

## **Higher Education Professionals Perceptions of the Effectiveness of FERPA:**

### **A Qualitative Pilot Study Summary of Findings**

Higher education professionals often view the Family Educational Rights and Privacy Act of 1974, or FERPA, more as myth rather than authoritative. McDonald (2008) argues that the fundamental misunderstandings of the law perpetuate its mythical status and prevents educators from providing an adequate level of care for their students. For example, in the aftermath of Virginia Tech tragedy, numerous reports attribute the chaos of that day to the administration's misinterpretation of FERPA (Fischer, 2007) and its failure to share the assailant's mental health issues with his parents (Ward, 2008). Balancing the needs of students with the law is more complicated when institutions must interpret a notoriously vague law during a crisis.

The need to address student mental health problems in the context of family continues to grow. A 2008 study of college students notes that over half of an institution's population will experience one mental health crisis during their enrollment (Blanco, Okuda, Wright, Hasin, Grant, Liu, & Olfson), which according to Perna and Titus (2005) is positively impacted when a parent is involved in the treatment process. Nevertheless, FERPA prohibits the sharing of information with an eligible student's family, even if the student is attending an online university while living in his or her parent's home.

Brett Sokolow, president and CEO of the National Center of Higher Education Risk Management contends that FERPA motivates institutions to “[err] on the side of silence—even in the midst of crises and in situations where we clearly need to be communicating more effectively,” especially with families (Kattner, 2009, p. 2). Students in need will continue to

suffer unless more clarity is provided on the law's guidelines regarding communication and the disclosing of information.

This study explores the compliance concerns of colleges and universities by asking how can the recommendations put forth by higher education professionals modify FERPA to meet the developmental and mental health needs of today's college students? Seeking out the answers to this question will not only highlight the areas in which FERPA needs improvement, but will also provide the recommendations from practitioners for amendment to meet the needs changing of faculty, staff, students, and families.

### **Method**

This pilot study used participatory action research with phenomenology incorporated into the data collection process, which allowed the researcher to approach the study as a collaborative partner with the participants to resolve the current issues facing higher education privacy law. The researcher and the participants discussed their experiences with FERPA, exposed foundational issues, and explored future implications for students, educators, and parents if the U.S. Department of Education does not consider recommendations for FERPA reform.

The document review of Title 34 CFR Part 99, or the Family Educational Rights and Privacy Act, informed my peer-reviewed interview protocol, which was used to conduct three semi-structured interviews with faculty and administrators. The researcher was able to identify areas within the law that highlighted the sharing of information with parents, student safety, and disclosure exceptions, as well as familiarized myself with the language used in the legislation, which is the main source of confusion for higher education administrators (Lipka, 2008).

The researcher used purposive sampling to select three participants for the 30-minute interviews, which took place over the phone or Skype. The confidential conversations were

recorded, transcribed, and coded. The sessions the same interview protocol comprised of a series of 15 questions broken in to four sections: background and context, legal comprehension, professional impact, and summary questions. These sections reflected the three measures of the pilot study including impact on job performance, capacity to communicate and/or collaborate with parents, and the FERPA's ability to protect students.

The researcher organized the data through thematic coding, conducted a comparative analysis of the document review and interviews, and drafted memos of the findings. The researcher looked for congruence between what the participants said about the law and what the law says, ways in which the law and the participant's understanding of the law differed, and patterns of recommendations for how the law can better meet the needs of higher educational professionals, student, and families.

### **Findings**

The interviews provided their own insights to the challenges presented by the law, but when compared against the findings from the document review, the data began to reveal the pervasiveness of McDonald's argument regarding the misinterpretations of FERPA within the field of higher education. Furthermore, whereas the study focused on the shortcomings of the law, the coding process exposed how FERPA can be beneficial in the developmental process for students as well as the transitional process for parents.

The researcher identified five themes including knowledge, interpretation, role of parents, adulthood, and behavior. These themes, reflective of the study's measures, demonstrate FERPA reform may be essential, but not necessarily for the purpose included in the study's research question: to better meet the developmental and mental health needs of today's college students. Rather, the research question may be resolved as an outcome of meeting the greater need for

FERPA reform: clarity. Majority of the data collected related to the struggle of educators to understand what FERPA means and how it should impact faculty and staff's decision-making behavior.

