

Privacy on Campus: Managing Student & Employee Data with Confidence

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Presenters:

Isabel Alele, Associate General Counsel

Andre Lindsay, Senior Associate General Counsel





Overview

- ☐ Part I: Overview of FERPA and HIPAA, when they apply, and key differences.
- ☐ Part II: Discussion of laws governing the privacy of employee records.
- ☐ Part III: Practical application and common scenarios
- ☐ Part IV: Questions



The Basics of FERPA



Family Educational Rights and Privacy Act

- FERPA rights and obligations generally apply to “education records”
 - **Directly related** to the student (other than directory information)
 - **Maintained** by the University.
- Rights shift from parent to student at 18 or upon attendance at postsecondary institution
- Prior written consent is required to share education records, unless an exception applies



Exceptions



What is not an “Education Record”?

- Campus police records;
- Employment records (unless dependent on status as a student);
- Non-circulating faculty or staff records made for personal use;
- Treatment records (medical/counseling);
- Certain alumni records; and
- Interaction about a student learned through personal observations (i.e. “He’s a hard worker.”)



Treatment Records

- FERPA excludes “treatment records” from the definition of “education records”, 20 U.S.C. § 1232g(a)(4)(B)(iv)
- Treatment records are:
 - made or maintained by a healthcare professional;
 - made, maintained, or used only in connection with treatment; and
 - disclosed only to individuals providing treatment.
- Treatment records must be used exclusively used for treatment purposes – *otherwise, they become education records*



Permitted Disclosures of Education Records

- Directory information
- Written consent of student
- Judicial order/subpoena
- **School officials with legitimate educational interest**
- Parents (if student is dependent for tax purposes)
 - Confirm dependency status with the adult student
 - Consider whether any other rules may prohibit this disclosure. Always go with the more stringent requirement.
- Health/safety emergency
 - Disclosure is based on the totality of the circumstances
 - Limited to the period of the emergency (e.g., campus shooting, disease outbreak)



Example

The university receives the following letter, “ I am a student at UNC Charlotte, and I would like to request all records created by the doctor at the Center for Health and Wellbeing, including all reports and notes.

FERPA excludes treatment records from the definition of an education record. If the requested records were used only for treatment, the university is not required to disclose them to the student.



Example

You work in the Registrar's Office. Your son and his best friend, Tom, attend UNC Charlotte. Both your son and his friend are in the same class. Your son told you that he received a C on his paper. You have access to Banner and want to see what Tim received on his paper. Can you lawfully access this information for this purpose?

No – curiosity is not a legitimate educational interest and you do not need this information to perform your job duties.



Example

You receive a call from local law enforcement asking for a copy of a student's class schedule because they are investigating a matter involving the student. Can you provide this information?

No, unless you receive a lawfully issued subpoena.



Basics of HIPAA



Overview of HIPAA

- HIPAA generally applies to covered entities and their business associates.
- HIPAA defines “covered entities” to include health care providers who electronically transmit “health information” in a covered transaction.
- HIPAA defines “protected health information” to exclude both “education records” and “treatment records” as described in FERPA.
- HIPAA Privacy, Security, and Breach Notification Standards apply to covered entities and business associates that handle PHI.



FERPA v HIPAA





The Rule	HIPAA	FERPA
Purpose	Healthcare data privacy, security, and electronic transaction standards.	Privacy of student educational records and institutional access.
Who Must Comply?	Covered entities: healthcare clearinghouses, health plans, healthcare providers who transmit health information in a covered transaction, and their business associates.	Educational Institutions: Any public or private school, college, or university receiving federal funding (and their contractors).
What is Protected?	Protected Health Information (PHI): Individually identifiable health information.	Education Records: Any records directly related to a student maintained by the institution (e.g., grades, transcripts, disciplinary, and student health clinic records).



The Rule	HIPAA	FERPA
Breach Notification Requirements	Strict Federal Rule: Must notify affected individuals, HHS, and media (if >500 records) within 60 days of breach discovery.	Context-Dependent: No rigid federal timeline, but institutions must document breaches. State laws and university policy enforce strict timelines.
Penalties	Severe Financial & Criminal: Tiered civil penalties ranging from \$100 to \$50,000+ per violation. Willful neglect can result in jail time.	Institutional Funding Loss: Withholding of DOE funding.
Application to Higher Ed	Does not apply to student health records created/maintained by a university clinic if they qualify as "education" or "treatment" records under FERPA.	Governs student health clinic records. Generally speaking, if a university treats a non-student, HIPAA applies; if they treat a student, FERPA applies.



Employee Records: *To Disclose or Not Disclose!*





Employee Personnel Records

- All records that are created regarding an employee's performance or the terms and conditions of their employment are considered part of that employee's personnel file.
- This includes onboarding and benefits information, payroll, annual appraisals, promotion/demotion, disciplinary information, ADA accommodations, and workers' compensation, etc.
- Personnel information can be maintained in any format, including electronic format.



Employee Personnel Records

- Most documents in an employee's personnel file are not considered public records; only the following items are:
 - Name
 - Age
 - Dates of employment
 - Employment contracts
 - Position/Title
 - Salary and salary increases
 - Assigned department
 - Date and type of dismissal, suspension, or demotion for disciplinary reasons
- The Privacy of State Employee Records ([Chapter 125 – Article 7](#))



Employee Medical Information

- Under both federal law and North Carolina law, employers generally must keep employee medical and certain personnel information confidential.
- The specific requirements vary by statute, but the overarching principle is that medical and protected employment information should be disclosed only to those with a legitimate business need or as otherwise authorized by law.



Americans with Disabilities Act (ADA)

- The ADA contains the most comprehensive confidentiality requirement applicable to employers.
- Under 42 U.S.C. § 12112(d), information obtained through:
 - pre-employment medical examinations,
 - post-offer medical examinations,
 - fitness-for-duty examinations,
 - disability-related inquiries, and
 - requests for reasonable accommodation
- must be:
 - collected and maintained on separate medical forms,
 - kept in separate confidential medical files, and
 - treated as confidential medical records.



Americans with Disabilities Act (ADA)

- Disclosure is generally limited to:
 - supervisors and managers who need to know about work restrictions or accommodations;
 - first aid and safety personnel when emergency treatment may be necessary;
 - government officials investigating ADA compliance; and
 - other disclosures specifically authorized by law, including certain workers' compensation purposes.



Family and Medical Leave Act (FMLA)

- The FMLA requires confidentiality of employee medical documentation.
- Medical certifications, recertifications, and related medical records obtained for FMLA purposes must:
 - be maintained as confidential medical records;
 - be kept separate from personnel files; and
 - satisfy the ADA's confidentiality requirements when applicable.
- Limited disclosure may be made to supervisors regarding necessary work restrictions and to first aid personnel or government investigators where authorized by law.



Genetic Information Nondiscrimination Act (GINA)

- GINA requires employers that possess employee genetic information to maintain that information as confidential medical information.
- Such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member
- Disclosure is permitted only in limited circumstances identified in the statute ([42 U.S. Code § 2000ff-5](#))



Workers' Compensation

- Workers' compensation claims necessarily involve medical information being shared among the employee, employer, insurer, medical providers, attorneys, and the North Carolina Industrial Commission as needed to administer the claim
- Medical information obtained through the workers' compensation process should not be broadly disseminated throughout the workplace.
- The ADA expressly recognizes that medical information may be disclosed when necessary to administer workers' compensation claims or otherwise comply with workers' compensation laws. Such disclosure should be limited to what is necessary for claim administration.





Thank you!!