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The legislative purpose behind Congress's enactment of the Family Educational Rights and Privacy Act (FERPA) is to promote communication between institutions and the parents of students. This chapter discusses FERPA's evolution and suggests implementation strategies.

Family-Friendly FERPA Policies: Affirming Parental Partnerships

Kent M. Weeks

The Family Educational Rights and Privacy Act of 1974 (FERPA), federal legislation that established parameters for access to educational records, continues to challenge the relationships between students and the institution and between the institution and parents. This chapter revisits the historical context of FERPA and offers insights into recent amendments that redefine some aspects of the provisions in the original statute.

Legislative History

In 1974 Congress took a significant step to ensure the rights of students and parents to the access and confidentiality of student records. Every student and parent is affected by this legislative initiative prompted by Senator James Buckley, former senator from New York and principal sponsor of the Family Educational Rights and Privacy Act of 1974, or as it is frequently referred to, the Buckley Amendment (Family Educational Rights).

Senator Buckley offered this legislation on the floor of the Senate as an amendment to other educational legislation, and as might be expected, there is a paucity of legislative history and debate on the act. Senator Buckley identified the twofold purpose of the act: "To assure parents of students, and students themselves if they are over the age of eighteen or attending an

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institution of post-secondary education, access to their education records and to protect such individuals' rights to privacy by limiting the transferability [and disclosure] of their records without their consent" (*Congressional Record*, 1974, p. 39862).

Senator Buckley expressed his primary concern with regard to the misuse and abuse of student records by elementary and secondary schools. He pointed to numerous practices that violated the privacy of students and parents, including the placement of information in a student's record that was not relevant or that reflected personal opinions of individuals not qualified to make statements concerning the psychological characteristics of the student. Furthermore, he pointed to a number of abuses in which confidential information from student personnel files was revealed to parties or persons who had no legitimate interest in that material. Against this background of documented abuse, Senator Buckley introduced his privacy legislation. The Buckley Amendment, or FERPA, has had a dramatic impact on students, parents, and educational institutions (Mawdsley, 1996; Weeks, 1999).

In addition to issues of confidentiality and disclosure, Senator Buckley expressed strong opinions about access to student records by parents or by eligible students. He argued that, at least in the context of elementary and secondary education, parents should be involved in the education of their children. According to Senator Buckley, access to student education records and knowledge of the contents of those records were essential to parental involvement. Senator Buckley noted,

The most fundamental reason for having introduced the Family Educational Rights and Privacy Act . . . is, my firm belief in the basic rights and responsibilities—and the importance—of parents for the welfare and the development of their children. Parents are the first and most important teachers of their children. I introduced the Family Educational Rights and Privacy Act not only to correct certain abuses in the schools but also to reassert and re-establish the basic rights, responsibilities, and involvement of parents in their children's upbringing and education. [*Congressional Record*, 1975, p. 13991]

FERPA and Public Policy

Even before the Family Educational Rights and Privacy Act was implemented there was a clamor of concern over the legislation from parents, students, and college administrators. Senator Buckley introduced his legislation in the summer of 1974 on the floor of the Senate, bypassing deliberative committee proceedings that would have allowed interested parties to address the legislation and their concerns.

Senator Buckley recognized this legislative gaffe. After hearing many constituents' concerns, he developed amendments to the act that became effective with it in November 1974. Senators Pell and Buckley introduced a "legislative history" and a variety of amendments to "remedy certain omis-

sions” in the law. They hoped these amendments would “provide a suitable response to the issues surrounding existing law which have been raised by parents, students, and institutions” (*Congressional Record*, 1974, p. 39862). Senator Buckley reflected,

Since the passage of the Act, commonly referred to as the Buckley Amendment, after its principal sponsor, a number of ambiguities in its provisions have come to light. Since the language was offered as an amendment on the Senate floor, rather than having it be the subject of Committee consideration, traditional legislative history materials such as hearings and Committee reports have not been available to serve as a guide to educational institutions, to students, and to the Department of Health, Education and Welfare in carrying out their various responsibilities under the Act. [*Congressional Record*, 1974, p. 39862]

The provisions of the amendment introduced in December 1974 were retroactive to November 1974, the date on which the Family Educational Rights and Privacy Act became effective. In those initial amendments to FERPA, Buckley proposed two critical exceptions covering disclosure to parents of dependent students and disclosure of health and safety information. These provisions dramatically affect parents’ rights and should prompt institutional judgment toward developing family-friendly strategies and policies.

