FERPA and Online Course Delivery

Session 13185

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Goals for this Session

- Share the University of Washington online delivery story - March 2020 to March 2021
- Explore the intersection between FERPA and online course delivery
- Identify Solutions for managing online course delivery
- Consider Zoom and FERPA
- Discuss Additional tools impacted by FERPA

University of Washington and the Tri Campus Model

Three separate campuses, yet…

- One University (One CEEB Code)

- One transcript

- Three separate curriculum

- Separate admissions and graduation requirements

- Three registrars

Andrea, Pam, Helen

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University of Washington

- UW-Seattle, Seattle, WA   Student Population: Fall 2019 49,047

- UW-Tacoma, Tacoma, WA Student Population: Fall 2019 5,062

- UW-Bothell, Bothell, WA   Student Population: Fall 2019 5,596

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The University of Washington - The first school in the nation to move to remote course delivery!

March 6, 2020

To keep our community healthy, beginning March 9, classes will not be held in person

UW President Ana Mari Cauce

Privacy Best Practices for Live Streaming Emerged

March 4, 2020

In light of current events, I'd like to proceed with publishing the below live streaming best practice. It includes but is not limited to FERPA considerations.

Ann Nagel, UW Institutional Privacy Officer

Right Away - New Terms Emerged

- Asynchronous vs. Synchronous
- Remote Delivery instead of Distance Learning or Online
- 6 Ft Social Distancing
- Zoom Bombing

Policies, Standards, and Guidelines

- Policies represent published institutional rules
- Standards explain and elaborate on the rule or policy
- Guidelines are recommendations, advice, or procedures

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In FERPA Speak

1
Access to education records, with 99.31 exceptions

2
Control over access, with exceptions

3
Right to challenge contents

When in Doubt, Don't Give It Out!

- Before releasing data, consider:
  - Education Record?
  - Student?
  - Signature required?
  - Must vs. may: do I have to release?
  - School official: do they provide a service to institution?
  - Need to know: job-related?
  - Is this directory information? Opt-out in place?
  - Institutional policies and procedures?

FERPA and Online Course Delivery?

- What does the FERPA law tell us about online delivery?
- There was no online delivery in 1974 when FERPA become a law!
- Revert to the principles of FERPA as it applies to online delivery

FERPA12

AACRAO 2012 FERPA Guide

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FERPA Law and Online Course Delivery

- Remember that "attendance" as defined in FERPA is agnostic to the method of attendance
- 2009 FERPA Amendment made it so you can no longer be anonymous in the classroom, electronic or in person.
- All students must be notified annually of the institutional FERPA policy and their rights

FERPA Law Basics Applying to Online Course Delivery

- Education Record * - 99.3
  - Contains information directly related to a student
  - Are maintained by an educational agency or institution or by a person acting for such agency or institution

*Did you know that the term "student record" does not appear in the FERPA law?

FERPA Law Basics Applying to Online Course Delivery

- Attendance - 99.3
  - Includes, but is not limited to: Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom

*

FERPA Law Basics Applying to Online Course Delivery

- Personally Identifiable Information - 99.3
  - The student's name
  - Address of the student
  - Personal identifier (i.e. SSN)
  - Indirect identifiers (date of birth, mother's maiden name)
  - Other information that, alone or in combination, is linked to a specific student that would allow a reasonable person...to identify the student with reasonable certainty

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FERPA Law Basics Applying to Online Course Delivery

- Record - 99.3
  - Any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche
  - This would now include Zoom, Microsoft Teams, or any other video conferencing software recordings

*

FERPA Law Basics Applying to Online Course Delivery

- Conditions where prior consent is not required to disclose information - 99.31
  - The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests
  - A contractor, consultant, volunteer or other party to whom an agency or institution has outsourced institutional services

*

FERPA Law Basics Applying to Online Course Delivery

- Conditions where prior consent is not required to disclose information - 99.31
  - An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have a legitimate educational interest

*

UW Best Practices for Online Conferencing

- https://privacy.uw.edu/policies/best-practices-online-conferencing/
- Headers:
  - **Use UW Provided Technologies** (Panopto and Zoom) with data sharing agreements in place
  - **Maintain Consistent In-Person and Remote Practices** - these should be consistent as far as recording. Example: Recording exams only if these were recorded in the in-person classroom. Should be communicated in course syllabus and recording kept on record retention schedule

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UW Best Practices for Online Conferencing

- https://privacy.uw.edu/policies/best-practices-online-conferencing/
- Headers (cont'd)
  - **Create Transparency** - In real time and on course syllabus