The need for clarity stemmed from a lack of knowledge of the law's content. All three participants were able to articulate a definition of FERPA in relation to their role at their respective institutions, yet none were able to provide a comprehensive summary of the law. The definitions stressed the role of the *educational record* in preserving a student's privacy, but a comparative analysis of the document revealed that the law focused on the disclosure exceptions of an *educational record*, not on the record itself. This demonstrated that a working knowledge of FERPA not only requires recognizing what the law says, but what it means.

Comprehension appeared to depend upon the context of a situation rather than an overall understanding of FERPA. For example, the faculty member said she felt confident in her grasp of FERPA while in the classroom, but unsure how it applied when she was a faculty in residence. "Where I think it gets fuzzier is coming from a housing and community living standard. When you see a student outside of the classroom, does that count as their educational record? Yes, it is, but it's also not." The lack of clarity in the terminology created confusion regarding the purpose and goals for the law. It also led to compliance concerns and questions as to how a university could apply the law equally across the institution to address the holistic needs of their students.

The researcher's findings reveal that clarity also played a role in interpretation, both on the institutional and personal level. Strict application of the law, which was more closely associated with public institutions, created a clear-cut framework from which educators could work and feel protected, whereas looser readings permitted more flexibility in how one did his or her job. An educator's choice to interpret the law through an institutional or personal lens varied

based upon the situation and types of experiences, both positive and negative. As one participant said, “The first question I ask is ‘What is the right thing to do?’ When a student comes in and says, ‘I’m going to kill myself,’ the right thing to do is to bring as many people into that conversation as possible. After that, I begin to ask, ‘Does FERPA give me permission to do this?’” FERPA was updated in December 2008 to include an explicit disclosure exception for mental health and safety emergencies, yet a comparative analysis showed that this amendment had little impact on interpretation. Though the merits of both styles of interpretations were discussed, the questions still remained: how could this law be interpreted to so many varying degrees?

The document review provided a great deal of clarity regarding the exclusion parents, yet the interviews suggested that parents still played a vital role in an *eligible student’s* education within the contexts of finances, support systems, need for information disclosure, and partnership. In addition to campus resources, parents were identified as a key stakeholder in ensuring a student’s wellbeing. The participants exhibited empathy for parents’ inability to check in on their *investment* through shared stories of FERPA’s limitations. It was widely recognized that not all families provide financial aid or a beneficial support network for their child, but this was not determined to be a deterrent for educators who desired to make contact with a parent.

The need to disclose information to parents was most closely linked to the notion of collaboration. The researcher found that the rationale for contacting parents in order to form a strategic partnership between the institution and family, thus safeguarding the wellbeing of the student was more compelling than the notion that parents or guardians should be contacted because they are paying the student’s tuition. When asked if they would share information with their students’ parents, if permitted by FERPA, two of the participants qualified their responses

by stating that they would be willing to do so if they believe the student's wellbeing was in jeopardy. The document review showed that the law did make parental disclosure exceptions for student conduct issues, but made no allowances for institutions to collaborate with parents to resolve non-emergency or alcohol and other drug related issues. The data suggested that as students transition into adulthood, institutions should consider the role in parents have played in their child's development; a role that did not disappear because the child leaves their home.

Striking a balance between emerging adulthood and parental oversight created tension throughout the data. A high value was placed on the opportunities for self-advocacy and the educational process that FERPA provided; yet the challenges students encountered as they navigated their newfound responsibility were also acknowledged. One participant noted, "It's no wonder that we have high rates of anxiety and depression, and all that. We're not teaching people how to be adults." The data indicated that the transition into adulthood is not reflected FERPA, and some ways promoted reckless behavior through the prohibition of sharing information with parents. Furthermore, the document review revealed that the law did not account for the sharing of information between campus partners, which contributed to the greater concern of clarity. For example, the researcher could not locate specific guidelines for the sharing of information between colleagues in in situation in which a concerns were raised regarding a student's unhealthy drinking habits, but those same guidelines did permit the sharing once that student had a medical emergency as a result of his or her drinking habits. The data revealed that FERPA often limited the participant's ability to engage in best practices by taking proactive measures to resolve student health and wellbeing needs before they escalate to unsafe behaviors.

