

Student Privacy: Pre- and Post 9/11

Ruchika Agrawal
Grace Hopper Conference 2002
Vancouver, Canada

Plan

- Discuss the Family Educational Rights and Privacy Act (FERPA; also known as the Buckley Amendment)
- Discuss survey results gauging student perceptions of their privacy rights at Stanford University

FERPA: Pre and Post 9/11

Question

Do students have a specific right to privacy?

FERPA: A Brief Historical Perspective

- Sponsored by Sen. James Buckley
- signed into law by President Ford on August 21, 1974
- Senator Buckley said FERPA was adopted in response to "the growing evidence of the abuse of student records across the nation"

FERPA: Before 9/11

Who is eligible?

- FERPA extends certain privacy rights to parents with regard to their children's education records.
- These rights transfer to the child when he or she reaches the age of 18.

Protections offered by FERPA

- (1) The right to inspect and review the information that the university/institution is keeping on the student
- (2) The right to seek amendment to those records and in certain cases append a statement to the record
- (3) The right to consent to disclosure of his/her records
- (4) The right to file a complaint with the FERPA Office in Washington

Exceptions

The disclosure of student record information without student or parental consent is permitted under the following conditions and/or to the following parties:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;

Exceptions (con'd)

- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Exceptions (con'd)

→ Given these exceptions, it is not clear what constitutes a violation of FERPA.

Questions

- What does "student educational record" mean?
- What is a subpoena?
- How many students aware of FERPA?

Definition: "record"

An accurate interpretation of FERPA depends on the definition of a "student educational record." FERPA defines a student educational record as:

- (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.
- Under this loose definition, a student's emails, data files, programs, and Network account may be interpreted as student educational records. However, this matter is not very clear.

Definition: "subpoena"

- Subpoenas range from court orders to attorney boilerplate.
 - For example, if some arbitrary law firm were to provide a school with a subpoena attempting to compel the disclosure of a student's educational record, the school could legally provide the requested information.
- Subpoenas do not always require judicial review.

FERPA Awareness

- Every school is required to notify parents and eligible students annually of their rights under FERPA.
- The notice can take any form the institution or agency considers appropriate.
- The notice must explain how a parent or eligible student may exercise their rights under FERPA.

FERPA Weakness in Sum

- Both FERPA's definition of student educational records as well as FERPA's provisions as to what constitutes a violation of protecting the privacy of student educational records is neither clear nor well defined.
- School officials should establish a formal interpretation of FERPA, educate/notify students (or parents of ineligible students), faculty, staff and system administrators about it, and put it into practice in a timely fashion.

Case of Hypothetical Student

- FBI
- 19 years old; US citizen of Iranian descent
- Working on international science and technology related policy issues
- FBI told student lawyer would not be necessary
- Asked irrelevant questions
- Told not to 'unwittingly' give information

FERPA: Post 9/11

- In January 2002, FERPA was amended to permit the Attorney General to obtain a court order to collect education records from schools for the purposes of investigating or prosecuting terrorism.

USA Patriot Act (anti-terrorism bill)

- "... the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to—
- (A) collect education records in the possession of the educational agency or institution . . . ; and
- (B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality."

In other words ...

- the anti-terrorism bill permits the Attorney General or a designee to get a court order requiring an educational institution to release student record information in response to an investigation of domestic or international terrorism
- the bill releases the institution from any liability

Important to note...

- While FERPA was originally intended to protect American citizens, international students assumed FERPA protection prior to the anti-terrorism bill.
- However, potential new laws intend to create programs that will provide the government with student record information without requiring the Attorney General to obtain a court order.
- This will enable Immigration and Naturalization Services (INS) to collect information from the Department of State, including "addresses, date of arrival, degree plans and credit hours, as well as information on people who don't show up for classes, change their major or drop out."

The INS and the USA Patriot Act

- The INS, in conjunction with a number of other federal agencies, is currently in the initial stages of implementing the Student and Exchange Visitor Information System (SEVIS).
- SEVIS is an Internet-based system that allows schools to transmit student information to the INS for purposes of tracking and monitoring non-immigrant and exchange students.
- Accessible information includes a student's personally identifiable information, admission at port of entry, academic information, such as changes in program of study, and disciplinary information.
- Schools will be required to transmit such information to the INS for the duration of a student's stay in the United States.
- The USA PATRIOT Act requires that SEVIS be fully implemented by January 1, 2003.

Concluding Point

What is going on at your school?