"**This course is scheduled to run synchronously at our scheduled class time via Zoom. These Zoom class sessions will be recorded. The recording will capture the presenter's audio, video and computer screen. Student audio and video will be recorded if they share their computer audio and video during the recorded session. The recordings will only be accessible to students enrolled in the course to review materials. These recordings will not be shared with or accessible to the public.**

The University and Zoom have FERPA-compliant agreements in place to protect the security and privacy of UW Zoom accounts. Students who do not wish to be recorded should:

- **Choose a Zoom username that does not include any personal identifying information like their name or UW Net ID; and**
- **Not share their computer audio or video during their Zoom sessions."**

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UW Best Practices for Online Conferencing

- https://privacy.uw.edu/policies/best-practices-online-conferencing/
- Headers:
  - **Use Real-Time and Recording Features Appropriately**
    - "The UW Privacy Office is consulting with the UW Division of the Attorney General's Office to evaluate the legal issues related to recording one on one conversation and group activities, instruction, or events. The UW must be mindful of laws that may relate to recordings (ex. Washington's two-party consent requirements for private conversations). The table below is a best practice."

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Appropriate Use of Real-Time and Recording Features

Appropriate Use of Real-Time and Recording Features

	Real-time Audio of Organizer	Real-time Audio of Invitees	Real-time Video of Organizer	Real-time Video of Invitees	Recording by Organizer	Recording by Invitees
Classroom Instruction (ex. Lectures and Presentations)	Yes	Yes	Yes	Yes	Yes[1]	Yes[1]
Classroom Exams	Yes	No	Yes	Yes	No[2]	No[2]
1-on-1 Meetings or Conversations	Yes	Yes	Yes	Yes	No	No
Staff Meetings	Yes	Yes	Yes	Yes	No	No

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Appropriate Use of Real-Time and Recording Features

Footnotes for previous slide

1 Recordings that are personally identifiable to students (e.g., have a student's image or audio question) are educational records and subject to FERPA protections. Access to such recordings may need to be limited to the instructor and students who are enrolled in the specific class.

2 If an in-person exam would have ordinarily included a recorded component (ex. a recorded oral presentation, dance or music performance, etc.), recording students while remote is permissible.

Zoom and FERPA Issues

- When recording all attendees have to accept
- Visitors
- Auditors
- Senior Citizen Students
- Cameras must be on?
- Names/Pronouns displayed
- Sharing recordings with presenters in class who are non-institutional officials

Privacy vs. FERPA Law

- Privacy and the FERPA Law should go hand in hand when evaluating online course delivery
- As an example, consider tools used to monitor for cheating in the classroom (ProctorU., Chegg):
  - Privacy: Issues around monitoring facial features, background and room surveillance, tracking on physical actions like eye rolling and hand movement
  - FERPA: Storing biometric information in the anti-cheating software, sharing and maintaining videos/screen captures as a student education record

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Partner with Teaching and Learning Institutional Resources

FERPA-compliant technologies

Meeting and collaboration

For FERPA compliance, use UW-supported technologies including Panopto, Zoom, Canvas, Office365 and Google G Suite.

- UW Office 365 Microsoft Teams provides chat-based workspaces for real-time collaboration and communication, meetings, and file and app sharing. It is both HIPAA- and FERPA-aligned.
- Google G Suite allows for real-time collaboration, communication, and file creation and sharing. The G Suite includes Hangouts, Docs, Drive, Sheets, and Presentations, Gmail, Calendar, and Sites. Note that many, but not all, G Suite apps are FERPA-aligned.

These technologies have comprehensive agreements in place to help the UW protect the privacy of personal data and manage information security risks. Please be cautious about using other technologies, which may not include an appropriate agreement or adequately protect individuals' privacy. See IT Connect for information about UW-supported technology.

Supplemental SAAS Questions that May Arise

- Slack
- Instagram
- Facebook
- Microsoft Teams
- SnapChat
- Signal

Let's Return to How the University of Washington Responded...

- As soon as we went remote delivery, the University Registrar, UW Privacy Office, and UW Attorney General's Office convened to create information on online delivery and recordings for faculty, students, and staff
- This information was published on the UW Privacy Office website and linked to the Center for Teaching and Learning
- As we learned more, the guidelines were updated and we always referred back to the UW Privacy website to be consistent with our responses

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One Year Later, Lessons Learned

- Stick to your FERPA basics
- Involve other wise folks when making new policies and procedures
- Always keep the students' needs front and center
- Be transparent in your decisions
- Be consistent

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Chat Questions?

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Share your Zoom recording!   Ah…FERPA

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