

FACT SHEET ON THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) AMENDMENTS OF 2008

Background:

The Family Educational Rights and Privacy Act (FERPA) of 1974 is a federal law that protects the privacy of student education records. FERPA applies to all educational institutions that accept federal funding, including institutions of higher learning, and public elementary and secondary schools. FERPA was designed at a time when students with physical, developmental, behavioral, and mental health conditions rarely attended school or were rarely monitored. Schools played a minimal role as health care providers, a circumstance that has changed substantially today. The genesis for this legislation is a 2007 report prepared on the Virginia Tech shooting for Virginia Governor Tim Kaine, as well as a similar report prepared for President Bush by the Attorney General and the Secretaries of HHS and Education. Both reports specifically cite clarifying FERPA as important in preventing future tragedies.

The Family Educational Rights and Privacy Act Amendments of 2008 would:

- Eliminate ambiguity that currently exists in FERPA as to the sharing by on-campus health care providers of students' medical records with off-campus health care providers when both are involved in treating the student. This section of the bill is meant to confirm that such information sharing is not prohibited by the federal education privacy law.
- Provide a "safe harbor" provision which ensures school officials that disclosure of information in emergency situations is allowed. Schools are reassured that they will not be in violation of FERPA if they choose to share information in a good faith belief that disclosure is necessary to protect the safety of the student or other persons.
- Clarify the emergency exception section in FERPA that allows for information sharing during an emergency. This bill would add a good faith provision in the emergency exception to protect against a potential threat to the health or safety of a student or other persons. Decisions about when an emergency disclosure is needed often must be made at a moment's notice, and school officials may otherwise choose to err on the side of caution for fear of potential liability to teachers, administrators, or institutions.

Why This Bill is Needed:

This bill is designed to clarify that federal education privacy laws do not impede an on-campus counseling center's decision when making a professional judgment to share students' health care records with outside health care providers. This bill is also intended to clarify the applicability of FERPA to treatment records at college clinics. The inclusion of an explicit "safe harbor provision" is intended to encourage good faith disclosures of information for health or safety reasons without fear of violating the federal educational privacy law.