The need for clarity most greatly impacted the faculty and staff's ability to make decisions. FERPA's complexity limited the participants' capacity to truly understand the true

purpose of the law, and thus they adopted more conservative decision-making practices. If FERPA provided more specificity as to what an *educational record* included, the participants said they would have greater freedom to make choices that benefited the students as opposed to ones that protected themselves. The researcher found that the concept of “hiding behind the law” was not seen as excuse, but rather is considered a legitimate strategy for circumventing challenging conversations in which they could not determine if a compliance issue would be in play. Ultimately, the data collected from both the document reviews and the interviews reviewed that though there is a significant need to reform FERPA to better serve students, the need for clarity must first be resolved in order to address the other misconceptions often associated with the law.

## Works Cited

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## Codebook

<b>Descriptive Coding</b>			
<i>Type of Data</i>	<i>Category</i>	<i>Context</i>	
Interview	Faculty Staff	Classroom Student Affairs Administrative Affairs	
Document	Title 34 CFR Part 99	Legislation	
<b>Thematic Coding</b>			
<b>Theme: Knowledge</b>			
<b>Description: Used to describe fundamental proficiency in what FERPA says</b>			
<i>Code</i>	<i>Description</i>	<i>When to Use</i>	<i>When not to Use</i>
Access to information	How a participant first learned or continued to learn about FERPA	Participant interviews	Document review
Content	How FERPA is defined and what is included in the law	Participant interviews and document review	
Comprehension <ul style="list-style-type: none"> <li>• High</li> <li>• Low</li> </ul>	How a participant verbally expresses his/her understanding of the law	Participant interviews	Document review
Clarification <ul style="list-style-type: none"> <li>• Sufficient (interview only)</li> <li>• Insufficient (interview only)</li> </ul>	How FERPA explained terminology or concepts	Participant interviews and document review	
<b>Theme: Interpretation</b>			
<b>Description: Used to describe fundamental understanding of what FERPA means</b>			
<i>Code</i>	<i>Description</i>	<i>When to Use</i>	<i>When not to Use</i>
Institutional	How a participant's institution interpreted FERPA	Participant interviews	Document review
Personal	How a participants interpreted FERPA based on his/her point of view and	Participant interviews	Document review

	knowledge base		
Experience <ul style="list-style-type: none"> <li>• Positive</li> <li>• Negative</li> </ul>	How a participant's experiences have influenced his/her interpretation of FERPA	Participant interviews	Document review
<b>Theme: Behavior</b> <b>Description: Used to describe a participant's behavior in relation to FERPA</b>			
<i>Code</i>	<i>Description</i>	<i>When to Use</i>	<i>When not to Use</i>
Impact	How a participant made decisions based upon his/her evaluation of FERPA	Participant interviews	Document review
No impact (neutral)	FERPA had no impact/role in a participant's ability to make decisions	Participant interviews	Document review
<b>Theme: Role of Parents</b> <b>Description: Used to describe how parents are involved in their student's education</b>			
<i>Code</i>	<i>Description</i>	<i>When to Use</i>	<i>When not to Use</i>
Finances	How a parent is involved in the student's finances	Participant interviews	Document review
Support System <ul style="list-style-type: none"> <li>• Academic</li> <li>• Wellbeing</li> </ul>	What role a parent played in a student's support system	Participant interviews	Document review
Need for disclosure	When a parent needed to know information about the student's <i>educational record</i>	Participant interviews	Document review
Partnership	When an institution identified a need to involve a student's parent to resolve a situation	Participant interviews	Document review
<b>Theme: Adulthood</b> <b>Description: Used to describe how FERPA's definition of an <i>enrolled student</i> impacted perception of a student's emerging adulthood</b>			
<i>Code</i>	<i>Description</i>	<i>When to Use</i>	<i>When not to Use</i>
Educational process	How FERPA provided opportunities to students to learn	Participant interviews	
Developmental	How FERPA	Participant interviews	

process	provided opportunities to students to transition into adulthood		
Self-advocacy	How FERPA provided opportunities for a student to make decisions for him or herself	Participant interviews	Document review