

HEALTH AND SAFETY EXEMPTION

FERPA permits non-consensual disclosure of education records, or personally identifiable, non-directory information from education records, in connection with a health or safety emergency under § 99.31(a)(10) and § 99.36 of the FERPA regulations. In particular, § 99.36(a) and (c) provide that educational agencies and institutions may disclose information from an education record “to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals” and that the exception will be “strictly construed.” Congress’ intent that the applicability of this exception be limited is reflected in the Joint Statement in Explanation of Buckley/Pell Amendment, 120 Cong. Rec. S21489 (Dec. 13, 1974). Accordingly, the Department consistently has limited the health and safety exception to a specific situation that presents imminent danger to a student, other students, or other members of the school community – or to a situation that requires the immediate need for information from education records in order to avert or diffuse serious threats to the safety or health of a student or other individuals .For example, the health or safety exception would apply to nonconsensual disclosures to appropriate persons in the case of a smallpox, anthrax or other bioterrorism attack. This exception also would apply to nonconsensual disclosures to appropriate persons in the case of another terrorist attack such as the September 11 attack. However, any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency. As the legislative history indicates, this exception is temporally limited to the period of the emergency and generally will not allow for a blanket release of personally identifiable information from a student’s education records. Under the health and safety exception school officials may share relevant information with “appropriate parties,” that is, those parties whose knowledge of the information is necessary to provide immediate protection of the health and safety of the student or other individuals. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. § 99.36(a).

Typically, law enforcement officials, public health officials, and trained medical personnel are the types of parties to whom information may be disclosed under this FERPA exception. FERPA’s record keeping requirements (§ 99.32) apply to disclosures made pursuant to the health or safety exception. The educational agency or institution has the responsibility to make the initial determination of whether a disclosure is necessary to protect the health or safety of the student or other individuals. However, the Department is available to work with institutions to assist them in making such decisions in order to ensure that the disclosure comes within the exception to FERPA’s requirement of prior written consent. In short, the health or safety exception will permit the disclosure of personally identifiable information from a student’s education record without the written consent of the student in the case of an immediate threat to the health or safety of students or other individuals. Of course, a school official, based on his or her own observations, may notify law enforcement officials of suspicious activity or behavior. Nothing in FERPA prohibits a school official from disclosing to federal, State, or local law enforcement authorities information that is based on that official’s personal knowledge or observation and not from an education record.