



TOPIC:

FERPA AND CAMPUS SAFETY

(UPDATE to Vol 5 No.4, August 6, 2007 issue)

INTRODUCTION:

Campus safety is a top priority for colleges and universities. Sometimes a student's statements or behaviors raise concerns about the safety of the student or others. To prevent harm from occurring, college administrators, faculty, and staff who are aware of such statements or behaviors may want to tell someone else – another campus employee, a parent, an outside health care professional, or a law enforcement officer about their concern. But they do not know exactly who to tell. And they often fear that the Family Educational Rights and Privacy Act ("FERPA") [\[1\]](#), the federal statute that governs disclosure of student records and information, limits those with whom they may share information found in the student's records. Therefore, they unnecessarily and unwisely conclude that the safest course is simply telling no one or saying nothing.

Misunderstandings about FERPA generate a lot of concern about the propriety of communicating critical information in an emergency. The information in this NACUANOTE demonstrates that FERPA is not an obstacle to appropriate and desirable cautionary communications intended to protect student, campus, or public safety. While emergency situations are not governed solely by FERPA, and other state or federal laws beyond the scope of this NACUANOTE may impose additional legal restrictions, preventing harm to individuals should take precedence.

DISCUSSION:

Question: What does FERPA restrict?

Answer: FERPA limits the disclosure of information from student "education records," a term that the law defines quite broadly and that is not limited to "academic" records.

"Education records" include virtually all records maintained by an educational institution, in any format, that are "directly related" to one or more of its past or present students [\[2\]](#). A record is "directly related" to a student if it is "personally identifiable" to the student [\[3\]](#). A record is "personally identifiable" to a student if it expressly identifies the student on its face by name, address, ID number, or other such common identifier. A record is also personally identifiable if it includes "other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not

campus personnel are free to share information from student education records with other “school officials” who have “legitimate educational interests” in the information [18]. Each institution must define for itself who qualifies as a “school official” and what is a “legitimate educational interest” and give annual notice of its definitions to its students [19]. These definitions can be quite broad – “school officials” need not be limited to “officers,” or even to employees [20], and “legitimate educational interests” (much like “education records”) need not be limited either to “academic” interests or to instances that are beneficial to the student. The Family Policy Compliance Office (“FPCO”) [21], the office within the U.S. Department of Education charged with overseeing and enforcing FERPA, offers the following model definitions:

A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted as its agent to provide a service instead of using University employees or officials (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibilities for the University [22].

At institutions that follow these or similar models, an employee concerned that a student’s statements or behavior evidence a potential threat could – and should – share relevant information with the dean of students, the judicial affairs office, the campus counseling center, the campus law enforcement unit, or other appropriate “school officials” whose job it is to deal with such issues.

Question: May information from a student’s education records be disclosed to protect health or safety?

Answer: Yes. FERPA permits the disclosure of information from student education records “to appropriate parties, including parents..., in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals [23].” For example, if a student sends an e-mail to his resident assistant saying that he has just been diagnosed with a highly contagious disease such as measles, the institution could alert the student’s roommate, and perhaps others with whom the student has come in close contact, to urge them to seek appropriate testing and medical care [24]. Safety concerns warranting disclosure could include a student’s statements about suicide, unusually erratic and angry behaviors, or similar conduct that others would reasonably see as posing a risk of serious harm [25].

This exception does not authorize “knee-jerk” or (in most cases) “broadcast” disclosures [26], but an institution need not be absolutely certain that there is an imminent crisis before invoking the exception. Rather, it is enough that, based on the totality of circumstances and on the basis of the facts that are available at the time, there is a rational basis for concluding that there is a threat to health or safety. As long as an institution can meet this relatively minimal threshold, “the Department will not substitute its judgment for that of the...institution in evaluating the circumstances and making its determination.” [27]

The institution has the same good faith discretion to determine to whom disclosure should be made. In general, and when reasonably possible, the initial disclosure should be made to professionals trained to evaluate and handle such emergencies, such as campus mental health or law enforcement personnel, who can then determine whether further and broader disclosures are appropriate. Depending on the particular circumstances, disclosure under this exception may be made to law enforcement, parents, threat assessment teams or professionals, individuals who may have information necessary to determine the extent of a potential threat (such as friends, roommates, and prior schools attended), and potential victims and their families. If the concerns are of a more urgent nature, school officials should immediately contact campus or local police. FERPA permits each of these communications.

