



**OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM
POLICY AND PROCEDURE MANUAL**



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I. PURPOSE

The purpose of this policy is to provide guidance to University of Texas System Police (UTSP) in identifying and clarifying the requirements of the Family Educational Rights and Privacy Act (FERPA) as it relates to the retention and dissemination of student educational record information by UTSP law enforcement personnel.

II. POLICY

It is the policy of the University of Texas System Police to comply with the requirements of the Family Educational Rights and Privacy Act (FERPA). University police records and reports shall be released or exhibited only in accordance with existing law and University, campus and departmental policies.

To assure compliance, UTSP personnel will use reasonable methods to identify and authenticate the identity of any party to whom personally identifiable information from education records is disseminated.

III. WHAT IS FERPA

FERPA is a federal law that, along with federal regulations implementing the law, protects the privacy of student education records. FERPA generally requires a university to have written permission from a student attending the university before the university may release any information from the student's education record. ***FERPA applies only to the disclosure of information obtained from an education record.***

FERPA does not apply to the disclosure of information from any other source. ***However, once the information is reported to a university official and becomes a record, the information in the record becomes subject to FERPA.***

It should be noted that failure to comply with FERPA regulations could result in the termination of eligibility of the institution from receiving federal funding as a result of violations of this act.

IV. DISCLOSURE AND DISSEMINATION OF INFORMATION

A. Before an educational agency can disclose personally identifiable information, the parent or eligible student must have provided a signed and dated written consent. However, FERPA does make exceptions in specific instances.

1. An institution may disclose personally identifiable information from an education record of a student without consent if the disclosure is to other school officials, including teachers, within the institution whom the institution has determined to have legitimate educational interests. *34 CFR §99.31 (a)(1)(i)(A)*
2. The institution may disclose information only if the institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena **in advance of compliance**, so that the parent or eligible student may seek protective action.

In those cases where advance disclosure to the parent or eligible student might jeopardize an investigation, it is suggested that the subpoena contain an order from the court that the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

B. University Police

FERPA allows a school to disclose education records to “school officials” who have “legitimate educational interests” in the information. A school official is a person employed by the school or university in an administrative, supervisory, academic, or research, or support staff position, *including law enforcement unit personnel* and health staff.

The UT System Police must protect the privacy of education records that are received and may disclose then only in compliance with FERPA.

Accordingly, law enforcement unit records should be maintained separately from education records.

C. Directory Information

Directory information generally does not include Personally Identifiable Information and may be disclosed to any interested party.

Exceptions:

1. The parent or eligible student has exercised his/her “opt out” right to withhold any or all directory information.
2. A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and
3. A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

D. Education Records

Under FERPA, education records usually cannot be disclosed without a court order or consent of the student or parents of a minor student.

Exceptions:

FERPA allows disclosure and dissemination of student education record information under certain circumstances:

1. Ex Parte Orders
2. Lawfully issued subpoenas and court orders
3. Health and safety emergency
4. Law enforcement unit records
5. Directory Information
6. Disclosures to Immigration and Naturalization (INS)
7. Disclosures to victims of crimes of violence
8. Registered Sex Offenders

1. Ex Parte Orders

Under FERPA, institutions are allowed to disclose, without the consent or knowledge of the student or parent, personally identifiable information from the student's education records to the Attorney General of the United States or to his designee.

2. Lawfully issued Subpoenas and Court Orders

FERPA permits institutions to disclose, without consent, information from a student's education records in order to comply with a "lawfully issued subpoena or court order" in three contexts:

a) Grand Jury Subpoenas

The court may order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response.

b) Law Enforcement Subpoenas

The issuing court, with good cause, may order the institution not to disclose to anyone the existence or contents of the subpoena or the institution's response.

c) All other Subpoenas

3. The Health and Safety Emergency Exception

a) Disclosure of protected information to any appropriate parties in connection with an emergency is permitted under FERPA if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

b) This exception is limited to a specific situation that presents imminent danger to a student, other students, or other members or the school community—or to a situation that requires the immediate need for information from education

records in order to avert or diffuse serious threats to the safety or health of a student or other individuals.

c) In making a determination to disclose information under this exception, UTSP personnel shall take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals.

(1) If it is determined that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals.

