The Devil Wears FERPA: Rethinking Student Records in the Digital Age

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Agenda

- FERPA basics
- Email/electronic documents
- Guest Access Portal
FERPA Basics
Family Educational Rights and Privacy Act (FERPA)

- Federal law enacted in 1974
- Protects students’ education records from being disclosed without consent (or other exception)
- Permits a student to access his/her own education record

University Policy 402, Student Records
  - http://legal.uncc.edu/policies/up-402
  - also, short training module on OLA website
The law initially applied to “any and all official records . . . incorporated into each student’s cumulative record folder, and intended for school use” (and included long list of examples).

Within a couple of months, the law was amended to apply to “education records,” which are:
- Directly related to the student and
- Maintained by the university

Still some debate about coverage of FERPA
- both in court and in public view
Family Educational Rights and Privacy Act (FERPA)

- NOT education records:
  - campus police records
  - employment records (unless dependent on student status)
  - peer-graded assignments BEFORE collection
  - treatment records (medical/counseling)
  - certain alumni records
Family Educational Rights and Privacy Act (FERPA)

- NOT education records (cont’d):
  - personal notes =
    - 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
Family Educational Rights and Privacy Act (FERPA)

- Student may consent to the disclosure of education records
  - Must be written
  - Must be signed and dated
  - Must specify the records to be disclosed, the party to whom the records are to be disclosed, and the purpose of the disclosure

- Student’s presence and lack of objection is not sufficient.
Family Educational Rights and Privacy Act (FERPA)

- Exceptions:
  - To university officials if legitimate educational interest
  - To parents if student is dependent
  - To another university if student transfers
  - Health/safety emergency
  - Judicial order/subpoena
  - Certain disciplinary information
    - crimes of violence (just victim or victim and public) or
    - alcohol/drug violations (if responsible)
Family Educational Rights and Privacy Act (FERPA)

- Exceptions (cont’d):
  - Directory information = information not generally considered harmful if shared (name, major, address, dates of attendance, telephone number, place/date of birth, honors and awards, etc.)
    - Unless privacy hold (on file with Registrar)
    - NOTE: At UNC Charlotte, it’s much more limited!
Advent of Email & Electronic Documents
Emails/social media

Emails

- Maintained by the university?
  - California case says no, but Ohio case says yes
  - UNC Charlotte considers faculty/staff emails directly related to a student to be protected by FERPA (partially based on records retention requirements)

- Student’s access to own education records
  - “inspect and review” within 45 days of request

Social media

- Be careful not to reveal protected student information when writing a blog, tweeting, or posting to other social media
- Same rules apply, but risks are greater with social media (posts go viral, newspapers search/pay attention to online info, etc.)
Directory information

- UNC Charlotte now limits publicly available directory information to:
  - Student’s name
  - Major field of study
  - Dates of attendance
  - Enrollment status
  - Degrees and awards (including scholarships) received

- Some of the reasons for the policy change were based on our increasingly technological society (flood of solicitation emails, safety concern re: physical addresses, etc.).
Limited use directory information

- Limited use directory information =
  - student images
  - university-issued email addresses

- Only disclosed:
  - for University publications/internal directory;
  - to University officials with a legitimate educational interest; and/or
  - to external parties contractually affiliated with the University, if required
    (and need to add FERPA-protective language to contract)
Written consent?

- You receive a text message from Anna letting you know that you can give her graded final paper to her friend Kelsey when she comes by your office later. Anna has used this same phone number to let you know when she was running late for class or when she had the flu earlier this semester.
Written consent?

- Micah, a Greek student, emails the Dean of Students office from his personal email account to let them know that they can talk with his dad about his fraternity’s hazing charges.

- What if it’s from his UNC Charlotte email account?
Written consent?

- You receive an online submission from Ashlyn, complete with a reference to her 800 number, giving you permission to discuss her financial aid package with her current employer.

- What if she had to log in with her NinerNet credentials to access the form, and the form submission includes an audit trail that is linked to her NinerNet credentials?
Sole possession?

- I keep my work notes in a folder labeled “Sarah’s stuff-PRIVATE” on my office’s J: drive. No final agreements, policy drafts, or advice memos are in there, so the staff and other attorneys never open it.

- What if it were on my H: drive?
- On my desktop?
- What about emails to myself?
Guest Access Portal
Guest Access Portal and FERPA

FERPA AND YOUR PRIVACY

As a student, you have the right to protect your information. The Family Educational Rights and Privacy Act of 1974, or FERPA, is the United States federal law that protects the privacy of student records. University Policy 402 provides detailed information on how UNC Charlotte protects student records.
Guest Access Portal

- View-only access
- Certain records are not included:
  - Student Conduct records
  - Health Center records
  - Any records not available in Banner Self-Service
- Even with passphrase, you cannot provide more information than what a parent/guest can view on the screen.
- Some circumstances will still require a paper/online form.
## Proxy Information

**Name:** Niner, Norm  
**Relationship:** Guest  
**Proxy Desc:** Norm Niner is my uncle and legal guardian.  
**Email:** sambrooa@uncc.edu  
**Passphrase:** Et tu, Brute?  
**Start Date:** 08-AUG-2016  
**Stop Date:** 04-AUG-2020  
**PIN Expire Date:** 22-AUG-2016

### Page Authorization List

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Consent review

- Written ✓
- Signed and dated ✓

Must specify:
- the records to be disclosed
- the party to whom the records are to be disclosed
Questions?