Balancing Student Privacy and Campus Safety

Bill LaTour | July 19, 2018
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Objectives

- FERPA 101
- FERPA Exceptions
- Law Enforcement Unit Records
- Health or Safety Emergency Provision
- Threat Assessment or Behavioral Intervention
- References
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FERPA 101
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FERPA 101

• FERPA has two primary objectives:
  – Protect the privacy of education records
  – Ensure students have a right to review and request amendments to their education records

• Applies to all colleges/universities that receive federal funds

• When students attend a college/university, regardless of their age, they become "eligible students"
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FERPA 101

- Education Records
  - Generally, if a record contains a student's “PII”, it's an education record.
  - Education records include academic and non-academic information recorded in documents, electronic files, email, or other material
  - While FERPA does not require the college/university to maintain education records, it does require it to protect the privacy of those records it does keep.
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FERPA 101

– Disclosure of education records does not violate FERPA if:
  • Student gives written consent
  • FERPA exception permits disclosure

– FERPA permits the disclosure of directory information
  • Students may opt out of disclosing directory information
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FERPA 101

• Annual Notification
  – FERPA requires that colleges/universities give annual notice to students currently in attendance of their FERPA rights

• Internal Practices
  – College/university must notify students of their internal policies and practices for sharing education records
  – May use this notification to give public notice of the what it intends to classify as directory information
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FERPA Exceptions
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FERPA Exceptions

• Legitimate Educational Interest
  – Allows "school officials" to access education records if they have a "legitimate educational interest" in a particular student's records.

• Disclosure to Parents
  – Parents of a college/university student generally have no right to access their child's education records.
  – However, FERPA makes certain exceptions for disclosing information to the parents.
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FERPA Exceptions

• Treatment Records
  – Medical "treatment records" maintained by a campus health center or counseling facility may not be education records

• Disciplinary Proceedings
  – If a student is found responsible for a violent crime or sex offense, certain information may be disclosed
  – Victim rights
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Law Enforcement Unit Records
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Law Enforcement Unit Records

• Law Enforcement Unit definition:
  – Any individual, office, department, division, or other component of the college/university (police, security, etc.) that is officially authorized or designated by the college/university to:
    • Enforce, or refer to appropriate authorities a matter for enforcement, of local, State, or Federal law
    • Maintain the physical security and safety of the college/university
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Law Enforcement Unit Records

• These records must be:
  – Created by a law enforcement unit
  – Created for a law enforcement purpose
  – Maintained by the law enforcement unit

• Excluded records do not include:
  – Records maintained by a component of the educational agency or institution other than the law enforcement unit
  – Records exclusively for a non-law enforcement purpose (student discipline, etc.)
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Law Enforcement Unit Records

• Maintain records separately:
  – The law enforcement unit may not re-disclose PII from students’ education records that it receives, except in compliance with FERPA
  – Therefore, it is advisable for law enforcement units to maintain law enforcement unit records separately from education records
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Health or Safety Emergency Provision
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Health or Safety Emergency Provision

• In some situations, a college/university official may determine that it is necessary to disclose PII from a student’s education records to appropriate parties in order to address a health or safety emergency.

• The health or safety emergency provision permits such disclosures, without the consent of the parent or student, if necessary to protect the health or safety of the student or other individuals.
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Health or Safety Emergency Provision

- Articulable and Significant Threat
  - FERPA allows disclosures of a student's PII if necessary to address an "articulable and significant" health or safety emergency
  - Definition:
    - A college/university official can explain why available information leads to a “reasonable belief” that there is a significant threat to the health or safety of a student or others which requires immediate action
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Health or Safety Emergency Provision

• DoE has consistently interpreted the health or safety emergency provision narrowly
  – Limits its application to a specific situation that presents imminent danger to students or other members of the community
  – Requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals
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Health or Safety Emergency Provision

• Totality of the Circumstances
  – College/university must determine whether to disclose PII from education records on a case-by-case basis, taking into account the “totality of the circumstances” pertaining to a threat to the health or safety of the student or others

• Personal Knowledge or Observation
  – FERPA does not prohibit a college/university official from disclosing information about a student that is obtained through their personal knowledge or observation and not from the student’s education records.
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Health or Safety Emergency Provision

• Timely Warnings and Emergency Notification
  – Under the Clery Act, colleges/universities must provide timely warnings to alert the campus community of certain crimes in a manner that will aid in the prevention of similar crimes
  – Colleges/universities must develop and disclose a statement of policy describing how they will handle emergency situations occurring on the campus that present an immediate threat to the health or safety of students or employees
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Health or Safety Emergency Provision

- FERPA does not conflict with the timely warning and emergency notification provisions of the Clery Act

- The health or safety emergency provision applies when a college/university sends out a timely warning in response to an emergency, or sends out an emergency notification in accordance with its stated emergency notification procedures
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Health or Safety Emergency Provision

• Missing Students
  – Colleges/universities that maintain on-campus student housing must establish 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
  – Only authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this confidential contact information
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Health or Safety Emergency Provision

– The college/university must advise students who are under 18 years old that a custodial parent or guardian must be notified if the student is determined to be missing.

– All students residing in on-campus housing must be advised that, regardless of whether they register a contact person, law enforcement will be notified in the event that the student is determined to be missing.
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Threat Assessment or Behavioral Intervention
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Threat Assessment or Behavioral Intervention

• Colleges/universities may need assistance in determining whether a health or safety emergency exists in order to know whether a disclosure may be made under the health or safety emergency provision

• Colleges/universities are encouraged to implement a threat assessment or behavioral intervention program, including the establishment of threat assessment (TAT) or behavioral intervention teams (BIT)
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Threat Assessment or Behavioral Intervention

• With a properly-implemented TAT or BIT, colleges/universities can respond to student behavior that raises concerns about mental health or the safety of the student and others that is chronic or escalating and then make other disclosures under the health or safety emergency exception, as appropriate, when an “articulable and significant” threat exists.
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Threat Assessment or Behavioral Intervention

• Colleges/universities may disclose PII from education records without consent to TAT or BIT members who are not employees if they qualify as “school officials” with “legitimate educational interests”

• To receive the education records under the “school officials” exception, TAT or BIT members who are not employees must be under the direct control of the college/university with respect to the maintenance and use of PII from education records
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Threat Assessment or Behavioral Intervention

• Challenges for Community Colleges:
  – Students live off campus
  – Campus services not seen as primary resource
  – Students less likely to report
  – Fewer support services

• Need to involve and train others
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References
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References

- Balancing Safety and Support on Campus: A Guide for Campus Teams
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References

• Addressing Emergencies on Campus

• Letter to Montgomery County Public Schools (MD) re: Law Enforcement Unit Records
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References

• The Handbook for Campus Threat Assessment & Management Teams
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Thank You!

Bill LaTour
Dean of Operations/Chief of Police
John Wood Community College
1301 S. 48th St.
Quincy, IL  62305
(217) 641-4290
blatour@jwcc.edu