Subsequently, almost all the FERPA amendments have been in the direction of providing more disclosure to inform the public, victims, and parents about the activities and behavior of students on American campuses. The shift in public policy is clear: Congress has opened Buckley for better interactive communication and fewer barriers to effective family-friendly policies.

Parents Meet Buckley

A college-bound student may first encounter the Buckley Amendment while preparing to submit admission materials that include requirements for recommendations. As students and parents review college catalogues, they will often encounter a statement of the college concerning its policies and procedures relating to disclosure of and access to student records. In some cases, parents may receive bills for tuition and college expenses of their son or daughter, but may be told that they are not allowed to receive grades and evaluations. The Buckley Amendment usually is cited by the college as the basis for this policy. Once a student is eighteen or enters a postsecondary institution, the rights of parents transfer to the student unless the college decides to permit parents of dependent students access to student records.

For parents, the Buckley Amendment offers a set of protections regarding financial information they submit to the college. It also offers a set of protections for their college-bound child regarding the disclosure of information

in the student's records. However, the amendment also establishes potential barriers to parents in obtaining full information on how their son or daughter is performing in college.

Campus offices may respond to parents' inquiries in different ways based on their particular philosophy or their interpretation of the Buckley Amendment requirements. For example, some offices might give a broader interpretation to the exception for providing information under health and safety conditions than other offices.

With today's changing family situation, colleges face issues about the parents with whom information can be shared. Court decrees or other legal documents may provide the necessary clarification; at other times colleges, like secondary schools, are caught in the middle between persons who all claim they should be the sole recipients of information.

The Buckley Amendment applies to all educational records maintained by the college that directly relate to a student. The key requirement is that the information be recorded. The amendment applies to almost all postsecondary educational institutions because they receive federal funds from the Department of Education.

Four Basic Rights. The amendment specifies four basic rights of students: the right of access to student educational records; the right to give consent prior to release of a record to a third party; the right to challenge any inaccurate, misleading, or inappropriate information in those records; and the right of students to be notified of their privacy rights under the Buckley Amendment (McDonald, 1999; "Federal Genesis," 1975; Rainsberger, 1998; Weeks, 1993, 1999).

Right of Access. The law requires that a college provide students access to its educational records. The institution can decide to disclose a student's records to his or her parents if the student is claimed as a dependent on the parents' tax returns. However, certain records are excluded. Records in the sole possession of professors and administrative personnel that are not made available by the professor to any other person do not fall within the definition of an educational record. Records of a law enforcement unit of the college are not accessible if those law enforcement records are maintained separately from educational records for law enforcement purposes and are disclosed only to law enforcement officials in that jurisdiction. Also exempted from access rights are employment records made in the normal course of business that relate exclusively to the student in his or her capacity as an employee and are not available for any other use.

Medical records used in treating a student are exempted from the access provisions provided they are maintained by a professional medical person acting in a professional or paraprofessional capacity. These records may not be disclosed to anyone other than an individual providing treatment to the student. Students have the right to allow a physician or other appropriate professional to review their medical records.

Records that a college maintains that contain information about students after they are no longer enrolled are exempted from FERPA. For

example, alumni records developed by a college for a graduate are exempted from disclosure protections.

Importantly, parents' financial information, usually required with a student's application for financial aid, is protected. Specifically, students do not have a right to inspect the financial records of their parents.

Letters of recommendation that were placed in a student's file prior to January 1, 1975, are not subject to the Buckley Amendment because when those letters were submitted there was no disclosure requirement; those persons writing the letters believed that their recommendations would be held in strictest confidence. Today, a student can waive the right of access. Most colleges provide an applicant the option to sign a waiver, and if the student signs the waiver, the student will not have access to letters of recommendation submitted as part of the admission process.

Right to Consent. Without the written consent of the student, personally identifiable information cannot be released. However, several specific exceptions to the release prohibition exist. An institution may release certain directory information, such as the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height (of members of athletic teams), dates of attendance, degrees and awards received, the name of the most recent previous educational institution attended, and other similar information. This exception was provided so that colleges could publish such information in student directories and sports programs without infringing on the Buckley protections. Even with directory information, the college must advise the student in advance about what type of information will be disclosed and provide the student an opportunity to object to its disclosure.

Certain records defined by the law and regulations may be disclosed without prior consent. First, records may be disclosed to other college officials who have a legitimate educational interest in the records. Second, records may be disclosed to officials of another collegiate system in which the student seeks or intends to enroll.