(2) The Department of Education will not substitute its judgment for that of the institution in evaluating the circumstances in making its determination if, based on the information available at the time of the determination, there was a rational basis for the determination. *34 CFR §99.36(c)*

4. Law Enforcement Unit Records Exception

a) FERPA permits an institution to contact its own law enforcement unit to investigate possible violations of and to enforce any local, state, or federal law.

b) Records created by the university police in their capacity as a law enforcement unit are not education records and are not subject to FERPA.

c) Records protected by FERPA and accessed by university police in a non-law enforcement capacity would still remain subject to FERPA, but could be released by university police to appropriate parties under the FERPA health or safety emergency exception.

d) University police can:

(1) Share information gained from their own law enforcement investigation with the school officials conducting a student discipline investigation.

(2) Share information gained from their own law enforcement investigation with outside law enforcement agencies.

(3) Communicate directly with mental health professionals who are otherwise precluded from sharing information about threats of violence that the mental health professional received from a student through a confidential therapist-patient relationship.

(4) Diffuse a crisis situation by arresting and detaining a student who has exhibited potentially dangerous conduct regardless of the source through which they received the information.

E. Disciplinary Actions

While student disciplinary records are protected as education records under FERPA, there are certain circumstances in which disciplinary records may be disclosed without the student's consent. A postsecondary institution may disclose to an alleged victim of any crime of violence or non-forcible sex offense the final results of a disciplinary proceeding conducted by the institution against the alleged perpetrator of that crime, regardless of whether the institution concluded a violation was committed.

An institution may disclose to anyone—not just the victim—the final results of a disciplinary proceeding, if it determines that the student is an alleged perpetrator of a crime of violence or non-forcible offense, and with respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies. See *34 CFR §§ 99.31(a)(13) and (14)*; (U.S. Department of Education)

1. Disclosure can be made to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense.
 - a) The disclosure may only include the final results of the disciplinary proceeding conducted by the institution of postsecondary education with respect to that alleged crime or offense.
 - b) The institution may disclose the final results of the disciplinary proceeding, regardless of whether the institution concluded a violation was committed.
2. The institution must not disclose the final results of the disciplinary proceeding unless it determines that:
 - a) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and
 - b) With respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies.
 - c) The institution may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student.

F. HIPAA (Health Insurance Portability and Accountability Act of 1974)

HIPAA is a law passed by Congress intended to establish transaction, security, privacy and other standards to address concerns about the electronic exchange of health information.

1. HIPAA does not apply to student medical records
2. HIPAA does not apply to student education records subject to FERPA.

G. University Mental Health Records

1. Records made or maintained by a university mental health care provider in the course of providing a student with medical or psychological care are generally not "education records" and would not be subject to FERPA. This means that the exceptions available under FERPA that allow disclosure would not apply to treatment records held by the University's counseling center or student health center.
2. Medical records created or held by a university clinic or center for providing medical or mental health treatment to students is generally not subject to the Health

Insurance Portability and Accountability Act of 1974 (HIPAA) and the federal Privacy Rules implementing HIPAA.

3. HIPAA Privacy Rules specifically exclude protected health information in student medical records as well as student education records subject to FERPA from the applicability of HIPAA.

4. Instead, university mental health care providers are required to comply with the limitations imposed by the state laws that govern the disclosure of mental health records and medical records.

H. Texas Health and Safety Code

1. All information about a patient obtained through the therapeutic relationship is confidential.

2. The professional is prohibited from disclosing even the identity of a client to third parties unless specifically authorized by state law.

Exception

1. Mental health care providers are specifically authorized to disclose patient information to medical or law enforcement personnel if the professional determines that:

- a) There is a probability of imminent physical injury by the patient to the patient or others, or
- b) Determines there is a probability of immediate mental or emotional injury to the patient

2. This information is not permitted to be disclosed to university officials who are neither medical nor law enforcement personnel.

V. DEFINITIONS

A. **Disciplinary action or proceeding**—means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the institution.

B. **Directory information**—information contained in an education record of a student that would *not* generally be considered harmful or an invasion of privacy if disclosed.

1. Directory information includes, but is not limited to: the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; and the most recent educational agency or institution attended.

2. Directory information does *not* include a student's:

- a) Social Security number; or
- b) Student identification (ID) number

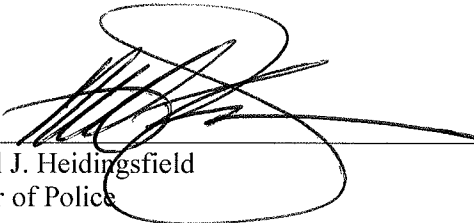
a) Directory information includes a student ID number, user ID, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the

identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number (PIN), password, or other factor known or possessed only by the authorized user.