An institution that makes a disclosure on the basis of this exception must keep a record of the nature of the

perceived threat and the parties to whom the disclosure was made [\[28\]](#).

Question: When may a college or university disclose information from a student's education records to the student's parent or legal guardian?

Answer: Once a student is in attendance at a postsecondary institution, all rights provided by FERPA rest with the student, even if the student is younger than 18 years old [\[29\]](#). Education record information may therefore be disclosed to the parent of a college or university student only with the student's consent or in instances in which one of the exceptions to FERPA permits disclosure. In addition to the other exceptions discussed in this Note, two such exceptions specifically address communications to parents.

First, FERPA permits (but does not require) disclosures of any or all education record information to a student's parents if the student is their dependent for federal tax purposes [\[30\]](#). To rely on this exception, the

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continue not to be [\[45\]](#). Moreover, any student education records that other campus offices share with the campus law enforcement unit, as “school officials” with a “legitimate educational interest,” remain subject to FERPA even in the hands of that unit [\[46\]](#).

Question: What if the institution receives a court order or subpoena requesting student records?

Answer: The institution may disclose records in response to a judicial order or lawfully issued subpoena but generally must notify the student of the order or subpoena before complying [\[47\]](#). An exception to this general rule is that a federal grand jury subpoena or other subpoena issued for a law enforcement purpose may instruct the institution not to notify the student [\[48\]](#).

Question: May an employee disclose personal knowledge and impressions about a student, based on the employee’s personal interactions with the student?

Answer: Yes. FERPA’s disclosure restrictions apply only to information derived from student education records, not to personal knowledge derived from direct, personal experience with a student [\[49\]](#). For example, a faculty or staff member who personally observes a student engaging in erratic and threatening behavior is not prohibited by FERPA from disclosing that observation. (If at some point the employee describes the observation in a personally identifiable record, that record would be subject to FERPA protections. The employee would still be permitted to disclose the personal observation but would not be permitted to disclose the record of the observation unless one of the exceptions to FERPA applied or the student consented to the disclosure). Again, however, the employee generally should limit disclosure of such information to professionals trained to evaluate and manage it, as other privacy laws conceivably could apply and prohibit broader disclosures, depending upon the circumstances.

Question: What other laws protect student privacy?

Answer: Students may have additional privacy rights under state privacy and confidentiality laws and under

disclosure of private information violates other laws, such as state medical confidentiality or privacy laws, which allow individuals to sue. Faculty and employees should consult campus counsel with questions about disclosing information in student records.

In the event of an emergency or serious concern about either campus safety or an individual's welfare, FERPA permits campus personnel to consult appropriate persons, including parents, if the information conveyed is necessary to protect the health or safety of the student or others. Any ambiguity about FERPA should be resolved in favor of disclosure, limited as necessary, to protect the safety of individuals.

Question: What should a faculty member or other college or university employee do if he or she is concerned about a student?

Answer: If the concern is that a student may engage in violent behavior, toward self or others, and the threat appears to be imminent, the employee should contact the campus police or security office immediately. If the concern is of a less urgent nature, or the employee is not quite sure what to make of a student's comments or conduct, the employee should consult with professionals on campus or associated with the institution, such as the Dean of Students, a campus counseling center, or law enforcement, who may be able to assess the potential threat, identify resources for the student, and provide information that could assist in deciding on an appropriate course of action. In consultation with appropriate campus resources, a collective decision may then be made to contact a family member, an appropriate off-campus resource, or others.