Third, the college may disclose certain student records to authorized representatives of the Controller General of the United States, the Secretary of the Department of Education, the Attorney General, and other designated federal and state educational authorities, if the disclosure is necessary for an audit or evaluation of federally supported education programs or for their enforcement or compliance. The regulations further provide that the identity of the student or parent is protected when this information is disclosed. If the identification of the student or parent is disclosed, that information is destroyed when it is no longer needed for the prescribed purposes. Fourth, under certain conditions, information may also be disclosed to state and local officials when that information is specifically required by state statute adopted prior to November 19, 1974.

Fifth, information may be disclosed to certain organizations that conduct studies on behalf of the college in developing, validating, or administering

predictive tests; administering student aid programs; and improving instruction. However, these disclosures must be done so that the student or parent will not be identified to anyone other than the organization to which the information is released. Once the information is no longer needed, the personally identifiable information must be destroyed.

Sixth, organizations that perform accrediting functions may also receive student record information in order to carry out these functions. Seventh, the institution may release information pursuant to a judicial order or subpoena provided the institution makes a reasonable effort to notify the student of the order or subpoena before releasing the information. Finally, educational records may be disclosed to appropriate parties in an emergency related to the health or safety of the student.

Right to Challenge. If a student believes that the educational records of the college contain inaccurate or misleading data, he or she has a right to challenge that information. The student may request that the college amend the records. Within a reasonable period of time of such a request, the institution may either amend the records or refuse to do so. If the college refuses the amendment, it must inform the student of its refusal and provide the student, if requested, an opportunity for a hearing.

The hearing should be held within a reasonable period of time and be conducted by a party having no direct interest in the outcome. The student may have a representative, including an attorney, present. Furthermore, the college must issue a written decision within a reasonable period of time after the hearing. If the institution will not make the requested change, the student has the right to insert explanatory material into the record.

Right to Notification. The sponsors of the legislation believed that it was important for students and parents not only to have rights relative to educational records but also to be aware of these rights. Therefore, colleges are required to notify students at least annually of their rights under FERPA. The notice must advise of their rights to inspect, review, and challenge the information in records. It must also notify students of their right to file a formal complaint.

Students who claim a violation of the Buckley Amendment must submit a complaint in writing to the Family Compliance Office, U.S. Department of Education, in Washington, D.C., which notifies the college that a valid complaint has been filed and asks it to provide a written response to the complaint. The office investigates the complaint and if it finds a failure to comply with the act, it will specify the steps to be taken by the college and the time period in which to comply. If voluntary compliance is not obtained, a review board in the Department of Education may consider possible termination of all federal funds. However, a review board has never been convened. The Secretary of the Department of Education has established specific procedures for the review board hearing and the review of its decision to terminate federal funds to the institution.

Parental Communication and Involvement. There are five basic parental rights that have developed under Buckley through amendment to

the original legislation. First, parents are assured of confidentiality of financial information they provide the institution in connection with financial aid; second, they can gain access to their students' records if a financial dependency relationship exists; third, they may be entitled to health and safety information concerning their son or daughter; fourth, they may obtain evidence on disciplinary actions; and fifth, they may obtain information on their child's violation of alcohol and drug use policies.

Parent Financial Information. A change made in 1974 to the act provided that information submitted by parents to the financial aid officer was not subject to disclosure to an eligible student. This exception to the general mandate of disclosure provided parents assurance that their income tax material and related financial data would not be shared with their son or daughter unless the parents agreed to do so.

Dependent Students. FERPA was amended immediately to provide substantial parental rights, although this process, until recently, has not been supported by many colleges. The law provides that parents may have access, if the institution chooses to provide it, to their student's records when the student is a dependent as determined by the Internal Revenue Service—in other words, a dependent on the parent's income tax return.

Senator Buckley's statements about this provision in the joint statement is critical to the whole issue of family-friendly policies and parental communication:

One concern that has been expressed about the working of existing law pertains to the transfer of all parental rights to information to the student about the latter's attaining the age of 18 or enrolling in post-secondary education. Colleges have been reluctant to send bills or grades of their students to the students' parents, for fear of violating the students' rights. The amendment proposed would make it clear that the parent of a dependent student, as defined for income tax purposes, would have a right to information about his child without the institution's having to seek the students' consent. [*Congressional Record*, 1974, p. 39863]

This provision empowers an institution to release student information to parents if the dependency requirement is met. The student does not have to consent to this release of information.

Buckley's language is very clear on the right of parents to information. The college's option to disclose information to them was established so that the amendment would not require a college to alter existing policies. Those institutions determining that such information should only be disclosed to a mature adult were protected; those determining that parents had a legitimate interest in their son's or daughter's education could continue to disclose information.