- C. **Education records**—means those records that are:
1. Directly related to a student; and
 2. Maintained by an educational agency or institution or by a party acting for the agency or institution or by a party acting for the agency or institution.
 3. The term does not include:
 - a) Records that are kept in the sole possession of the maker, are used only as a personal memory aid and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
 - b) Records of the law enforcement unit of an educational agency or institution, subject to provisions of 34 CFR §99.8.
 - c) Records relating to an individual who is employed by an educational agency or institution, that:
 - (1) Are made and maintained in the normal course of business;
 - (2) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (3) Are not available for use for any other purpose.
- D. **Eligible student**—means a student who has reached 18 years of age or is attending an institution of postsecondary education.
- E. **Ex Parte Orders**—means a court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in *18 U.S.C. §2332b(g)(5)(B)* or an act of domestic or international terrorism as defined in *18 U.S.C. §2331*.
- F. **FERPA**—Family Educational Rights and Privacy Act; protects “education records” maintained in a central records depository.
- G. **HIPAA**—Health Insurance Portability and Accountability Act; safeguards “protected health information”. The HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students.
- H. **Health and Safety Emergency**—an articulable and significant threat to the health or safety of a student or other individuals.
- I. **Law Enforcement Unit**: means any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:
1. Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or
 2. Maintain the physical security and safety of the agency or institution.

- J. **Medical information**—all information, either written or oral, obtained during a course of treatment.
- K. **Parent**—means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.
- L. **Personally identifiable information**—The term includes, but is not limited to:
1. The student's name;
 2. The name of the student's parent or other family members;
 3. The address of the student or student's family;
 4. A personal identifier, such as the student's social security number, student number, or biometric record;
 5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
 6. 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 have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
 7. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
- M. **Protected Health Information**—means individually identifiable health information that is:
1. Transmitted by electronic media;
 2. Maintained in electronic media; or
 3. Transmitted or maintained in any other form or medium.
- N. **Protected Health Information excludes:**
Education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, *20 U.S.C. §1232g*.
- O. **Record**—means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.
- P. **Records of Law Enforcement Unit**—means those records, files, documents, and other materials that are—
1. Created by a law enforcement unit;
 2. Created for a law enforcement purpose, and
 3. Maintained by the law enforcement unit.
- Q. **Records of a Law Enforcement Unit does *not* mean—**
1. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

2. Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.
- R. **Student**—unless specifically provided in the regulations, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.
- S. **University Officials**—anyone who needs to review an education record in order to fulfill his or her professional responsibility and who is:
1. A person employed by the university in an administrative, supervisory, academic, or support staff position (including a law enforcement unit or health staff);
 2. A person or company with whom the university has a contract or affiliation (such as an attorney, auditor, collection agent, or clinical facility);
 3. A member of the Board of Trustees; or
 4. A person assisting another university official in performing his or her tasks.



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Director of Police

Appendix A

FAQ's

FERPA IN GENERAL

Q. Who is protected under FERPA?

A. The rights under FERPA apply primarily to eligible students. (Counsel, 2009) (Cornell, 2009)

Q. Does FERPA apply only to the disclosure of information obtained from an educational record?

A. Yes. Directory information, unless it includes personally identifiable information or the student has exercised his/her "opt out" right, is not protected under the law.; (34 CFR §99.3); (Holthaus, 2011) (Cornell, 2009)

Q. To which information does FERPA apply?

A. Personally identifiable information contained in educational records. (34 CFR §99.30(a)); (U.S. Department of Education, 2008)

Q. Does FERPA apply to everyone?

A. FERPA rights apply to students. A student is a person who is or has been in attendance at the institution, regardless of the person's age.

Q. Are correspondence students covered under FERPA?

A. Yes. FERPA defines "attendance" as paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom. 34 CFR §99.3(a); (The National Association of Colleges and Employers, 2008)

Q. What are a student's rights under FERPA? (34 CFR §99.5)

A. Under FERPA, a student has the right to:
Inspect and review his/her educational records
Request to amend his/her educational records
Have some control over the disclosure of information from his/her educational records

Q. Does FERPA regulate the directory information of former students?

A. Yes. Institutions must continue to honor a former student's request to opt out of the disclosure of directory information while he or she was an enrolled student. However, former students may rescind such a request. (34 CFR §99.37(b))

Q. Does FERPA protect the education records of former students?

A. Yes. FERPA protects the education records of former students. (34 CFR §99.3)

Q. Does FERPA protect information about former students collected after the students have graduated from the institution?

