



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

DEALING WITH PUBLIC HEALTH ISSUES IN LIGHT OF FERPA

Like other federal, state, and local officials, school boards are increasingly having to address growing concerns regarding the spread of the COVID-19 (a.k.a. coronavirus). Many believe schools can play an important role in slowing the spread of COVID-19 in their communities. To this end, there are several factors and considerations on which school officials must focus in making decisions regarding preparedness and student/staff safety. One such consideration is how to work with public health officials in managing public health issues related to COVID-19, while protecting the privacy of students' education records as required by the Family Education Rights and Privacy Act (FERPA).

FERPA is a federal law that protects the privacy of student education records and personal identifiable information (PII) contained within those records. The law applies to all educational agencies and institutions that receive funds under any program administered by the Secretary of Education. The term "educational agencies and institutions" under FERPA generally includes school districts and public schools at the elementary and secondary levels, as well as private and public institutions of postsecondary education. FERPA gives parents certain rights with respect to their children's education records at educational agencies and institutions to which FERPA applies. These rights transfer to students when they reach the age of 18 or attend an institution of postsecondary education at any age. Under FERPA, a parent or eligible student must provide a signed and dated written consent before an educational agency or institution discloses PII from education records, unless an exception to the general consent requirement applies. For instance, pursuant to one such exception, the "health or safety emergency" exception, educational agencies and institutions may disclose to a public health agency PII from student education records without prior written consent in connection with an emergency if the public health agency's knowledge of the information is necessary to protect the health or safety of students or other individuals.

The health or safety emergency exception to FERPA's general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception. For purposes of FERPA's health or safety emergency exception, the determination by a school that there is a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities.

If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, a school in that community may determine that an emergency exists as well. **Under the FERPA health or safety emergency exception, a school is responsible for making a determination, on a case-by-case basis, whether to disclose PII from education records, and it may take into account the totality of the circumstances pertaining to the**

threat. If the school 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. Within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed.

There may be a rare situation during a health or safety emergency, however, in which schools may determine (in conjunction with health, law enforcement, or other such officials) that parents and students are appropriate parties to whom to disclose identifiable information about another student with COVID-19. For example, school officials may determine that it is appropriate to disclose personal identifiable information about a student with COVID-19 to parents of other students if parents need to know this information to take appropriate action to protect the health or safety of their children. For example, if a student with COVID-19 is a basketball player and has been in direct and close contact with other students who are on the same basketball team or who are in the same school and have higher health risks, school officials may determine it necessary to disclose the identity of the diagnosed student to the parents of these other students. In these limited situations, parents and students may need to be aware of this information in order to take appropriate precautions or other actions to ensure the health or safety of their child or themselves, especially if their child or they may have a higher risk of susceptibility to COVID-19 or of developing severe complications from COVID-19. School officials should make the determination on a case-by-case basis whether a disclosure of the student's name is absolutely necessary to protect the health or safety of students or other individuals or whether a general notice is sufficient, taking into account the totality of the circumstances, including the needs of such students or other individuals to have such information in order to take appropriate protective action(s) and the risks presented to the health or safety of such students or other individuals.

The U.S. Department of Education, through the Student Privacy Policy Office, has issued guidance in the form of FAQs regarding the application of FERPA in addressing the COVID-19 pandemic. Issues addressed in this article, as well as other related issues, are explained in the guidance. This guidance may be accessed at the following link:

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa%20and%20coronavirus%20frequently%20asked%20questions_0.pdf.

Additional information relating to the COVID-19 pandemic may be found on the ND Department of Health's website (<https://www.health.nd.gov/>) and the Center for Disease Control's website (<https://www.cdc.gov/coronavirus/2019-ncov/index.html>).

For additional K-12 education-related information, please contact NDSBA or the ND Department of Public Instruction.