

Information Sharing Guidance for Idaho's Behavioral Threat Assessment and Management Teams at Institutions of Education



Idaho State Board of Education
Office of
School Safety
and Security



Introduction and Overview

Preventing and responding to campus violence is a community issue that involves various people, agencies and educational institutions. It requires coordinated information sharing from multiple stakeholders. Notably, one of the key recommendations from the final reports on the shootings at Columbine High School, Virginia Tech, and Arapahoe High School was that campus officials and other community partners should improve communication and information sharing to help prevent future incidents of campus violence.¹ However, education personnel may be uncertain about privacy restrictions under the Family Educational Rights and Privacy Act (FERPA) and the extent to which they may share a student's information with other school districts and postsecondary institutions.

This guidance document outlines how FERPA permits lawful information sharing amongst behavioral threat assessment and management (BTAM) teams across K–12 and higher education settings in Idaho, and outlines the law's current exemptions, exceptions and collaborative frameworks that protect student privacy while supporting safety. This guidance does not constitute legal advice and is not a substitute for sound legal advice from a school district or institution of higher education's legal counsel. Additionally, laws change regularly, and best practices evolve over time. Readers should consult their own counsel with all legal questions and issues that may arise.

¹ The Report of Governor Bill Owens' Columbine Review Commission, STATE OF COLO. (2001), <https://schoolshooters.info/sites/default/files/Columbine%20-%20Governor%27s%20Commission%20Report.pdf>. Mass Shootings at Virginia Tech, VIRGINIA TECH REVIEW PANEL (2007) <https://scholar.lib.vt.edu/prevail/docs/VTRewiewPanelReport.pdf>. Sarah Goodrum & William Woodward, Report on the Arapahoe High School Shooting: Lessons Learned on Information Sharing, Threat Assessment, and Systems Integrity, CTR. FOR THE STUDY & PREVENTION OF VIOLENCE (2016), https://cspv.colorado.edu/wp-content/uploads/2019/03/Report_on_the_Arapahoe_High_School_Shooting_FINAL.pdf.

FERPA Protections²

Who is Protected?

FERPA affords protections to parents and eligible students. The definition of parent includes a natural parent, guardian, or an individual acting as a parent in the absence of a parent or a guardian. An eligible student is a student who is 18 years old or older, or is attending an institution of postsecondary education.

The rights of most K-12 students under FERPA will be with the parents. Once a student reaches 18 years old or enters and is attending a postsecondary institution, those rights transfer from the parent(s) to the student.

What is Protected?

FERPA protects a student's education records and their personally identifiable information (PII) contained therein. Education records are defined as records that are directly related to a student and maintained by an educational agency or institution. PII refers to data that would allow a reasonable person in the campus community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty.³

FERPA applies to all campuses that receive funds under any program administered by the U.S. Department of Education. Under FERPA, education records generally cannot be disclosed without written consent from a parent or eligible student.⁴ However, there are specific exemptions and exceptions that make it possible to communicate essential safety information among members of a BTAM team and with partner agencies and other educational institutions when necessary. The goal of this document is to ensure that privacy protections remain intact while enabling campuses to act quickly and appropriately when a student poses a risk of harm to self or others. Related to this goal and as detailed below, violence prevention strategies that involve the

² 272 20 U.S.C. § 1232g, 34 C.F.R. §§ 99.1-99.67.

³ 273 34 C.F.R. § 99.3.

⁴ FERPA also requires that campuses maintain a record of all disclosures of FERPA-protected information.

sharing of student information in appropriate circumstances are generally not in conflict with FERPA's privacy protections.

FERPA's Exemptions and Exceptions

The concept of an education record is often viewed as any form of information about a student, but this is not the case. Certain types of information fall outside the definition of an education record and therefore may be shared without consent.

