



HOW THE USA-PATRIOT ACT PUTS STUDENT PRIVACY AT RISK

The final version of the anti-terrorism legislation, the Uniting and Strengthening America By Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (H.R. 3162, the "USA PATRIOT Act") amends the Family Educational Rights and Privacy Act (FERPA) and the confidentiality requirements for statistical databases of student information (Sections 507 & 508). Law enforcement officials already have adequate tools to access student records under current law. These sections of the bill would allow law enforcement officials to cast an even broader net for student information without any particularized suspicion of wrongdoing. When these student record anti-privacy proposals are combined with other information-sharing provisions contained in the USA PATRIOT Act, highly personal student information will be transmitted to many federal agencies that could lead to adverse consequences far beyond the stated goal of the anti-terrorism bill.

As a general rule, FERPA prohibits disclosure of student records without consent. Student records include student coursework and grades, student financial information, and just about any other student information maintained by the educational institution. There are, however, numerous exceptions to the rule and various methods for law enforcement to access these records, including:

- **Disclosure of directory information:** Educational institutions are permitted to disclose "directory information" to anyone who asks. Directory information includes a student's name, phone number, address, date and place of birth, major field of study, participation in activities and sports, dates of attendance, the most recent previous educational institution attended, and other information which would not generally be considered harmful or an invasion of privacy.
- **Information gathered pursuant to judicial order or lawfully issued subpoena:** Educational institutions may disclose more detailed and personal information pursuant to a court order or a subpoena issued by a grand jury or for some other law enforcement purpose.
- **Emergency exception:** Educational institutions may disclose student records in an emergency if such information is necessary to protect the health or safety of the student or other individuals.

Since September 11, Federal, state and local law enforcement officials have faced few barriers in accessing student information. According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO), about 200 colleges and universities have turned over student information to the FBI, INS, and other law enforcement officials. Based on FERPA's various exceptions, investigators have accessed information about foreign students, students in particular fields of study, including flight training, and students of particular ethnicities, including US citizens.

But law enforcement officials want even easier access to a broader range of student information. Section 508 of the USA PATRIOT Act would allow law enforcement to access the student data collected for the purpose of statistical research under the National Education Statistics Act (NESA). The NESA includes a vast amount of identifiable student information and - until now-has been held to strict confidentiality

requirements without exception. While the bill requires a court order, it would be issued based on a mere certification that the records are relevant to an investigation. This standard is insufficient to protect the privacy of sensitive information contained in student records.

FERPA already provides law enforcement adequate tools to conduct investigations and access student records. The bill omits good cause requirements and meaningful judicial review to protect against fishing expeditions that violate student privacy or investigation based upon racial profiling.

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