FERPA Privacy Checklist for Online Course Hosting

Introduction

The Family Educational Rights and Privacy Act (FERPA) is a federal law that requires universities to (1) give students access to their education records and (2) keep personally identifiable education records confidential with respect to third parties unless there is a specific FERPA exception allowing the release.

Because an online environment creates a record of student activity, it is subject to FERPA privacy rights, unlike verbal exchanges in a physical classroom.


Activities That Trigger FERPA Duty

1. If students submit information electronically, is the information accessible to anyone other than the student who submits it and FSU employees who need to know the information to carry out their job duties (typically, the instructor and computer system administrators)?

   [Example: an off-campus vendor uses its servers to automatically grade electronic student assignments and send the grades back to the instructor on campus.]

2. Do you send information about a student to anyone other than (1) the student or (2) FSU employees who need to know the info to carry out their job duties?

   [Examples: the instructor posts student work for other students in the class to review, or a person or computer at the university makes student information available to a vendor who provides online supplemental services for course management software or for textbook materials.]

Ways to Fulfill FERPA Duty

1. First Option -- Student Consent

   If “yes,” to either of the two prior questions, then one way to comply with FERPA is to obtain the written, signed, dated consent of each student for the release of his/her information. This consent must be completely voluntary; that is, students who decline to provide the consent must not be denied any academic opportunity or privilege or suffer any adverse consequences. The consent form must be completed in its entirety and describe the type of confidential information that may be disclosed and each individual, group or body that will be allowed to review such confidential information. A generic Release of Student Records Consent Form can be found at www.uncfsu.edu/chancellor/legal_counsel/forms.htm.
OR

2. **Second Option -- Student Comments Only Available to Other Students in the Course**

For communications and posting of student work for electronic discussion among students in a class, the express written consent of students is NOT required, provided that

i. electronic postings of student work do not contain grades or evaluative comments of the professor,
ii. the students perform the posting rather than the professor,
iii. students are notified prior to or at the time of enrollment that posting of their work is a course requirement,
iv. the student is not identified by his/her actual name but by an anonymous, de-identifying and confidential pseudo-name created by the professor that is known only to the professor and FSU staff,
v. the student is informed of the importance of not posting identifiable information about him/herself in the comments, and
vi. the posted work is available only to members of the class.

OR

3. **Third Option -- Outside Parties Under Contract to the University**

Where an outside party, such as a vendor, receives student information (e.g., for grading, or access to online supplemental materials provided by a textbook publisher), the third party recipient should be bound by contract to preserve confidentiality, if at all possible. A sample contract is appended; please obtain review and signature according to FSU policy for contract review.

**Special Exception**

Do you require students to send a letter to the editor, or post to a non-university blog, or post to a social networking site not affiliated with faculty, or comparable activity?

In such cases the activity may not be FERPA-protected because it has not been received and, therefore, is not in the custody of the university. However, the copy of the student submission which is maintained by the faculty member is FERPA-protected and the information contained in the copy should not be released by the professor unless it is disclosed under a specific FERPA exception allowing such disclosure. In addition, a student should be allowed to opt-out of this type of student submission and the faculty must offer at least one option that will allow the student to meet the requirements of the assignment without making the student’s comments publically available.

**Questions**

Questions may be directed to Angel Powell, Office of Legal Affairs, 910-672-1145 or bpowell3@uncfsu.edu.
Please note that FERPA was written before the Internet existed, it is an awkward fit to modern teaching, and concerns about the workability or usefulness of FERPA are better addressed to the U.S. Department of Education.