A. No. Information about former students (i.e., alumni records) collected after the students have graduated from the institution is not considered an education record, so it is not protected by FERPA. (34 CFR §99.3)

UNIVERSITY POLICE

Q. Are UT System Police officers considered “university officials” and designated as such by the UT System?

A. Yes. The model FERPA policy drafted by the UT System Office of General Counsel includes “law enforcement unit” in the policy and UT System Police are considered to be law enforcement units as defined by FERPA.. (Holthaus, 2011)

Q. When can university police have access to student records?

A. FERPA allows a school to disclose education records to “school officials” who have “legitimate educational interests” in the information. A “school official” is a person employed by the school or university in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff). (34 CFR §99.31 (a)(1)(ii)); (34 CFR §99.36)

Q. Are law enforcement unit records exempt from FERPA?

A. Yes. As long as they are 1) created by the law enforcement unit, 2) created for law enforcement purposes, and 3) are actually maintained by the law enforcement unit. All three elements must be present for the records to meet the exemption. (34 CFR §99.8)

Q. Are investigative reports and other records created and maintained by the university police department considered subject to FERPA?

A. No. As such, these records may be disclosed to anyone, including outside law enforcement authorities, without student consent. (34 CFR §99.8) (U.S. Department of Education)

Q. Are records created by the law enforcement unit, but maintained outside of the law enforcement unit, exempt from FERPA?

A. No. (34 CFR §99.8)

Q. Are records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose—such as a disciplinary action conducted by the school—exempt from FERPA?

A. No. They do not qualify as exempt records and would be subject to FERPA if they directly relate to a student. (34 CFR §99.8)

Q. Does FERPA allow school and college administrators and faculty access to university police records?

A. Yes. Records maintained by a school’s law enforcement unit are exempt from FERPA and may be shared with administrators and faculty.

Q. In the event that a law enforcement unit receives information from education records, do those records lose their protection under FERPA?

A. No. Education records should be maintained confidentially and only disclosed in compliance with FERPA. It is advisable to maintain police records separately from education records. (34 CFR §99.8(2)); (Bender, 2009); (Rooker, 2002)

Q. Should we maintain our law enforcement unit records separately from education records?

A. Yes. (U.S. Department of Education)

DISCLOSURE

Q. When may records be disclosed?

A. 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. (Tribbensse, 2007)

Schools may release records without consent to "other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests." (34 CFR §99.31(a)(1)(i)(A))

In health and safety emergencies, schools may make disclosures without consent. Law enforcement agencies and monitoring agencies have access to confidential records. (34 CFR §99.31); (34 CFR §99.36)

Q. Can a school official disclose information on a student that is based on that official's *personal* knowledge or observation, and not from an education record?

A. Yes. (U.S. Department of Education, 2007); (Bender, 2009)

Q. The local police department is trying to determine whether a particular student was in attendance on a specific day. Because the police are in the middle of an investigation, are you allowed to give them this information?

A. No. A subpoena is required. (Rooker, 2002)

Q. Are images of students captured on security videotapes and maintained by the school's law enforcement unit considered education records under FERPA?

A. No. Furthermore, these videotapes may be shared with parents of students whose images are on the video and with outside law enforcement authorities as appropriate. (U.S. Department of Education, 2007)

Q. If my police department or another outside law enforcement agency presents a subpoena for educational records, will that be disclosed to the student?

A. Yes, unless the subpoena specifically states nondisclosure. (34 CFR §99.31(9)(ii))

Q. Will the contents of a law enforcement subpoena be disclosed to the eligible student or parent in advance of compliance?

A. Yes, unless the court orders that the contents of the subpoena or information furnished in response to the subpoena not be disclosed. (34 CFR §99.31(9)(ii); (34 CFR §99.33(b)(1)(ii)(A))

In health and safety emergencies, schools may make disclosures without consent. Law enforcement agencies and monitoring agencies have access to confidential records. (34CFR §99.31); (34CFR §99.36)

Q. When may a school disclose information to parents of dependent students?

A. Under FERPA, schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules or if the student voluntarily provides the University with a wavier consenting to his or her parent's access to educational records. (34 CFR §99.31); (McBain, 2008)

Q. Does FERPA provide an exception that would permit a university to disclose to the parent of a student under the age of 21 that the student violated an applicable law or institutional policy governing alcohol or controlled substances?

