

FERPA

*The information shared below is offered as general guidance, not formal legal advice.

Legitimate Educational Interest:

Only school officials with a legitimate educational interest may access Family Educational Rights and Privacy Act (FERPA) protected education records, and schools are responsible for determining who is considered a “school official with a legitimate educational interest.” Generally, this includes school professionals with expertise in education, mental health, behavioral interventions, and safety and security. Non-school employees, whose professional expertise can help to address school safety concerns, may also be designated as school officials for the purpose of serving on a BTAM team if they meet certain criteria. For example, an SRO/law enforcement officer employed by the city police department can serve on a school’s threat assessment team but could not disclose, without consent, PII from a student’s educational records to anyone else unless the health or safety emergency exception is met.

Notification of Disclosure

The information disclosed must be related to the specific presenting concern and may be disclosed only to protect the health and/or safety of student or other individuals. A notation must be made in the student’s educational record to the articulable and significant threat that formed the basis for the disclosure, and the parties to whom the information was disclosed. While parents and eligible students have a right to inspect and review the record of disclosure, they do not need to be proactively informed that records have been disclosed.

Limited to Period of Emergency

The FERPA exception is temporarily limited to the period of the emergency and does not allow for a blanket release of PII or disclosures for those emergencies that might occur (evidence must support a strong likelihood the emergency will occur without disclosure), and covers only educational records. If the above guidelines are followed, the U.S. Department of Education would likely not find a school in violation of disclosing FERPA protected information under the health and safety exception as long as the school had a supported rationale, based upon information available at the time, for making a determination of a significant and articulable threat to the health and safety of the student or other individuals.

What is an Educational Record?

Educational records are protected by FERPA, non-educational records are not guided by FERPA guidelines.

<i>EDUCATIONAL RECORDS</i>	<i>NOT EDUCATIONAL RECORDS</i>
Transcripts	Records that are kept in the sole possession of the maker and used only as personal memory aids
Disciplinary records	Law enforcement unit records
Standardized test results	Grades on peer-graded papers before they are collected and recorded by teacher
Health (including mental health) and family history records	Records created or received by a school after an individual is no longer in attendance and that are not directly related to the individual’s attendance at the school
Records on services provided to students under the Individuals with Disabilities Education Act IDEA/IDEIA	Employee records that relate exclusively to an individual in that individual’s capacity as an employee
Records on services and accommodations provided to students under Section 504 of the Rehabilitation Act of 1973 and Title II of ADA	Information obtained through a school official’s personal knowledge or observation and not from a student’s educational records.

School officials should always consult with district legal counsel if clarification is needed.