Many institutions have never informed parents of this right or this option. There are a variety of ways of making this right known to parents

and implementing their access to their student's records. Some institutions at the beginning of each year provide students the option of stating they are a dependent for income tax purposes or waiving their rights so the institution can send grades or other materials to parents. Other institutions require parents, if they seek information on their son or daughter, to produce an income tax return demonstrating that the student is in fact a dependent. A few institutions follow a policy that all students are dependent and will provide such information unless the student objects. This latter process has been challenged by the Office of Family Compliance, which administers Buckley, asserting that this approach is an inadequate way to implement this statutory exception to the confidentiality provisions of FERPA.

Some institutions do not recognize this parental "right" as Senator Buckley labeled it. Such a position is not consistent with the intent of Buckley or with developing parental involvement and communication. Family-friendly policies certainly should be based on adequate information between the institution and parents.

Health and Safety. During the discussion of the initial amendments to the act in 1974, Senator Buckley again addressed a concern that arose about sharing certain health and related information to persons who needed to know. In an effort to balance competing interests between the need to divulge information in certain emergency situations and the need to protect student privacy, the law provides that certain health and safety information can be released to an appropriate person. Under this last exemption, the college must consider such factors as the seriousness of the health or safety threat, the need for the information to meet the emergency, whether the person to whom the information is released is able to treat the emergency, and the extent to which time is crucial.

This is an area where college and university administrators have a great range of discretion in interpreting the provision and in providing full and adequate communication to parents. There is no reason for an institution to hide behind this language and not communicate serious health and safety concerns to parents. If parents inquire about serious health issues, this exception could serve as a basis for providing full information to the parents.

Student Behavior. In line with increasing public policy concerns and pressure from advocates, Congress has amended Buckley several times to provide for the disclosure of student information relating to disciplinary and behavioral activities. Congress initially provided that an institution may disclose to an alleged victim of any crime of violence the results of any disciplinary proceeding conducted by the institution against the alleged perpetrator, regardless of the outcome of the proceeding. This was the first wedge in the area of opening disciplinary proceedings and resulting student punishment to victims.

Subsequently, in 1998 Congress further amended Buckley by allowing "nonforcible sex offenses" as well as crimes of violence to be disclosed to anyone, including members of the general public, if the institution deter-

mines that the student committed a violation of its rules or policies in respect to that act. What this means is that an institution could inform parents of the results of these disciplinary proceedings if the institution determines their student was involved in the disciplinary proceeding either as a perpetrator or as a victim.

The use of alcohol and drugs on college campuses is a major national concern. Many campuses deal with students who engage in binge drinking, which may also lead to acquaintance rape and other forms of serious unacceptable student behaviors. Also in 1998, parental rights were dramatically expanded to include right to information concerning alcohol and drug use by their student.

In the Senate debate in July 1998 on certain amendments to higher education legislation, the excessive use of alcohol on college campuses was a central concern expressed by several senators. For example, Senator Joseph Biden commented,

The biggest issue facing America's colleges—according to many college presidents themselves—is not raising money for the university. Not ensuring high academic standards. Not finding top quality faculty. No, it is binge drinking. There is a reason for that. And, it has to do with more than just the 18 college students who died this year—tragic as this is. . . . The greater the number of binge drinkers at a school, the greater the chances are that a student will be hit, pushed, insulted, assaulted—and of being the recipient of an unwanted sexual advance. And, alcohol is involved in most campus rapes, violent crimes, student suicides, and fraternity hazing incidents. Many of the victims of these crimes are not the ones doing the drinking. [*Congressional Record*, 1998, p. 7842]

During this debate, Senator John Warner from Virginia addressed the tragic facts surrounding five alcohol-related deaths in colleges and universities in Virginia. He noted that one inebriated student fell out of a dorm window to her death and a second fell down a flight of stairs to her death.

In response to these deaths, a task force was set up in Virginia to assess what could be done. One of the outcomes of the task force was the recognition that the Family Educational Rights and Privacy Act prevented colleges from notifying parents of their students' behavior. The task force recommended that it should be the policy and the practice of each college and university to notify parents of dependent students, defined as under age twenty-one, of violations of law as they relate to alcohol and drugs.