FERPA would not present an obstacle to any of these disclosures. The worst response is to ignore troubling or threatening behavior. School officials should trust their instincts when a student appears to be in trouble and should consult with others on campus.

CONCLUSION:

FERPA is not a serious impediment to the sharing of student information among campus officials or appropriate third parties when there is a legitimate concern relating to campus safety. Institutions may wish to review certain aspects of their current FERPA policies (such as what they include within the scope of "directory information," who they include as "school officials," and what they consider "legitimate educational interests") in order to gain maximum flexibility and discretion for information sharing. As important as maintaining current policies is the need to educate those on campus about the true limits and applications of FERPA. Finally, in the case of an emergency or serious threat to personal safety, any ambiguity about FERPA can – and should – be resolved in favor of protecting the safety of individuals.

FOOTNOTES

AUTHORS:

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RESOURCES:

NACUA Resources:

Publications

[Christine R. Williams, FERPA, GLBA & HIPAA: Th](#)

[The Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d-1320d-8.](#)
Student Assistance General Provisions; Campus Safety, 59 Fed. Reg. 22314 (April 29, 1994) (final rule).
[Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.](#)

U.S. Department of Education Resources:

Family Policy Compliance Office (FPCO)

["About the Family Policy Compliance Office".](#)
["Model Notification of Rights under FERPA for Postsecondary Institutions".](#)
[Disclosure of Information from Education Records to Parents of Postsecondary Students.](#)
[Parents' Guide to the Family Educational Rights and Privacy Act: Rights Regarding Children's Education Records.](#)
[Disclosure of Information from Education Records to Parents of Postsecondary Students.](#)
[Model Form for Disclosure to Parents of Dependent Students.](#)
[Model Form for Disclosure to Parents of Dependent Students and Consent Form for Disclosure to Parents.](#)
[Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities](#)

FPCO Guidance Letters

[Letter to Richard J. Gaumer, Webber, Gaumer & Emanuel, P.C., January 31, 2007.](#)
[Disclosure of Anonymous Data Under FERPA, \(letter to Matthew J. Pepper, Tennessee Department of Education, November 18, 2004\).](#)
[Disclosure of Information Making Student's Identity Easily Traceable \(letter to Robin Parker, Miami University, October 19, 2004\).](#)
[Disclosure of Education Records to Texas Office of Attorney General \(letter to School District in Texas, April 6, 2006\).](#)
[Unauthorized Access to Education Record Systems \(letter to B. Alan McGraw, Altizer, Walk & White, October 7, 2005\).](#)
[Letter to Diane Layton, Shelton State Community College, August 7, 1998.](#)
[Open Records Request \(letter to Corlis P. Cummings, Board of Regent](#)

[March 11, 2005\).](#)

[Potential Conflict with State Law \(letter to Omero Suarez, Grossmont-Cuyamaca Community College District, January 16, 2004\).](#)

[Parents of dependent students, disclosure to \(letter to Robert E. Bienstock, University of New Mexico, October 29, 1993\).](#)

[Law Enforcement Unit Records \(letter to Judith S. Bresler and Michael S. Molinaro, Reese & Carney, LLP, February 15, 2006\).](#)

[Blanket Court Orders \(letter to Monique C. Shay, Los Angeles County Office of Education, and Kelly Rozmus Barnes, Los Angeles Unified School District, March 28, 2006\).](#)

[Letter to Elvira Strehle-Henson, University of Colorado at Boulder, February 11, 2005.](#)

Cases:

[Jain v. State of Iowa, 617 N.W.2d 293 \(Iowa 2000\).](#)

[Brown v. City of Oneonta, 106 F.3d 1125 \(2d Cir. 1997\).](#)

[Trustees of Bates College v. Congregation Beth Abraham, 2001 WL 1671588 \(Me. Super. Ct. Feb.](#)

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