
The Family Educational Rights and Privacy Right (FERPA)

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1. Privacy in Higher Education

Privacy became an important issue in education in the 1960s and 1970s (Thelin, 2011). With the increasing amount of information held by educational institutions about their students and the increasing impact that information was having on their lives. School and college records could be used to make evaluations of a person regarding their character, their aptitude, and their job prospects. Thus, the importance of handling that information came to the fore as an important issue to be discussed in the public sphere.

Initially educational institutions had considerable discretion as to manage and use student information (Baker, 2009; Thelin, 2011). This resulted in a lack of standardization about how to handle student information and to considerable differences in how some institutions handled students records compared to others (Baker, 2009; Weeks, 2001). Due to increased parental and public concern about the importance of those records the government, in particular Congress, started to look into the issue (Weeks, 2001). Initially the main thrust of the effort was geared towards elementary and high schools due to the greater parental involvement and the perceived consequences that

the use or misuse of those records could have on the future lives of those children (Weeks, 2001).

Eventually, the issue started to become important in higher education due to parental requests for the academic progress of their offspring (Weeks, 2001). The possible release of student records to potential employers was also an important concern as well as access to those records by the student themselves ("High court takes on second federal privacy case over education records," 2002). Therefore, the initial interest in privacy in elementary and secondary education eventually reached higher education with important consequences.

Public pressure as well as the interest of policy makers in Congress resulted in the passing of important legislation in 1974 called the Family Educational Rights and Privacy Act (Education, 2014; U.S.C., 1988). This new legislation attempted to standardize and to define the rights of individuals and institutions in terms of handling records and other types of student information. The next section explores the legislative history of FERPA.

2. The Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act was introduced to the house by James L. Buckley in 1973 and was signed into law by President Ford in 1974 (Education, 2014). FERPA (20 U.S.C. § 1232g) is a complex law that regulates the management and possible release of records held by educational institutions (Baker, 2009; Education, 2014; "High court takes on second federal privacy case over education records," 2002; Schmitt & Aronofsky, 2013; U.S.C., 1988; Weeks, 2001). The law was amended by Congress nine times: the Buckley/Pell Amendment of 1974, the Establishment of the Department of Education in 1979, the Campus Security Act of 1990, the Higher Education Amendments of 1992, the Improving America's Schools Act

of 1994, the Higher Education Amendments of 1998, the Campus Sex Crime Prevention Act of 2000, and the USA Patriot Act of 2001 (Education, 2014). Under most situations records cannot be released without the written consent of the student or the parents (if the student younger than 18) to third parties. Records are supposed to be kept in a safe place by educational institutions (Schmitt & Aronofsky, 2013). Records can be released to other institution staff members, and other government agencies. FERPA was slightly modified by the Patriot Act in that universities were allowed to share more information with security agencies. The law also regulates how data is transferred to other government authorities (U.S.C., 1988). FERPA does allow educational institutions to release directory information about students with their prior consent (U.S.C., 1988). This includes basic information such as name and phone number. Students are supposed to be informed before this is done. In summary FERPA has resulted in the standardization and regulation of the handling of student records. The next section of this paper will discuss some important cases that have resulted from this important piece of legislation.

3. FERPA related Cases

Two important cases dealing with FERPA are *Gonzaga University v. Doe* and *Owasso Independent School District v. Falvo* ("High court takes on second federal privacy case over education records," 2002). Both cases helped interpret the reach of the provision in FERPA, in particular in respect of individual rights of non-disclosure of personal information. In *Gonzaga University v. Doe* the Supreme Court decided a case in which a college professor refused to certify the good conduct of a student because she had overheard the student talking to another friend about sexual misconduct (Weeks, 2001). The student alleged that the professor infringed his rights under FERPA. Nevertheless, the court ruled that

FERPA does not create any personal rights but simply is binding in terms of financial aid for qualifying institutions [536 U.S. 273](#) (2002). The case of *Owasso Independent School District v. Falvo* explored a similar issue of rights. In this case, the parent of a child brought suit against the District for the practice of allowed other students to grade assignments and for calling out the grades out loud. The Supreme Court ruled in favor of the School District claiming that FERPA does not create any individual rights that can be enforced under the Civil Rights legislation [534 U.S. 426](#) (2002).

The two previously discussed cases are pivotal in understanding the limits of FERPA. Although FERPA regulated the handling and release of private records it is binding only on the institutions themselves and it does not create any privately enforceable rights. This makes the legislation different from Civil Rights and limits the amount of litigation to a certain extend (Weeks, 2001). The American legal system follows Common Law and therefore judicial decisions are very important in providing an operational interpretation of complex laws such as FERPA (Thelin, 2011).

4. Implications of the Law

The Family Educational Rights and Privacy Act is a complex law that combines greater oversight over the way educational institutions manage private records with control over the disbursement of financial aid. Nevertheless, it should be noted that the mechanisms of control over institutions are simply based on their need for funding, as discussed in the previous paragraphs the legislation does not create any personal rights (Thelin, 2011). Moreover, an institution that does not accept financial aid would be affected by this legislation.

In terms of the larger context in higher education, FERPA is an integral part of the Federal Government's leverage over higher education (Mangu-Ward, 2008). With shrinking state allocations and increasing costs, institutions of higher learning are becoming increasingly dependent on Federal dollars and thus more responsive to Federal regulation (Aud et al., 2011; Stratford, 2013). The Obama administration favors greater regulation of Higher Education in terms of both accreditation requirements as well as in terms of measurements and evaluation of outcomes (Lederman, 2013). This means that the Federal government aims to have a greater say in program offerings, curriculum design (to a certain extent), and more access to student information in order to monitor progress.

The Higher Education Act is up for renewal and FERPA could possibly be affected by its renewal. Student records could be used by the Federal Government to monitor employment and economic indicators which are at the forefront of the government agenda (Lederman, 2013). For example the statistics of student employment after graduation could possibly be tied to future financial aid for institutions of higher learning ("Elementary and Secondary Education Act," 2011).

Although security concerns have decreased since September 11, terrorism, extremism, and campus violence are still a reality. Republican support for any changes of FERPA would probably require the protection of the amendment made to the Act when the USA Patriot Act was passed. Recent intelligence indicating that many prominent terrorist held American passports and attended American Universities makes it important for Universities to share this vital information with the Federal Government (Mendelsohn, 2009).

In conclusion, the Family Educational Rights and Privacy Act is an important piece of legislation providing some regulation to the handling, storing, and release of student records held by educational institutions. Although the Act does not create individual rights but rather regulates the disbursement of financial aid to educational institutions this leverage is increasingly important due to the difficult financial situation of the educational sector. FERPA will probably be discussed in relation with the renewal of the Higher Education Act in terms of the possible release of data to track student progress, degree completion rates, and employment.

5. References

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