



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INNOVATION AND IMPROVEMENT

Ms. Frances K. Dice
Assistant Dean
Academic Management
Community College of Allegheny County
800 Allegheny Avenue
Pittsburgh, Pennsylvania 15233-1895

OCT 26 2006

Dear Ms. Dice:

This responds to your letter dated July 3, 2006, and in follow-up to our recent telephone conversation regarding the requirements of the Family Educational Rights and Privacy Act (FERPA) as they relate to a disclosure of education records by the Community College of Allegheny County (College) to alumni search associations. As you are aware, this Office administers FERPA which pertains to education records.

You explain that the College is making a concerted effort to find alumni from 1966 to 1980. In this regard you state:

Our new alumni director has located two alumni search agencies, but those agencies are asking for social security numbers in order to have a reasonable chance of locating these graduates. Our alumni director has corresponded with Cuyahogo Community College and the Vermont Law School both of whom have provided SSNs to alumni finder agencies. Vermont Law School has a letter from you from 1996 stating that an institution may send SSN's to such an agency and remain FERPA compliant. You cited the fact that the agency would be working as an agent of the institution.

Given the many technological advances since 1996, do you still feel that using such an agency and supplying that agency with SSN would be permissible under FERPA? We are looking at an agency named Alumni finders and would appreciate any information you might have on that company.

FERPA provides that educational agencies or institutions may disclose a student's education records, or personally identifiable information from such records only after a minor student's parent or a student who has reached the age of 18 or is attending an institution of postsecondary education has provided prior written consent. 34 CFR § 99.30.

“Education records” are defined as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3 “Education records.” This means that records directly related to a student that are maintained by contractor or other party acting for a school, including records created by that party, are subject to all FERPA requirements. A student’s name, student ID number and social security number maintained by the College meet the definition of an education record.

While FERPA permits “directory information” to be disclosed without prior written consent, this exception is inapplicable here. FERPA defines “directory information” as information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. 20 U.S.C. § 1232g(a)(5)(A); 34 CFR § 99.3 “Directory information.” Directory information includes, but is not limited to, information such as name, address, dates of attendance, degree obtained, grade level, photograph, student status (full-time, part-time, undergraduate, graduate), telephone number, date and place of birth, and participation in officially recognized activities and sports. However, an eligible student's social security number (SSN) or ID number is not considered directory type information and, thus, may not be disclosed absent prior written consent, unless permitted under one of the exceptions listed in § 99.31(a) of the regulations.

One of the exceptions to the prior written consent requirement in FERPA allows “school officials, including teachers, within the agency or institution” to obtain access to education records provided the educational agency or institution has determined that they have “legitimate educational interests” in the information. 34 CFR § 99.31(a)(1). An educational agency or institution may disclose education records without consent to a “school official” under this exception only if it has first determined that the official has “legitimate educational interests” in obtaining the information to perform specified services for the agency or institution and includes in its annual notification of FERPA rights a specification of its criteria for determining who constitutes a “school official” and what constitutes “legitimate educational interests” under § 99.31(a)(1). See 34 CFR § 99.7(a)(3)(iii).

FERPA does not specifically address disclosure of education records to contractors, consultants, volunteers and service providers who are not employees of an educational agency or institution. However, this Office has advised that agencies and institutions subject to FERPA are not precluded from disclosing education records to parties to whom they have outsourced services so long as they do so under the same conditions applicable to school officials who are actually employed. Please review the attached letter to the Clark County School District dated June 27, 2006 for a full explanation of the conditions that apply to the disclosure of education records to a contractor performing services for an educational agency or institution. If the College has a contract or written agreement with the outside alumni search agencies that meets the requirements set forth in our June 27 letter, then the College could disclose personally identifiable information such as a social security number to the search agency.

Note that an educational agency or institution may not disclose education records without prior written consent merely because it has entered into a contract or agreement with an outside party. Rather, the agency or institution must be able to show that 1) the outside party provides a service for the agency or institution that it would otherwise provide for itself using employees; 2) the outside party would have “legitimate educational interests” in the information disclosed if the service were performed by employees; and 3) the outside party is under the direct control of the educational agency or institution with respect to the use and maintenance of information from education records.

It is also important to note that, under § 99.33(a) of the regulations, any party, including a “school official,” that receives education records may use the information only for the purposes for which the disclosure was made and may not redisclose the information to any other party without prior written consent, except as authorized under § 99.33(b). As noted above, education records maintained by a party providing services for an educational agency or institution, including records created by that party, are subject to all FERPA requirements. Search agencies may redisclose or search a database using unblocked directory information provided by the College, such as student name and address. However, search agencies may not redisclose or search a database using nondirectory information such as a social security number or student identification number provided by the College, unless they or the College have the prior written consent of the student authorizing the disclosure of that information for the purposes of the alumni search. Therefore, from the above outlined information, it should be clear that FERPA prevents an outside alumni search agency from disclosing or conducting a search with a student’s social security number or other non-directory information provided by the College absent prior written consent for the disclosure of such.

In sum, the College must ensure that a party acting for it does not use or allow anyone to obtain access to personally identifiable information from student education records except in strict accordance with the requirements established by the College. In that vein, a college that outsources services under these requirements remains completely responsible for its service provider’s compliance with applicable FERPA requirements and liable for any misuse of protected information. For that reason, we recommend that these specific protections be incorporated into any contract or agreement between an educational agency or institution and any non-employees it retains to provide institutional services.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it applies to your concern.

Sincerely,



LeRoy S. Rooker
Director
Family Policy Compliance Office

Enclosures