

Addressing Emergencies on Campus

June 2011

Tragedies like the incidents in Tucson and at Virginia Tech remind us all of the importance of having policies and standard practices in place on campuses to ensure the physical safety of students in the event of an emergency and to help in preventing such terrible tragedies from occurring in the future. Tucson has again sparked a national dialogue about campus safety, and in light of these terrible events some schools may be reevaluating

Family Educational Rights and Privacy Act (FERPA)

Introduction

While the Family Educational Rights and Privacy Act (FERPA) generally requires parents or eligible students to provide educational agencies and institutions with written consent before the school discloses personally identifiable information from a student's education records, FERPA allows schools to make necessary disclosures without obtaining prior written consent in order to address emergencies. We are providing this guidance to help school officials understand the conditions under which they may disclose personally identifiable information from education records, without consent, in order to address emergency and safety issues. Understanding these provisions in FERPA empowers school officials to act decisively and quickly when the need arises and is an important part of emergency preparedness.

FERPA is a Federal law that protects the privacy interests of parents and students in a student's "education records."³ The law applies to all educational agencies and institutions that receive funds under any program administered by the Secretary of Education. Under FERPA, a parent or eligible student (i.e., a student who has reached 18 years of age or attends a postsecondary institution) generally must provide a signed and dated written consent before the educational agency or institution discloses such information.

why, based on all the information then available, the official reasonably believes, for instance, that a student poses a significant threat, such as a threat of substantial bodily harm to any person, including the student, the school official may disclose personally identifiable information from education records without consent to any person whose knowledge of the information will assist in protecting a person from threat. This is the flexible standard under which the Department defers to school administrators so that they may bring appropriate resources to bear on the situation, provided that there is a rationale for the educational agency or institution's decisions about the nature of the emergency and the appropriate parties to whom the information should be disclosed. We note also that, within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student's education records the articulable and significant threat formed the basis for the disclosure, and the parties to whom the information was disclosed. 34 CFR § 99.32(a)(5).

Personal Knowledge or Observation

FERPA applies to the disclosure of education records and of information derived from education records. FERPA does not prohibit a school official from disclosing information about a student that is obtained through the school official's personal knowledge or observation and not from the student's education records. For example, if a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information from disclosure. Therefore, a school official may disclose what she overheard to appropriate authorities, including disclosing the information to local law enforcement officials, school officials, and parents. However, this general rule does not apply where a school official personally learns of information about a student through his or her official role in making a determination about the student and the determination is maintained in an education record. For example, under FERPA a principal or dean who took official action to suspend a student may not disclose that information absent consent or an exception under 34 CFR § 99.31 that permits the disclosure.

Nothing in FERPA requires an educational agency or institution to use only employees to staff its law enforcement unit. Local police officers and other law enforcement personnel employed by local or State authorities also serve as the "law enforcement unit" of an educational agency or institution. However, if the law enforcement unit is comprised of local off-duty police officers who work under contract or some other arrangement and not of employees of the educational agency or institution, then, in order to qualify as "school officials" for purposes of receiving personally identifiable information from education records without parental consent, the officers must be under direct control of the educational agency or institution to meet this exception. Under these requirements, the school may outsource institutional services and functions (such as security), provided that the outside party: (1) performs an institutional service or function for which the agency or institution would otherwise use employees; (2) is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) is subject to the same disclosure requirements in

34 CFR § 668.46(b)(11)(vi)(B), an institution must clearly state that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. For the purposes of the requirement, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused.

As noted above in the section entitled "Disciplinary Records," while student disciplinary records are protected under FERPA as education records, in some circumstances a postsecondary institution may disclose disciplinary records without the student's consent. This requirement under the HEA goes further than FERPA in not only permitting but requiring that the outcome of institutional disciplinary proceedings regarding an alleged sex offense must be disclosed to the accuser, regardless of whether the institution concluded that a violation was committed. Because postsecondary institutions under FERPA are permitted to disclose disciplinary records in certain circumstances such as these, compliance with HEA requirement does not constitute a violation of FERPA.

Missing Students

The HEA also requires postsecondary institutions that maintain on-campus student housing facilities to establish, for students who reside in on-campus student housing (defined in 34 CFR § 668.41(a)), a missing student notification policy that includes notifying students that they can confidentially register an individual to be contacted if the student is determined to be missing. The statute requires an institution to advise students who are under 18 years old and not emancipated that a custodial parent or guardian must be notified if the student is determined to be missing. Further, all student

authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this confidential contact information. This means that an institution may not disclose a student's confidential contact information to a student's parent or guardian or any other person other than authorized campus officials and law enforcement officers who are conducting a missing person investigation. We view a student's identification of a contact person pursuant to section 485(j) of the HEA and 34 CFR § 668.46(h) as the student providing permission for law enforcement personnel to contact the identified individual under the circumstances identified in these statutory and regulatory provisions.

Fire Safety

Section 485(i)(1) of the HEA requires postsecondary institutions that maintain on-campus student housing facilities (as defined in 34 CFR § 668.41(a)) to publish an annual fire safety report that discloses campus fire statistics, fire safety practices, and fire safety standards. As required in 34 CFR § 668.49, postsecondary institutions must collect, disseminate to the campus community, and report to the Department, fire-related statistics, such as the number of fires, the number of injuries and deaths related to each fire, and the value of property damage caused by each fire, in on-campus student housing. Furthermore, institutions must describe each on-campus student housing facility fire safety system; the number of fire drills in the previous year; the institution's fire safety policies on portable electrical appliances, smoking, and open flames; the procedures for evacuation in the case of a fire; the policies regarding fire safety education and training program policies; and plans for future improvements in fire safety, if applicable. The institution must also maintain a log of all fires that occur in on-campus student housing facilities. These fire safety requirements, particularly the safety statistics and log maintenance requirements, do not override a postsecondary institution's legal obligation to maintain the privacy of certain information and records under FERPA.

Contact Information and Additional Resources

The Department's Family Policy Compliance Office, the office that administers FERPA, is available to respond to any questions school officials may have about FERPA. For quick

responses to routine questions about FERPA, school officials may e-mail the Department at FERPA@ed.gov. Should you need more in-depth technical assistance on a matter or a more formal response, you may write us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

You may also call the Family Policy Compliance Office at 202-260-3887. Additional information and guidance on FERPA is available on the Department's Web site at: <http://www.ed.gov/policy/gen/guid/fpco/index.html>

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