



## FERPA, HIPAA, and State Law Guide

*A quick reference for  
sharing student information.*

*Have additional questions?*

Contact Your College Administrator

or

Legal Counsel

### FERPA

The Family Educational Rights and Privacy Act (FERPA) was enacted in 1974 and sets forth a national standard for the privacy and protection of students' education records.

#### Basic Principles of FERPA

- Students have the right to control the disclosure of their education records to others.
- "Education Record" is broadly defined to include any information recorded in any way directly related to a student that contains personally identifiable information and is maintained by an educational agency or institution.
- Before an institution can disclose an education record it must obtain a signed and dated written release from the student specifying the records that may be disclosed, the purpose for which they may be disclosed, and the persons or entities to whom they may be disclosed.

#### Exceptions to the Disclosure Restriction

- **Information not recorded is not subject to the restrictions of FERPA.** For example, this would include personal observations or knowledge of a student's behavior by a school official that was not obtained from an "education record." Accordingly, if there is a concern about a student based upon such observations, the school official may share his/her concerns with other appropriate school officials.
- **Records created by campus law enforcement of colleges and universities are exempt from privacy restrictions and may be shared with anyone,** including parents or federal, state, or local law enforcement authorities without the consent of the student **if the records meet all 3 of the following criteria:**
  - (1) Created by campus law enforcement (campus police or security);
  - (2) Created for law enforcement purposes; and,
  - (3) Maintained by the law enforcement unit.

## FERPA (exceptions continued)

- **Education Records may be shared with school officials when the institution has determined that they have a legitimate educational interest to view the records.**

Example: Some institutions have committees of university officials, which include representatives from the counseling center, office of student affairs, and campus police, that meet regularly to discuss and review the actions of specific students of concern and decide upon an appropriate course of action.

Administrators or faculty members who are concerned about a student's behavior or actions may contact this committee with their concerns and submit relevant records.

- **Education Records may be disclosed in connection with a health and safety emergency.**
  - Institution must determine whether a health and safety emergency exists on a case-by-case basis;
  - Institution must believe that there is imminent danger to students or others;
  - Institution must believe that disclosure of information may prevent the threat or harm; and
  - Institution may disclose only the information necessary to respond to the specific threat or harm.
- Any and all information from education records may be disclosed to parents without the consent of the student if (a) the student is considered a dependent for federal tax purposes, and (b) the parent has provided proper documentation establishing such dependency.
- A college or university may inform parents of a student under the age of 21 years old if the institution has determined that the student violated its alcohol/drug policy.
- **FERPA does not grant an individual the right to sue based upon a violation.**
- Enforcement of FERPA resides with the U.S. Department of Education, Family Compliance Office.

## HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) was enacted in 1996 to establish a national standard for the protection of personally identifiable information relating to health care in order to facilitate the development of an electronic health care infrastructure. The HIPAA privacy rule excludes from its coverage those records that are protected by FERPA at institutions that provide health or medical care to students.

- Health/medical records maintained and used only for purposes of a student's medical treatment and disclosed only to health care providers are protected by HIPAA.
- If health/medical records are maintained and used for purposes other than medical treatment and disclosed to others who are not health care providers, the records are education records and are protected by FERPA.

- HIPAA applies only to "covered entities," which includes health providers and insurers and their business associates.
- Under HIPAA disclosure of information is permitted in order to prevent or lessen the risk of a serious or imminent threat to the health or safety of a person or the public.
- Disclosure of health/medical records may be required by law, such as reporting of gun-shot wounds, reporting to a public health agency, or by an order of the court or subpoena issued by a law enforcement agency.
- **HIPAA does not grant an individual the right to sue based upon a violation.**
- HIPAA Enforcement resides with the U.S. Department of Health and Human Services, Office of Civil Rights.

## STATE LAW

Based upon Ohio laws and codes of professional conduct, communications between doctors, psychologists and mental health professionals and their patients are privileged and confidential.

- Mental health professionals cannot communicate about their patients without a signed release. Confidentiality is extremely important.
- However, even in the mental health area there are exceptions to the confidentiality requirements. Under Ohio Law there is an established process that allows an individual, such as a mental health professional, to seek a court order to hospitalize a mentally ill person. (Ohio Revised Code §§ 5122.11 to 5122.15)
- Ohio Revised Code § 5122.01(B) defines a mentally ill person subject to hospitalization by court order to mean a person who poses a substantial risk of physical harm to himself/herself or others or is unable to provide for his/her basic needs.
- **Ohio law provides immunity to individuals who acted in good faith when participating in the decision-making process to determine whether a mentally ill person should be hospitalized.** (Ohio Revised Code § 5122.34)
- **If a mental health patient communicates to a mental health professional a specific threat to inflict harm on identifiable potential victims, the mental health professional can obtain immunity from damages** if he/she follows the specific procedures for action outlined in Ohio Revised Code § 2305.51.
- It should be recognized that **state employees are provided civil immunity for their actions unless their actions were manifestly outside the scope of employment or unless they acted with malicious purpose, in bad faith, or in a wanton or reckless manner.** (Ohio Revised Code §§ 9.86, 9.87)