Accordingly, Senator Warner introduced an amendment in 1998 that provided for this disclosure. Senator Warner opined,

As a parent, and indeed as a grandparent, I would want to know if my children were in the unfortunate position of being in violation of the law as it relates to alcohol and drugs while they were students at a college or university. I would

want to step forward in a constructive way, as would other parents, to lend a hand and assistance to work with the faculty and administration of the college or university to help that student. But sometimes parents are not aware of these problems because of the provisions as construed in FERPA. Our colleges and universities should be free to notify the parents of dependent students who have violated the law relating to drugs and alcohol. [*Congressional Record*, 1998, p. 7856]

Accordingly, the amendment approved by Congress removed the “impediment” to the disclosure of this activity to parents of either dependent or nondependent students who were under 21. As Warner stated: “[T]here is a presumption of dependency by colleges and universities for all students who are under the age of 21 for the purposes of this notification to parents. This would ensure that parents are informed when their sons and daughters had the misfortune of violating state alcohol law or drug laws” (*Congressional Record*, 1998, p. 7856).

Accordingly, institutions of higher education may disclose to a parent or legal guardian information regarding a student’s violation of any law or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the student is under twenty-one and the institution determines that the student has committed a disciplinary violation.

In determining how best to implement this provision, institutions have developed a variety of strategies. Some colleges notify parents if the student is under twenty-one when the stated violations occur. Some only notify parents if the violation is serious or repetitive. Some only notify parents if a first-year student under twenty-one commits the violation. Some are not notifying parents. Some state institutions, however, may now be required to provide this information upon request of parents based on state open-record laws.

Family-Friendly Policies

In many cases, parents pay the college bills for their student. Understandably, parents want to know how their student progresses and whether he or she encounters serious educational, behavioral, or medical problems. Many parents, for example, may not always obtain accurate information from their son or daughter about academic performance. What can colleges do?

For institutions to develop campus-specific policies, administrators must return to Senator Buckley’s statement about parents’ involvement in the education of their children. Buckley Amendment rights were granted to students or their parents. However, if the student is over eighteen or enrolled in a postsecondary institution, the parents’ rights are transferred to the student. Parents may possess rights if the student is legally classified as a dependent, but since colleges have the option, many provide information only to students. Accordingly, parents often do not receive grades; rather, they receive bills, and they may not be informed of a student’s progress.

Too many colleges hide behind the Buckley Amendment to escape their responsibility to parents. Professors and others will state that they cannot provide information. That is not true, however, if the student is a dependent and the college agrees to permit such disclosure, or if the parents pursue their “right” to such information. Too few colleges take advantage of the provisions of Buckley to facilitate access to information on the parents’ son or daughter.

Throughout Senator Buckley’s discussion of his legislation, he emphasized that the “rule of reason” applies to its implementation. Accordingly, student affairs practitioners should participate in a reassessment of student privacy and educational records and respond to two fundamental questions. Two questions deserve response. First, what is an appropriate policy for the college in regard to disclosure of student records to parents, and what rationale supports that policy? And second, what are the costs and benefits of a disclosure to parents if, in the professional judgment of the administrator, the disclosure relates to the health and welfare of the student? Special attention should be devoted to assessing the consistency of policies in student affairs as well as other campus units that interact with parents.

The Buckley Amendment, or FERPA, provides significant privacy protections to colleges and students. Furthermore, students benefit from these protections through established rights of access, consent, challenge, and notification.

The legislative history and subsequent policy changes point to three dramatic moves in the administration of Buckley and identify the need for institutions to reexamine their policies of communication and working with parents. First, Senator Buckley clearly did not support eliminating parental communication with postsecondary institutions. Second, public policy considerations and advocacy groups have prompted Congress to adopt specific changes to the law to empower institutions to communicate with the public and with parents. Third, several decades of legislative experience coupled with changing understandings of the role of parents in their student’s education and in changing behaviors of students should prompt institutions to reexamine their communication policies.

It is time for colleges and universities to adopt a less defensive approach to communicating with parents and move toward policies that are family-friendly and sustain partnerships with parents while appropriately recognizing the rights of the individual.

One interactive solution is for institutions to encourage parents and students to discuss their concerns and interests and how they feel about disclosure or nondisclosure of information. Students can waive their rights so that parents can have information. A law that was meant to empower parents should not be used by colleges to deny parents access to their children’s records as long as the parents meet the established qualifications—unless the college makes a definite policy choice prohibiting such disclosure.

Conclusion

The Buckley Amendment continues to serve as the defining piece of legislation for how colleges and universities define the relationship between the institution and parents. Routinely, institutions should check the multiple messages that their various offices communicate through policies and communications to ensure compliance. More importantly, institutions should assess how effectively they communicate rights and responsibilities to current and prospective parents about their participation in the academic experience.

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KENT M. WEEKS is a practicing attorney and professor of education at Vanderbilt University, Nashville.

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