A. Yes. (34 CFR §99.31(15)(I))

Q. Can an institution disclose student ID numbers?

A. Only if the ID number cannot be used by itself to gain access to other student information.(34 CFR §99.3); (University of Wisconsin System, 2009)

Q. Can an institution disclose information on a student who is a registered sex offender?

A. Yes. The Campus Sex Crimes Prevention Act amended FERPA and allows universities to give out information on registered sex offenders. (34 CFR §99.31(a)(16)); (Bender, 2009)

Q. What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses? (34CFR §99.39); (34 CFR §99.33(c)-(d))

A. Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses:

- 1) Arson
- 2) Assault offenses
- 3) Burglary
- 4) Criminal homicide—manslaughter by negligence
- 5) Criminal homicide—murder and nonnegligent manslaughter
- 6) Destruction/damage/vandalism of property
- 7) Kidnapping/abduction
- 8) Robbery
- 9) Forcible sex offenses

Q. Under the Patriot Act, are educational agencies required to record disclosures?

A. No. (34 CFR §99.31(a)(9)(ii); (University of Wisconsin System, 2009)

Q. Does FERPA permit a postsecondary institution to disclose a student's treatment records or education records to law enforcement, the student's parents, or others if the institution believes the student presents a serious danger to self or others?

A. Yes. An eligible student's education records and treatment records (which are considered education records if used or made available for any purpose other than the eligible student's treatment) may be disclosed, without consent, if the disclosure meets one of the exceptions to FERPA's general consent rule. (34 CFR §99.31)

One of the permitted disclosures is to "appropriate parties", which may include law enforcement or parents of a student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. (34 CFR §99.31(a)(10)) and (34 CFR §99.36); (U.S. Department of Education, 2008)

DISCIPLINARY RECORDS

Q. Are student disciplinary records covered under FERPA? (34 CFR §99.31(13)); (34 CFR §99.31(14)); (34 CFR §99.31(15))

A. Yes.

- a. The results of a disciplinary hearing must be disclosed to the victim of a sex offense or a crime of violence and may be publicly disclosed if the student was found responsible.
- b. Disclosure may be made to parents of students who are under the age of 21 and convicted or found responsible of drug, violent crime, or non-forcible sex offenses.
- c. These records can also be disclosed to officials at other universities where the student seeks to enroll or is enrolled.

Q. If the disciplinary records contain medical information on mental health or chemical dependency, will a separate release be necessary?

A. Yes, a separate release may be necessary.

Q. Does FERPA prevent an institution from including appropriate information in a student's education records 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 school community?

A. No. FERPA does not prevent the institution from sharing this information with persons at the institution, and at other institutions, who have a legitimate educational interest in the student's behavior. (34 CFR §99.36); (Tribbensse & McDonald, 2007)

Q. Can parents be informed about students' violation of alcohol and controlled substance rules?

A. Yes. You may inform parents of students under the age of 21 of any violation of law or policy concerning the use or possession of alcohol or a controlled substance. (34 CFR §99.31); (McBain, 2008)

Q. Can a school disclose law enforcement unit records to parents and the public?

A. UT System may disclose information from "law enforcement unit records" to anyone -- including parents or federal, State, or local law enforcement authorities -- without the consent of the eligible student. Records created and maintained by these units for law enforcement purposes are exempt from the privacy restrictions of FERPA and can be shared with anyone. (34 CFR §99.8)

Q. What is the rational basis test for the disclosure of education records in an emergency?

A. FERPA requires institutions to record their rational basis for believing that under the totality of the circumstances there was a specific and articulable threat to health or safety of an individual(s). (34 CFR §99.36(c)); (University of Wisconsin System, 2009)

Q. Does FERPA keep campus officials from sharing personal observations based on information other than that contained in an education record?

A. No. University faculty and staff do not violate FERPA by disclosing information that is based on their own personal knowledge or observations or from a conversation with the student or another individual who has observed the student. However, once that information becomes a part of the student's educational record, it becomes subject to FERPA regulations. (Holthaus, 2011); (U.S. Department of Education, 2007); Tribbensee & McDonald, 2007)

Q. Can school officials share their observations of students with parents?

A. Nothing in FERPA prohibits a school official from sharing information with parents that is based on that official's personal knowledge or observation and that is not based on information contained in an education record. Therefore, FERPA would not prohibit a professor or other school official from letting a parent know of his or her concern about the student based on his or her personal knowledge or observation. (Holthaus, 2011)

