

## THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA): A GUIDE FOR MARKETING EDUCATORS

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### Abstract

The Family Educational Rights and Privacy Act (FERPA) is an act of legislation enacted to protect the privacy rights of students. The statute was originally intended to protect two broad rights: (1) the right for students to access and amend their educational records; and (2) the right for students to prohibit the disclosure of their educational records to third parties without their consent (Buckley, 1974). Students depend on the accuracy and maintenance of their educational records for attaining, e.g., future employment, scholarships, and acceptance to higher education. As a result, compliance with the statute is essential for the protection of students. Unfortunately, the plain language of FERPA can be confusing and unclear, which has made it challenging for universities and educators to comply with the statute.

The most important place to begin is the scope of FERPA. The statute only applies to “educational agencies or institutions” that receive federal funding (FERPA, 2001). This includes most universities. If an educational agency or institution does not comply with the terms of FERPA, then the Secretary of Education may withhold its federal funding. However, the Secretary has yet to wield that power; but, the threat remains intact.

The central aspect of the statute is the definition of “educational records” (Silverblatt, 2012). Educational records are defined as “those records, files, documents, and other materials which (1) contain information *related to a student*, and (2) are *maintained* by an educational agency or institution or by a person acting for such agency or institution” (FERPA, 2001). This includes, *inter alia*, grades, financial records, disciplinary records, and class enrollment lists. The statute requires that universities (1) allow students to access these records, (2) provide the opportunity to correct or amend the records as necessary, and (3) prohibit the disclosure of the records to third parties, subject to several exceptions. For example, educational records can be freely disclosed to university employees who hold a legitimate interest in that specific educational record.

FERPA applies to marketing educators on two broad levels: a *university* and an *individual* level. Each university, as a whole, has an obligation to comply with the terms of the statute. The university may lose its federal funding if it has any university-wide policies that violate the terms of the statute. A common issue for universities is a policy that enables the untimely destruction of educational records. This prevents students from accessing their educational records for future endeavors. This can be remedied by good archiving policies (Chute and Swain, 2004). Another issue is the posting of personally identifiable information on the university website. Lipinski (1999) recommends that the university receive the consent from students before they post any such information.

Lastly, the university must provide students with reasonable notice of their FERPA rights. The university website is an important tool for notifying students. To better assess the veracity of website notifications, we collected data from the top fifty national universities and top ten regional universities from the North, South, East, and Midwest, as ranked by *U.S. News*. Iacobucci (2013) recently demonstrated that rankings of graduate business schools by *U.S. News*, *Forbes*, and *Business Week* demonstrate good to excellent psychometric characteristics. From a higher-education marketing standpoint, university websites that go above and beyond what FERPA calls for might also be perceived by students as a compelling demonstration that

the university cares about their rights. If so, a strong website might help universities market themselves to prospective students and their parents having their best interests in mind.

On an individual level, each and every marketing educator should understand and comply with the terms of FERPA. FERPA creates ethical guidelines for educators to follow by emphasizing the protection of students' privacy rights (Pena, 2008). In addition, Depending on the institution, an educator may be terminated for violating the statute (see, e.g., Latourette, 2010; *Woods v. Newburgh Enlarged City School District*, 2008). Fortunately, this is generally only seen in egregious situations. Nonetheless, educators need to be cognizant of students' FERPA rights. Educators play perhaps the most important role in protecting the FERPA rights of students. They directly maintain their grades, write them letter of recommendations, and can have an influence on their individual futures. In all, educators should recognize FERPA as a mutually beneficial opportunity to the extent that FERPA allows for greater cooperation and mutual respect between students and their educators.

One of the biggest challenges for universities and educators alike is adapting the statute to changes in higher education. Over the years, higher education has extended beyond both state and national borders toward greater globalization (Morey, 2004). Institutions are achieving this predominately through online courses and distance learning (Walker, 2009, Bell and Federman, 2013). Marketing professors need to understand the FERPA implications when teaching online courses or other forms of distance learning, such as Massive Open Online Courses (MOOCs). Likewise, "Executive" forms of education present interesting FERPA challenges as well.

The goal of this article is to clarify the FERPA duty for marketing educators and to provide recommendations to marketing educators on how they can improve compliance with the statute while also addressing how FERPA might impact emerging pedagogical modalities.

References Available upon Request