FERPA Exemptions: Non-Education Records⁵

1. Personal knowledge or observation

Information based on a campus official's personal knowledge or observation is not an education record maintained by an educational agency. FERPA protects only tangible education records - it does not protect other types of information that a campus employee gains through hearsay, from overhearing a conversation, or from their own personal observations. Because such information is not maintained in a student's education record, the information may generally be disclosed. Additionally, student-generated information not maintained in a student's education record (e.g., social media posts, notes to another student) does not qualify as an education record.

- *Example (K-12): A teacher overhears a student threatening violence toward classmates and immediately reports it to the school's BTAM team. Because this knowledge is based on observation, not a record maintained by the school, it can be shared without written consent.*
- *Example (higher education): A residence hall advisor witnesses a student expressing suicidal intent and reports it to the university's BTAM team. Since this comes from personal observation rather than a recorded and maintained education file, it may be shared without violating FERPA.*

2. Private notes

⁵ 274 20 U.S.C. § 1232g(a)(4); 34 C.F.R. § 99.3.

Personal notes kept solely for an individual's own memory aid and not shared with others are not considered education records. Information from personal notes thus can be shared with BTAM teams and used to support threat assessment decisions as long as they remain separate from official files.

3. Law enforcement unit records

This exemption applies to records (1) created by a "law enforcement unit," (2) maintained by that unit, and (3) that are for the purpose of law enforcement.

Federal regulations under FERPA define a "law enforcement unit" as:

Any individual, office, department, division, or other component of an educational agency or institution, such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to—

(i) Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state, or federal law against any individual or organization other than the agency or institution itself; or

(ii) Maintain the physical security and safety of the agency or institution.

In practical terms for Idaho's K-20 campuses, a "law enforcement unit" does not need to consist of sworn law enforcement officers but can be anyone who is designated or authorized to maintain the physical security and safety of the educational institution – even if they perform other duties. For example, the vice principal of a high school who oversees safety and security; a non-sworn campus safety office; a dean of student's office whose personnel chair the campus BTAM team; or anyone else who meets the definition above.

Records created for law enforcement purposes include threat assessment records, incident reports created by campus security, files of investigations into threats or crimes on campus, or records of a crime on the campus.

For Idaho's K-20 campuses, consider designating a law enforcement unit in your policy and ensure that records maintained within that unit are maintained separately from educational records. Records, including BTAM

records, that are designated as law enforcement records and maintained by the law enforcement unit are not subject to FERPA's disclosure requirements.

Law enforcement unit records can be kept in a variety of formats including surveillance videos, photographs of students, structured professional judgment tools, BTAM interview notes, written reports, etc. If the records are maintained by a component of the campus other than a law enforcement unit, or the records are utilized for non-law enforcement purposes (e.g., an investigation report is subsequently used in disciplinary action against a student), it is protected by FERPA and another exception or the consent requirements apply to disclosure.

- *Example (K-12 → higher education): The vice principal in charge of safety at a high school shares BTAM records with the dean of student's office at a community college where the student has enrolled. These are considered law enforcement unit records and no consent to share is needed.*
- *Example (K-12): A school resource officer documents an investigation into a student's possession of a weapon on campus. This report, maintained by the police department, may be shared with other law enforcement or BTAM teams as appropriate.*
- *Example (Higher education): Local police that a university contracts with capture security footage of a student vandalizing property while making violent statements. That footage, maintained for police purposes, can be shared with the university BTAM team.*

4. Employment records of campus personnel

Records which relate only to an employee in that person's capacity as an employee are not education records.⁶ However, personnel records are exempt from disclosure to the public under Idaho's public records act⁷ and public school employee personnel files are confidential under Idaho Code § 33-518.

⁶ This exemption only applies to records of non-student employees.

⁷ Idaho Code § 74-106

5. [Alumni records](#)

Records about former students are protected by FERPA if they relate to the former student's attendance at the school. As noted above, threat assessment records pertaining to a former student stored in a law enforcement unit, would not be education records under FERPA and can be disclosed. Additionally, records created about a former student, after the student is no longer in attendance, would not be education records.

