



August 21, 2020

To Whom It May Concern:

It has come to our attention that you have been reluctant to provide accurate, timely information to student media about the status of COVID19 cases on your campus, citing the federal Family Educational Rights to Privacy Act (FERPA). Given the importance of ensuring that your campus community be provided with the information they need to protect themselves and others — and given the misunderstandings about this issue that we have seen at several schools — we are pleased to offer the following guidance.

By way of introduction, the Student Press Law Center (“SPLC”) is a national nonprofit organization founded in 1974 that is dedicated to educating high school and college students about the First Amendment and other media law issues and advocating for the rights of student journalists and the educators who work with them.

As you know, FERPA, 20 U.S.C. § 1232g, is a federal law that protects the privacy of student education records. Under FERPA, a parent or eligible student must provide consent before an educational agency or institution discloses “personally identifiable information” (PII) from education records, unless an exception to this general consent requirement applies. 34 C.F.R. § 99.30(a)

In March 2020, the U.S. Department of Education — recognizing that schools “play an important role in slowing the spread of COVID-19 in U.S. communities” — issued new guidelines to “assist school officials in protecting student privacy in the context of COVID-19 as they consider the disclosure of personally identifiable information” to protect their communities.

The following points reflect those guidelines and the law more generally:

- 1. Student media has the right to gather and provide accurate information about their classmates’ COVID19 status or the conditions at your school. FERPA does not limit that right.**



FERPA does not restrict the right of *student media* to independently obtain and/or publish lawful information that might fall within the statute’s “educational records” definition. That would include, for example, the COVID19 status of specific students or images of their classmates as they return to school this fall. FERPA only restricts the ability of *school employees and their agents* to release student educational records. Students are generally neither employees nor agents of the school and any attempt on your part to limit student media from gathering or publishing otherwise lawful information is both misguided and potentially illegal.

2. **FERPA does not restrict your ability to disclose statistical data about the prevalence of COVID19 on your campus that does not identify individual students. Moreover, at a public institution, FERPA cannot be used as an excuse to deny access to such information in response to a request under your state’s open records law.**

FERPA only restricts a school’s authority to release personally identifiable information (PII) about students. Information that does not contain PII, including for example statistical reports about campus COVID19 testing, infections, quarantines, etc., is not subject to FERPA and can be released without obtaining prior consent from students or their parents. Moreover, where documents and data containing such information fall under a state open records law — which will almost always be the case at a public school — you may not lawfully cite FERPA as an excuse for denying public access to such information.

3. **FERPA cannot be used as an excuse to deny access to information about the COVID19 status of faculty, school employees or other non-students.**

As the Department of Education noted in its March 2020 guidelines: “Nothing in FERPA prevents schools from telling parents and students that a specific teacher or other school official has COVID-19 because FERPA applies to students’ education records, not records on school officials.”

4. **The U.S. Department of Education has eased FERPA restrictions on the release of student information and does allow you to notify students and other affected individuals of another student’s COVID19 status where necessary to protect their health or safety.**



As the Department of Education noted in its March 2020 guidelines: “If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of the student or another individual and that certain parties need the PII from education records, to protect the health or safety of the student or another individual, it may disclose that information to such parties without consent. This is a flexible standard under which the Department will not substitute its judgment for that of the educational agency or institution.

I hope you will agree that providing accurate, timely data about the prevalence of COVID19 on your campus, as well as transparency about your school’s response to the pandemic, is essential to ensuring that students and other members of the campus community can protect themselves and have confidence and trust that you are looking out for their best interests. Student media are well-suited to assist you with this and should be seen as allies, not adversaries, in this meeting this shared goal during these unprecedented times.

I hope that you find this helpful. We would be pleased to try and answer any other questions on this topic you might have.

Sincerely,

STUDENT PRESS LAW CENTER

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