

# Feds Address Substantial Misunderstanding in Application of FERPA in School-Based Threats

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Federal education officials continue to carve out guidelines on the confusing intersection of privacy laws and school safety measures.

In an effort to further clarify this issue, on the U.S. Department of Education issued new guidance Tuesday, "[School Resource Officers, School Law Enforcement Units, the Family Educational Rights and Privacy Act \(FERPA\)](#)." The department issued the guidance in part to respond to conclusions from the [Federal School Safety Commission's School Safety Report](#) from December.

Among the commission's findings was a determination that "a substantial misunderstanding remains at the local level among officials and educators concerning FERPA, and in particular its application to school-based threats." The new guidance includes a comprehensive FAQ addressing how school entities should interpret and apply FERPA when addressing school safety procedures and emergency situations.

FERPA includes exceptions permitting educational entities to disclose personally identifiable information from a student's educational record without prior consent to designated "school officials" determined to have a "legitimate educational interest" in the information. There also are other limited circumstances for disclosure including safety emergencies. The School Safety Commission indicated that school resource officers could receive such information because they have a legitimate interest in school safety. The new guidance notes that when certain conditions are met, off-duty police officers and school resource officers can be deemed as school officials if the school district has outsourced school safety and security to law enforcement officials.

The guidance also reiterates the FERPA health and safety emergency provision " permits such disclosures when the disclosure is necessary to protect the health or safety of the student or other individuals." However, "[t]his exception to FERPA's general consent requirement is limited to the period of the emergency and does not allow for a blanket release of [protected information] from a student's education records. Rather, these disclosures must be related to a significant and articulable emergency, such as an impending natural disaster, a terrorist attack, a campus threat, or the outbreak of an epidemic disease."

The document consists of 37 commonly asked questions about schools' and school districts' responsibilities under FERPA. These questions relate to disclosures of student information to school resource officers, law enforcement units and others. The document seeks to explain and clarify how FERPA protects student privacy while ensuring the health and safety of students and others in the school community. Some of the questions include:

- Does FERPA distinguish between student resource officers or other outside local police officers who work

in a school?

- Does FERPA permit schools and districts to disclose education records, without consent, to outside law-enforcement officials who serve on a school's threat assessment team?
- How does a school or district know when a health or safety emergency exists so that disclosure may be made under this exception to consent?
- Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?

If you have any questions regarding this new guidance and how it affects your school, or wish to review your current practices, policies, and procedures, please contact any member of the [Barley Snyder Education Practice Group](#).