6. [Treatment records for postsecondary students](#)

Records created by a licensed healthcare professional and used only for treatment purposes are governed by HIPAA, if the entity is a HIPAA covered entity. Treatment records may be disclosed to other school officials within the agency or institution who has a legitimate educational interest, without consent, and to outside persons, such as law enforcement, where the health and safety exception (below) applies.

7. [Records related to students with disabilities](#)

Records created by a public-school employee or independent contractor in the course of providing treatment to a student with disabilities are protected as educational records under FERPA. However, if the school bills Medicaid for the treatment, it becomes a HIPAA covered entity and the transaction of billing data falls under HIPAA. Further, medical records provided by a parent to a school for evaluation under the Individuals with Disabilities Education Act become education records with FERPA protection.

FERPA Exceptions: When Education Records May be Disclosed Without Consent⁸

FERPA recognizes several circumstances under which education records may be shared without prior consent. Three of these exceptions are particularly relevant to BTAM teams: the disclosure of directory information; the legitimate educational interest exception; and the health or safety emergency exception.

⁸ 20 U.S.C. § 1232g(b)(1).

1. Directory information

Directory information generally includes student names, addresses, electronic mail addresses, telephone numbers, participation in extracurricular activities or sports, height and weight of members of athletic teams, dates of attendance, degrees received, and previous attendance at other educational institutions. Such information may be disclosed without prior consent and the disclosure does not need to be recorded. In its annual notice to parents and eligible students, the school must describe the types of PII designated as directory information and provide an opportunity to opt-out of the disclosure.

2. Legitimate educational interest

PII from an education record may be shared with other campus officials who have a legitimate educational interest in the information. Generally, a campus official has a legitimate educational interest if they need to review an education record in order to fulfill their professional responsibilities. Campus officials are those who:

- Perform an institutional service or function for the campus;
- Are under the direct control of the campus with respect to the use and maintenance of education records;
- May use the records only for the purposes for which the disclosure was made, e.g., to promote campus safety and the physical security of students; and
- Meet the criteria specified in the campus' annual notification of FERPA rights for being an official with a legitimate educational interest in the education records.

Officials typically include teachers/instructors, administrators, board members, school resource officers and specialized service providers, including BTAM team members.¹⁰ Campus officials such as BTAM teams have legitimate educational interests in the behavior of a student. As such, campuses can include information in a student's education record pertaining to disciplinary actions for conduct that creates a significant risk to the safety and well-being

¹⁰ If a campus's threat assessment team includes members who are not employees of the campus (e.g., local law enforcement), these individuals may only access student education records if they are under the direct control of the school as it pertains to the maintenance and use of the education records.

of the student and/or the campus community, and may disclose this information to those who qualify under this exception. Meaning, this information could be disclosed to campus officials at *another school or campus* (e.g., another school or campus's BTAM team), if the other school or campus has a legitimate educational interest in the behavior of the student (e.g., transferring to or attending a school-sponsored activity at the other school, being a dual-enrolled student at a campus of higher education, etc.).

- *Example (K-12 → higher education): A K-12 district may share a student's threat assessment records with an institution of higher education's BTAM team if the student has been accepted, is dual-enrolled, or is participating in the institution of higher education's program.*
- *Example (higher education → K-12): an institution of higher education may share threat assessment records with a K-12 BTAM team if a student continues to engage in dual-enrollment or presents safety concerns on shared facilities.*
- *Example (K-12 → K-12 and higher education → higher education): a campus' BTAM team may share threat assessment records on a student who has transferred to another campus.*

Whenever sharing information under this exception, campuses must use reasonable methods to ensure that access is limited to education records in which campus officials have a legitimate educational interest. Under this exception, campuses do not need to record the disclosure.

