

[1], the federal statute that governs disclosure of student records and information, prevents them from doing so.

Concerns about the ability to communicate critical information in an emergency are, in large part, the result of misunderstandings about FERPA. We offer the following information to demonstrate that FERPA is not a significant obstacle to appropriate (and desirable) communications intended to protect student, campus, or public safety. Depending on the relevant context and jurisdiction, however, additional restrictions may arise under other applicable state or federal laws, which are beyond the scope of this Note.

## 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 pr [3], and a record is “person

**Question: When may information from education records be disclosed?**

**Answer:** In general, information derived from a student's education records may be disclosed only if: (1) it is "directory information;" (2) the student has consented to the disclosure; or (3) the law provides an exception that permits disclosure without the student's consent.

**Question: What is "directory information"?**

**Answer:** FERPA allows institutions to designate certain classes of information as "directory information" that

**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 in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals [22].” 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 [23]. Safety concerns warranting disclosure could include a student’s suicidal statements or ideations, unusually erratic and angry behaviors, or similar conduct that others would reasonably see as posing a risk of serious harm [24].

This exception does not authorize “knee-jerk” or (in most cases) “broadcast” disclosures [25], but a limited disclosure to a limited number of people, made on the basis of a good-faith determination in light of the facts available at the time, and is highly unlikely to be deemed a violation of FERPA, even if the perceived ts 8001 Tdeeted ts 800

**Answer:** FERPA expressly permits institutions to include in a student's education records appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well being of that student, other students, or other members of the community [\[30\]](#). Such information may be disclosed to any "school officials" who have "legitimate educational interests" in the behavior of the student, and it also may be disclosed as the 2

**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 [\[42\]](#). 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 [\[43\]](#).

## 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.

š [Nancy E. Tribbensee](#),

- [Letter to Diane Layton, Shelton State Community College, August 7, 1998.](#)
- [Open Records Request \(letter to Corlis P. Cummings, Board of Regents of the University System of Ge](#)



- § 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. 13, 2001).

### **Additional Resources:**

- § William Kaplin and Barbara Lee, *The Law of Higher Education* (Jossey Bass, 4th edition) (2006).
- § [American Association of Collegiate Registrars and Admissions Officers](#)
  - [FERPA Compliance](#)
  - [FERPA Final Exam](#)

### Sample Institutional Training Resources:

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[Department of Education, November 18, 2004\).](#)

FN4. [34 C.F.R. § 99.3](#) (definition of “personally identifiable”) and [Disclosure of Information Making Student's Identity Easily Traceable \(FPCO letter to Robin Parker, Miami University, October 19, 2004\)](#) and [Disclosure of Education Records to Texas Office of Attorney General \(FPCO letter to School District in Texas, April 6, 2006\).](#)

FN5. [Unauthorized Access to Education Record Systems \(FPCO letter to B. Alan McGraw, Altizer, Walk & White, October 7, 2005\).](#)

FN6. [FPCO Letter to Diane Layton, Shelton State Community College, August 7, 1998.](#)

FN7.



[University of Colorado at Boulder, February 11, 2005.](#)

FN45. Not all campus health providers are covered by HIPAA. For those that are, HIPAA expressly provides