FERPA Concerns in Light of COVID-19 Institution Decisions
4/3/20

Issue
Institutions have made various decisions to address student health and transmission of academic content in response to the COVID-19 pandemic. Protection of student privacy within requirements of the Family Educational Rights and Privacy Act (FERPA) must be maintained. The U.S. Department of Education (ED) released guidance on March 12, 2020 in the form of an FAQ to assist institutions.

Impacted
A student’s personally identifiable information (PII) may be at stake. Institutions must consider the permissible use and protection of the student’s PII when providing notifications, providing electronic transmission of student information and contracting with a third party to help provide academic content.

Effective Dates
FERPA is a currently effective Federal law.

Background
FERPA is a Federal law designed to protect the student education records. The law requires that institutions and educational agencies that participate in any Federal funding program administered by the Secretary of Education must comply with certain requirements when collecting and sharing PII of the student.

For purposes of public notifications, institutions may rely on the health and safety exception to the law if the institution has concerns about a “specific” health or safety threat for which the sharing of the PII with appropriate state or local health officials would mitigate the risk to students and others in the community. However, ED recommends not sharing the PII of students who test positive or has the virus unless it is an emergency situation. ED recommends general notices that do not directly identify the student but suggests that there could be a need to share with specific members of the community who came in close contact with the person.

Additionally, in the shift to online learning, institutions have become reliant on the electronic transmission of student data and must take steps to protect the PII of the student. Institutions should be aware that if they are working with a vendor with access to student data, that the institution must own and direct the use of the data.

Recommended Action(s)
- **Institution Work with Health Officials** – Institutions should communicate with state and local health officials to determine what student information must be shared to address public health concerns.
• **Document Institution Policy** – Institutions should develop a written policy regarding the sharing of student PII with state and local health officials, medical personnel and the community.

• **Contract Stipulations** – Contacts with consultants and other contractors must contain a stipulation to protect student privacy

Applicable laws and regulations

• [20 U.S.C. 1232g](#)

• [34 CFR Part 99](#)

Resources

• [Protecting Student Privacy: FERPA and the Coronavirus](#), Department of Education (March 12, 2020)