3. Health or safety emergency

In case of emergency, disclosure of a student's education record is permitted without consent to the extent necessary to protect the health or safety of the student or others. This exception requires campuses to make case-by-case determinations, based upon the totality of the circumstances, as to whether there is an articulable and significant threat to the health or safety of a student or other individuals. This standard simply requires that campus officials be able to explain their reasoning for making a disclosure under this exception. As long as there is a rational basis for the campus's decisions about the nature of the emergency and the appropriate parties to whom the information should be disclosed, the U.S. Department of Education has

signaled that it will not second-guess the decision of campus officials to disclose the information.^{11 12}

Relatedly, it is important to note that in 2008, the Family Policy Compliance Office (FPCO) made specific changes to FERPA regarding school violence prevention.¹³ These changes removed language about narrowly construing the health or safety emergency exception and requiring its use only in cases of imminent threats. Instead, FPCO provided a more flexible approach. In light of the 2007 shooting at Virginia Tech and similar incidents, FPCO made changes to FERPA to give latitude and deference to campus officials presented with concerns about potential harm to their communities.¹⁴ Accordingly, campus officials, including BTAM members, should feel confident about their ability to share relevant information in cases of potential health and safety concerns. When in doubt, consider the potential consequences of what could happen if relevant information is *not* shared. For example, would not sharing relevant information reduce the effectiveness of preventative measures or increase risk of harm to the student or others in your campus community?

Once a campus determines there is an articulable and significant threat to the health or safety of a student or others, the campus must then determine who should receive the PII/education record. FERPA allows the information to be shared with “appropriate parties” (i.e., those whose knowledge of the information is necessary to protect the student or others from harm). This often includes law enforcement officials, public health officials, medical professionals, and/or parents, but would also include relevant campus BTAM teams.

Within a reasonable time after the emergency has been addressed, campuses are required to make a specific record of the disclosure. The record

¹¹ 34 C.F.R. § 99.36.

¹² There are limitations to this exception: the potential threat must be present and the exception is only available for the period in which the emergency exists; the exception does not permit a blanket release of PII or education records - only the information that is needed to address the emergency may be disclosed.

¹³ FPCO is responsible for administering two federal laws that provide parents and students with certain privacy rights: FERPA and the Protection of Pupil Rights Amendment.

¹⁴ Katrina Chapman, A Preventable Tragedy at Virginia Tech: Why Confusion Over FERPA's Provisions Prevents Schools from Addressing Student Violence, 18 B.U. PUB. INT. L.J. 349, 360-362 (2009).

must include (1) the articulable and significant threat justifying the disclosure and (2) the parties to whom the campus disclosed the information.¹⁵

- *Example (K-12 → higher education):* After learning that a student has posted a violent threat online, the K-12 BTAM team where the student is enrolled determines there is a credible threat and shares relevant details with law enforcement and the community college BTAM team where the student is dually enrolled.
- *Example (Higher Education → K-12):* A university BTAM team identifies a student showing escalating aggression and suicidal behavior. The team obtains limited information from the student's former high school BTAM team to ensure effective intervention strategies and coordination of care.
- *Example (K-12 → K-12):* When a K-12 student transfers to a new district after making threats, the original district's BTAM team shares relevant BTAM documentation to help the receiving district implement safety measures and support plans.

Campus Staff Liability under FERPA

Campus officials cannot be held personally liable for FERPA violations. FERPA is designed to address institutional policies and practices related to students' privacy interests, not individual disclosures. If a campus violates FERPA protections, the U.S. Department of Education may issue a cease-and-desist order, require the campus to make changes to its procedures, or deny federal funding to the campus.¹⁶ Students and parents do not have a private right of action to directly sue a campus or campus official for an unauthorized disclosure of protected information.¹⁷

Conclusion

When faced with the choice of remaining silent or sharing potentially valuable information about a concerning student, campus officials, including BTAM teams, should err on the side of safety and disclose the appropriate

¹⁵ 34 C.F.R. § 99.32(a).

¹⁶ 34 CFR § 99.67(a)(1).

¹⁷ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 275 (2002). See §§ 1232g(b)(1)-(2).

information to the proper authorities who can help mitigate potential threats to themselves or campus communities