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## Amid Virus, Schools Must Balance Data Reporting Against Privacy

By Daniel R. Stoller and Sara Merken Mar 13, 2020

- Federal student privacy law has emergency exceptions
- Schools should follow best practices with data-sharing

Schools that share novel coronavirus information about their students must do so carefully to comply with federal education privacy law, attorneys said.

Federally-funded schools can share personal information from education records without consent under the Family Educational Rights and Privacy Act in limited circumstances, such as to protect health and safety, attorneys said. But they should document their sharing and limit it to appropriate parties.

“Community health and safety takes priority over personal privacy in emergency situations, and this is one,” said Paul Lannon, a partner who co-chairs Holland & Knight LLP’s education team.

Education institutions around the country have canceled classes or shifted to online instruction amid the coronavirus spread. Some schools question what student information they can share with public officials or others seeking to limit the spread, attorneys said.

Schools are generally barred from disclosing personal information from education records without permission. But during emergencies they can share it under an exception to protect the health and safety of other students, teachers, and community members.

Schools also can announce closures or other precautions without identifying individuals, which would not require consent, attorneys said.

Public health officials haven’t started asking for the information in part because students are self-reporting outside of FERPA, attorneys said. “Formal data-sharing requests will come later,” said Paul Lannon, a partner who co-chairs Holland & Knight LLP’s education team.

The Department of Education issued guidance Thursday on how schools can protect student privacy as they think about disclosing personal information to public health officials, students, and parents. The agency underscored that schools can share information under FERPA when public health officials declare a public health emergency.

Law enforcement, public health officials, medical staff and parents are among those who can get information from student records under the FERPA exception, according to the guidance.

“It’s not a blanket authorization,” but schools’ “hands are not tied by FERPA in responding to the coronavirus,” said Alexander Bilus, who advises higher education clients on cybersecurity and data privacy at Saul Ewing Arnstein & Lehr LLP.

### ‘Little Window’

Education institutions should document how they use student records in emergencies, train staff on how to handle information requests, and limit the amount of data shared, said Amelia Vance, director of youth and

education privacy at the Future of Privacy Forum.

Schools should shared only what is necessary, and limit the number of third parties they give it to, attorneys said.

“In the current state, sometimes concerns about privacy get pushed to the background,” Bilus said. “That would be an unfortunate effect of what’s going on.”

Past outbreaks, such as meningitis, have helped the University of Wisconsin-Madison “make sure we’re well prepared to handle this situation,” said John Lucas, the school’s assistant vice chancellor of communications.

The university “will share information with public health authorities as appropriate under” the emergency exemption but “will continue to abide by FERPA and ensure that our communications to the campus community do not violate students’ privacy,” Lucas said.

Lucas said he isn’t aware that the university has received any health-data requests.

Schools that don’t yet have plans still have “a little window” to prepare for coronavirus student privacy issues, said Kirk Nahra, co-chair of Wilmer Hale’s privacy and cybersecurity practice.

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