

Discussion Draft: Campus Litigation Privacy Act of 2015 Summary

Students enter higher education at a pivotal time in their lives. They are suddenly adults, living on their own for the first time, tackling new academic and social challenges without the familiar support of family and old friends. They are also taking over responsibility for making decisions about their physical and mental health. Fortunately, a variety of options exists for students who seek care, such as campus counseling centers and health clinics, through university-wide health systems, as well as private medical practice. But unfortunately, a great deal of confusion also exists for students navigating through these options for the first time.

A study from the National Alliance for Mental Health highlighted the significant challenge of making students feel safe accessing health services. It found that stigma remains the “number one” barrier to students seeking help; and one of the top five reasons why students do not disclose their mental health concerns is that they “do not trust that their medical information will remain confidential”.

At a minimum, students should never be deterred from seeking counseling services out of fear that the content of their treatment records might one day be shared.

On August 18, 2015, the Department of Education issued a draft “Dear Colleague” letter that outlines best practices for how a student’s medical records may be disclosed and solicits comments on the proposed language. The comment period ends on October 2, 2015. This discussion draft seeks to mirror and codify the Department of Education’s draft guidance. Recognizing the sensitive nature of this issue and potential unintended consequences of far-reaching legislation, feedback from both the privacy and higher education community is critical.

This discussion draft proposes amending federal law to:

- Codify the Department of Education’s guidance regarding how school officials with a “legitimate educational interest” may access student medical records by amending the Family Educational Rights and Privacy Act (FERPA) to restrict an attorney acting on behalf of an educational institution in litigation with a student from accessing a student’s medical health records unless:
 - The student provides informed consent;
 - The attorney has a court order for such information;
 - The litigation in question relates directly to the medical treatment itself or the payment for that treatment; or
 - The attorney provides satisfactory assurances that he or she has exercised due diligence in providing a student with notice and the opportunity to object to the disclosure of records **and** agrees to limit the use, disclosure, and retention of the information to the specific legal proceeding.