HEALTH AND SAFETY EMERGENCY EXCEPTION

Q. Does FERPA permit disclosure of protected information to any appropriate parties in connection with an emergency?

A. Yes, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. (Holthaus, 2011); (McBain, 2008)

Q. Who determines “appropriate party”?

A. FERPA does not define “appropriate parties”, leaving it to the university to determine who is an “appropriate party” based on the particular circumstances. For example, the university could share information with local broadcast media as needed to alert the public to a threat posed by an armed student. (Holthaus, 2011)

Q. When can disclosure occur under the Health and Safety Emergency exception?

A. When a university, taking into account the totality of the circumstances, determines there is an articulable and significant threat to the health or safety of the student or other individuals. (Holthaus, 2011)

HIPAA

Q. How does HIPAA apply to student education records?

A. The HIPAA Privacy Rule excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services for students. This is because Congress specifically addressed how education records should be protected under FERPA. For this reason, records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under certain circumstances. (Holthaus, 2011)

Q. Does FERPA or HIPAA apply to records on students at health clinics run by postsecondary institutions?

A. FERPA applies to most public and private postsecondary institutions, and, thus, to the records on students at the campus health clinics of such institutions. These records will be either education records or treatment records under FERPA, both of which are excluded from coverage under the HIPAA Privacy Rule, even if the school is a HIPAA covered entity. (U.S. Department of Education, 2008)

Q. When can an institution release, without consent, an eligible student's "treatment records" for purposes other than treatment?

A. Because treatment records become education records as soon as they are used or disclosed for any purpose other than treatment, those records can also be disclosed pursuant to the health and safety exception. (Bender, 2009)

Q. Where the HIPAA Privacy Rule applies, does it permit a health care provider to disclose protected health information (PHI) about a patient to law enforcement, family members, or others if the provider believes the patient presents a serious danger to self or others?

A. Yes, it does permit a covered entity to disclose PHI, including psychotherapy notes, when the covered entity has a good faith belief that the disclosure: (1) is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others and (2) is to a person(s) reasonably able to prevent or lessen the threat.

This may include, depending on the circumstances, disclosure to law enforcement, family members, the target of the threat, or others who the covered entity has a good faith belief can mitigate the threat. (U.S. Department of Education, 2008)

If a school discloses an eligible student's treatment records for purposes other than treatment, the records are no longer excluded from the definition of "education records" and are subject to all other FERPA requirements. (U.S. Department of Education, 2008)

Q. Does Chapter 611 of the Texas Health and Safety Code authorize a mental health provider to disclose patient information to medical or law enforcement personnel if 1) the professional determines that there is a probability of imminent physical injury by the patient to the patient or others, or 2) determines that there is a probability of immediate mental or emotional injury to the patient?

A. Yes. However, this exception does not permit the mental health professional to disclose information to university officials who are neither medical nor law enforcement personnel. (Holthaus, 2011)

Appendix B

Crimes of Violence Definitions

Arson—any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Assault Offenses—an unlawful attack by one person upon another

NOTE: By definition there can be no “attempted” assaults, only “completed” assaults

Aggravated Assault—An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious injury if the crime were successfully completed.)

Simple Assault—An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation--To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words or other conduct, or both, but without displaying a weapon or subjecting the victim to actual physical attack. (NOTE: This offense includes stalking.)

Burglary--The unlawful entry into a building or other structure with the intent to commit a felony or a theft.

Criminal Homicide-Manslaughter by Negligence--The killing of another person through gross negligence.

Criminal Homicide-Murder and Nonnegligent Manslaughter—The willful (nonnegligent) killing of one human being by another.

Destruction/Damage/Vandalism of Property-To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

Kidnapping/Abduction-The unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian. (NOTE: Kidnapping/Abduction includes hostage taking.)

Robbery-The taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear. (NOTE: Carjackings are robbery offenses where a motor vehicle is taken through force or threat of force.)

Sex Offenses, Forcible-Any sexual act directed against another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent.

(a) **Forcible Rape** (except “Statutory Rape”)- The carnal knowledge of a person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his or her youth).

(b) **Forcible Sodomy**- Oral or anal sexual intercourse with another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

(c) **Sexual Assault with an Object**-To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity. (Note: (NOTE: An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc..)

(d) **Forcible Fondling**-The touching of the private body parts of another person for the purpose of sexual gratification, forcibly or against that person's will, or both; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity. (NOTE: Forcible Fondling includes "Indecent Liberties" and "Child Molesting.")

Nonforcible Sex Offenses (Except "Prostitution Offenses")-Unlawful, nonforcible sexual intercourse.

(a) **Incest**-Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) **Statutory Rape**-Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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