FERPA's record-keeping requirements when disclosing information pursuant to a standard court order or subpoena (34 CFR §99.32).

Of course, FERPA permits non-consensual disclosure of education records, or personally identifiable, non-directory information from education records, in connection with a health or safety emergency, whether for the benefit of the student or other individuals (34 CFR §99.31(a)(10) and §99.36). For example, the health or safety exception would apply to non-consensual disclosures to appropriate persons in the case of smallpox, anthrax, or other bioterrorism attack. However, any release of student information must be narrowly tailored depending on the immediacy, magnitude, and specificity of data requested relative to the emergency situation. This exception is limited to the period of the emergency and generally will not allow for a blanket release of personally identifiable information from a student's education records.

Enforcement of the Acts

Courts have consistently held that FERPA itself does not provide the right to maintain an action to challenge the alleged violations and seek corrective measures.⁹ What then may students do to protect their rights? First, students may file a complaint with the Family Policy Compliance Office ("FPCO"). The FPCO will then investigate

the complaint and notify the student and the school in writing of its findings. There is no hearing afforded either party (34 CFR §99.66). If the FPCO finds that the school has violated the statute, the school will be given a list of certain conditions that it must meet within a specified period of time in order to resolve the complaint. These conditions may include removing records, agreeing to handle records differently, or correcting inaccurate records. In extreme cases, where a pattern of violations exists, the Office of the Secretary of the Department of Education may initiate proceedings to withdraw federal funds from the school. To date, the Office has never attempted to withdraw federal funds because of a FERPA violation. Generally, FERPA prohibits the funding of an educational institution that has a policy or practice of nonconsensual disclosure of students' "education records" (or personally identifiable information contained therein) without student consent (20 USC §1232g(a)(1)(A)-(B)).

Students could possibly bring a civil rights lawsuit against the university for a FERPA breach. State privacy laws, as well as state constitutional provisions, may constitute a basis upon which a student or students' parents could bring a suit for damages. Should the student win such a lawsuit, recovery could include money damages, attorneys' fees, and in some cases pain and suffering and even punitive damages from schools that are found to have violated the law. However, in a recent Washington state case, the US Supreme Court barred students from using federal privacy laws to sue school officials that divulge personal information. Under *Gonzaga*, the United States Supreme Court reserved to the parties the right to bring a State cause of action for a violation of their rights to privacy.¹⁰

General Questions and Answers

- Q:** Someone calls the offices and wants to know what class a student is in or where they can be located because there is a "family emergency." Should you tell them where to find the student?
- A:** No. A student's schedule is not considered "directory information." If an emergency ex-

ists, have office personnel or campus security intercept and inform the student of the situation or who to call concerning the situation. This response will also prevent a stalker from obtaining valuable information.

Q: A hospital where a student is on rotations informs the school that the student may have been exposed to hepatitis and wants proof of the student's prior immunizations. May the university release this medical record to the hospital?

A: Yes. Such records shall be released "in connection with an emergency, to appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons" (20 USC §1232g(b)(1)(I); 34 CFR §99.36).

Q: A parent calls the pharmacy administrative office and asks to review an adult student's records under FERPA. Can you release the records?

A: It depends. Generally the answer is no. However, if the student is a dependent child, as defined by Section 152 of the Internal Revenue Code of 1986 and the parents provide proof, then the answer is yes (20 USC §1232g(b)(1)(H); 34 CFR §99.31(a)(8)).

Q: The admissions committee desires to receive a letter of recommendation that will assure the author that the student will not be entitled to review the letter. Can a student be required to sign a waiver not to see letters of recommendation regarding admission to the professional program?

A: No.

Q: Can disciplinary records be included in a student's education record?

A: Yes. A 1994 amendment added a section that states that nothing in FERPA prohibits an institution from including in a student's records appropriate information regarding disciplinary actions taken against the student for "conduct that posed a significant risk to the safety or well-being of that student, other

students, or other members of the school community."

Q: Can the pharmacy school publicly identify students who are honor students by pointing out their GPA at an awards ceremony?

A: Only if the student authorizes you to do so. Such recognition without authorization by the student is a violation of FERPA. It is not uncommon for such student consent to be obtained on a registrar issued "application for graduation" in anticipation of graduation. Some of these consents are passive in nature, a situation in which, unless the student denotes otherwise, the information will be made public. However, FERPA requires active consent for disclosure, except with respect to directory information. Passive disclosure would likely be in violation of the intent of FERPA.

Q: A pharmacist or benefactor calls your office wanting to know why a candidate was not admitted to the pharmacy program. Can you tell them?

A: Yes. Applicants to a program are not considered "students" and therefore not entitled to the protections under FERPA. However, it may be that many factors considered regarding admissions and the admissions process by the admissions committee based on the information presented to them in making their determination is confidential under school or university policy. The pharmacy school may want to develop a policy that would provide for all information within the application process to be considered confidential and all information considered by the committee to be protected information.

Q: Where could pharmacy administration turn to find answers to questions regarding student privacy?

A: University legal counsel, as well as the Dean of Students or the Registrar, will be helpful. These individuals are continually faced with the task of determining when it is appropriate to release student information. Numerous

web sites are also available that will provide excellent guidance on FERPA questions.¹¹⁻¹³

Faculty Questions and Answers

Q: Can grades be assigned and posted using a social security number?

A: Only if the number would not be personally identifiable. Students from certain areas of the country may have social security numbers that would allow other students to connect a name with a grade. The first 3 digits of a social security number identify 1 of 8 regions within the United States. Therefore, a complete social security number should not be used. Even the use of a partial social security number might raise issues under FERPA. A better alternative is probably to allow students to select their own number that would then eliminate this problem. Again, "personally identifiable information" includes any list of personal characteristics that would make a student's identity easy to trace. Some universities have elected not to disclose social security numbers to faculty members.

Q: As a professor, am I required to talk with students about their final grades?

A: FERPA does not mandate any such discussion. However, should the grade be assigned in error, the student legally can obtain a hearing to review the error. Conversations with students legally can be limited to the accuracy of the grade. It should be remembered that some universities might have other quasi-judicial forums in which a student may challenge a grade.

Q: A student shows up at my door wanting to get the final grade of another student and they have a note of approval from that student. Should I provide them with the grade?

A: A student can authorize a third party to obtain all or part of the student education record. A grade is such a record. The key is to verify the authenticity of the document issued by the student authorizing the release.

Once accomplished, the grade may be released.

Q: Is it permissible for student TA's to assign grades under FERPA?

A: Yes. Such students are considered to be agents of the school. Nevertheless, it would be advisable to require student TA's to sign a confidentiality statement before being allowed to grade student papers. This would convey to the TA the seriousness of the issue and convey an unequivocal oath of silence.

Conclusion

Student privacy and the laws providing for such privacy are found in federal legislation known as FERPA and the USA PATRIOT Act. State laws, including statutes, court decisions, and constitutional provisions also define the limits on privacy for students and other citizens. Pharmacy administration and faculty should be acutely aware of students' rights and the corresponding responsibility of pharmacy school employees to maintain in confidence appropriate education records and afford hearings when appropriate. When a question is raised regarding disclosure of student information, appropriate authorities should be consulted to assure the letter of the law is followed.

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