

Privacy vs. Protection:

The Case of College Student Suicide

FERPA Privacy: The Law's Intended and Unintended Consequences

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USA Today 1/24/2002
**Suicide at MIT raises
parents' ire**



CBS News: MIT officials explained they did not contact Shin's parents because of confidentiality laws, specifically the federal Family Educational Rights and Privacy Act

**Is phoning a student's family to
warn of suicide risk**

An unconsented disclosure of "personally identifiable information" from an "education record" that can lead to a lawsuit or loss of federal funding under FERPA?

- Does it matter if I'm the one dealing with the student as opposed to Health Services?
- What if my phone call is based solely upon an interview of the student?
- What if I call the student's husband, who's listed on her emergency contact form?
- Can the student sue me (and win)?

Consent to disclosure?

Elements of valid FERPA consent

- What: Records to be released
- Why: Reasons for the release
- To Whom: Recipients

Consent to disclosure?

Does it matter who's notified?

What if the student will only consent to notify someone other than parents/significant other?

Is an emergency contact form satisfactory consent?

In case of an emergency in which I am at risk of harm (from myself or others) or have been injured, harmed or am ill, I authorize the University to contact _____, and to disclose what has happened to me, my condition, and my location, including whether I am being admitted to a hospital.

In the moment....

- Can the student rescind her “emergency contact consent” when in crisis?

What if a parent calls you?

Parents suspect their child has some serious problem ...drugs, depression, suicidal.

The conversation can go two ways:

“I’m very sorry, federal law precludes me from revealing any information about your son.”

OR

“I think that you should follow your instincts.”

The Relevant Law

- Family Education and Privacy Rights Act (FERPA or Buckley Amendment)
- Health Insurance Portability and Accountability Act (HIPAA)
- State laws protecting medical records and other confidential information

HIPAA's relationship with FERPA

HIPAA has a "FERPA carve-out"
45 C.F.R. 160.103

A Morass

- FERPA applies to student records that are disclosed outside the Health Clinic
- **HIPAA applies to non-student records**
- HIPAA applies if the records fall under the “transactions rule” codified at 45 CFR 162
- **State law applies to records that are exempt from FERPA because they are NOT disclosed outside the clinic (unless it’s the student’s physician)**



Protects confidentiality of and access to student educational records

Release of “education records” generally requires written consent

FERPA

- To whom does it apply?
- Who does it protect?
- To what does it apply?
- Important Exceptions
- Sanctions

To what does FERPA apply?

- Education records
 - Records, files, documents and other materials which
 - Contain information directly related to a student
 - Maintained by the school or by a person acting for the school

To what does FERPA apply?

- Information regarding suicidal ideations can come to light a number of ways:
 - Roommate
 - Professor
 - Dean of Students
 - Health Services
 - Campus Police

Campus Health Center

- **If operated by the University:** Records are “education records” protected by FERPA
 - If protected by FERPA, not subject to HIPAA
45 CFR § 164.501
- If a campus-based clinic funded or run by someone not the university, not subject to FERPA, but may be subject to HIPAA

Education records don't include

- Treatment Records of Eligible Students
 - *created by physician, psychiatrist, psychologist or paraprofessional used to treat the student, and not shared with others except a physician*

HOWEVER, these records may be subject to HIPAA and are DEFINITELY subject to relevant state law

Even if information is subject to FERPA Consent Requirement

EXCEPTION:

- *In connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons*

Interpreting the Emergency Exception

- **Must be exceptional circumstances**
 - Examples: epidemic, bioterrorist attack
- **Exception strictly construed: *specific situation*** that presents
 - *imminent danger* to students or other members of the community, or
 - immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals.

Interpreting the Emergency Exception

- *any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency*
- Must be temporally limited
- No blanket release of the student's record

DOE requires individualization

- "a student's suicidal statements, coupled with unsafe conduct and threats against another student, constitute a "health or safety emergency"
- However, . . .this exception does not support a general or blanket exception in every case in which a student utters a threat."

Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements

North Dakota State

1. EMERGENCY EXCEPTION TO CONFIDENTIALITY: Suicidal situations are highly individual. The primary goal of this policy is student's safety. To achieve this, appropriate family members will be contacted as necessary, under the direction of the Dean of Student Life, to promote the safety of the student and others whose health, life, or safety may be endangered.

Sanctions

- Government can stop funding
 - If *policy or practice* of releasing information without written consent
 - A single instance is not a policy or practice
 - Must attempt to obtain voluntary compliance before de-funding
- No private cause of action: can't be sued

The bottom line

- Draft comprehensive “consent to release information to emergency contact” form
- If a student expresses suicidal ideations,
 - attempt to obtain consent to contact parent or significant other
 - Attempt to obtain consent to contact anyone

The bottom line

- If a student refuses consent, but University believes the particular student is truly at risk of suicide, contact person identified on emergency contact form
- When in doubt, do what's necessary to save the student's life

USA Today 1/24/2006

Student alive and recovering, but complains that school called parents to protect her



CBS News: University officials explained that the school has a policy against disclosing confidential information, except in an emergency. Our counselor felt that calling the student's family was essential to saving her life.