

Proactive Member Accountability: FERPA and The Clery Act

Dr. D. Matthew Gregory | Texas Tech University

Many of us have likely said it or have heard someone else say it, “I can’t tell you anything because of FERPA.” The Family Education Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) or FERPA protects the privacy of student records. Note that the title of the act references privacy, not confidentiality of student records. The act was introduced initially by Senator James Buckley largely to help outline access by parents of their respective students’ education record. Over the years, FERPA has garnered, right or not, a spirit of being quite restrictive. In actuality and by design, the intent behind FERPA is to be permissive and private in nature, but not restrictive. Given, FERPA does afford some nominal protections of student records.

With the heightened concern over fraternity/sorority behavior, there is renewed interest by headquarters staff, organization volunteer leadership, and campus-based professionals to be proactive and address problematic behavior before the concern becomes a chapter or campus issue. In trying to be proactive, it is possible to find a well-intending individual who proudly deploys the FERPA barricade, “I can’t tell you anything because of FERPA!” While it is true there are certainly restrictions on what institutions can share, there are also provisions to allow for the sharing of information. A chapter advisor of an organization at a large, public institution in the south found value in the practice of obtaining FERPA waivers from his students. These waivers allowed the release of student record information pertaining to academic performance and student conduct records, specifically authorizing the chapter advisor access. From the perspective of a campus-based professional, this practice is helpful to proactively address concerning student behavior in conjunction with the organization as a means to intervene effectively to assist the student and address the concerning behavior in advance of a significant incident (medical transport, arrest, or death). It is important to remember the Department of Education FERPA Compliance Office recommends renewing such a waiver each academic year. Other than an emergency exemption or directory information, written consent from the student is required prior to the release of most student record information. Because of the potential barricade, we often assume there is nothing we can do to partner proactively to better assist our students and address emerging concerns. There are ways, however, to do so.

Another oft-misunderstood federal law that may be a pro-active accountability tool is The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092f; 34 CFR Part 668.46). Following the death of Jeanne Clery, a Lehigh University student, the intent of the Clery Act was to make campuses safer and require disclosure of information surrounding campus crime occurring in and around campus owned property. The Clery Act

includes an annual report institutions are required to publish detailing certain crime statistics (aka the Annual Campus Security Report or ASR). Aside from the ASR, there is another facet of The Clery Act that can be quite useful to campus-based professionals and organization volunteer leadership to proactively have conversations and possibly address trends occurring on or around campus – the public campus crime log that campus police and security departments are required to publish. These logs include the most recent 60 days’ worth of reported crimes received by that respective agency. While the logs do not publish specific names of students, the types of information published (theft, drugs, minor in possession, assault, etc.) can be information used to inform how your community or organization talks about safety and bystander intervention. This information can also be used as a tool to begin to identify potential discussion topics within a given organization. For campus-based professionals, information from the public log often includes the location where the crime occurred. This information makes the practice of crime-mapping possible. Crime-mapping is a visual representation of the reported crimes by location. This is another way to determine possible issues or trends within a given community, like fraternity or sorority housing areas (e.g. ‘Greek Row’).

When trying to be proactive to address potential behavior concerns surrounding our students, information is key. The more we know, the more we can positively intervene to help our students and organizations. FERPA and The Clery Act are potential tools that can assist us and are not necessarily barricades that hold us back. Consider what information you need in order to be successful in addressing behavior concerns and find out how you can collect that information while being compliant. Use yearly waivers to collect academic and conduct information in order to spot trends or address concerns. Use the Annual Campus Security Report to see if trends on campus match, differ, or vary as it relates to the fraternity and sorority community.

From a risk management perspective, being proactive and having conversations with our students on potential topics of concern may be one of the best forms of accountability in advance of a potentially harmful incident. One thing we can improve in our communities is encourage open sharing and dialogue to address our concerns. We tend to embrace the mantra of out of sight, out of mind or it is not cool to talk about such topics. Taking care of each other *is* cool. We should be using FERPA and The Clery Act to our advantage, not letting it keep us from reaching our end goal of supporting students.