



Legal Training for Government, Schools, and First Responders

THE APPLICABILITY OF THE FAMILY EDUCATION RIGHTS & PRIVACY ACT (FERPA) TO SCHOOL-BASED THREAT ASSESSMENT TEAMS

Frequently Asked Questions

Introduction: CLPS' legal advisor, Response Law, LLC, through its President and CEO, Dr. John L. More, has set forth below some of the most often-asked questions with corresponding answers regarding FERPA and how it applies to the school threat assessment process. Dr. More is a national instructor on the legal aspects of school threat management and authored the *"Information Sharing Guide for K-12 Public Schools"* for the Virginia Department of Criminal Justice Services.

Q1: What is FERPA and what does it protect?

A1: FERPA is a federal law created to protect the educational records of students that are maintained by educational agencies or institutions. Access to these records generally requires the prior consent of the parent or eligible student unless some exception applies.

Q2: Does FERPA allow school threat assessment team members to access the educational records of a student?

A2: Yes, but only if the accessing member has already qualified as a "school official" with a "legitimate, educational interest" under FERPA.

Q3: How does a threat assessment team member qualify as a "school official" under FERPA?

A3: FERPA (§ 99.31(a)(1)(i)(B)) permits schools to outsource institutional services or functions that involve the disclosure of education records to contractors, consultants, volunteers, or other third parties provided that the outside party:

1. Performs an institutional service or function for which the agency or institution would otherwise use employees;
2. Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
3. Is subject to the requirements in § 99.33(a) that the personally identifiable information (PII) from education records may be used only for the purposes for which the disclosure was made, e.g., to promote school safety and the physical security of students, and governing the redisclosure of PII from education records; and
4. Meets the criteria specified in the school or local educational agency's (LEA's) annual notification of FERPA rights for being a school official with a legitimate educational interest in the education records.

Q4: Is it best to have, if circumstances permit, all threat assessment team members qualified as "school officials"?

A4: Yes. In doing so, the entire team can access the personal, identifiable information of a student's educational record so long as they have a legitimate educational interest in doing so. This helps streamline the investigative process for the team in determining the credibility of a threat.

Q5: Who should be on the threat assessment team?

A5: Although a wide variety of school personnel may qualify as team members, some of the key members should include administrators, faculty, security, school resource officers, mental health professionals, and outside law enforcement.

Q6: What information may be utilized by threat assessment team members that does not fall under FERPA requirements?

A6: Some examples of this type of information are:

- Interviews with students, parents, school employees, and witnesses
- Searches of students based upon a reasonable suspicion of evidence related to the threat investigation
- Searches of school property such as lockers, desks, and school-owned electronic devices
- Drawings, writings, photos, or any other information that is in plain view or volunteered by anyone

Q7: May threat assessment team members access school-owned and controlled video cameras as part of their threat investigation?

A7: Yes, so long as the members accessing the video are "school officials" under FERPA with a legitimate educational interest in doing so.

Q8: May threat assessment team members access a student's health record?

A8: Yes. A student's health record is part of their educational record under FERPA, and the member may access it if they are a school official with a legitimate educational interest in doing so. Keep in mind FERPA, not HIPAA, applies to student health records.

Q9: What types of behavior are generally investigated by a threat assessment team?

A9: Some examples are:

- Any behavior by a student that poses a potential threat
- Any behavior that is significantly disruptive to the educational process
- Any behavior that may be construed as a request for assistance by the student
- Any circumstances that require the team to determine if a health and safety emergency exists

NOTE: School and police personnel should never hesitate to share information immediately regarding potential danger or violence.

*The answers provided above are summarized excerpts from FERPA and supporting law. For a complete review of the law, please see 20USC§1232(g)/34CFR Part 99.