

September 30, 2015

Kathleen M Styles, JD, CIPP-G
Chief Privacy Officer
US Department of Education
400 Maryland Ave, SW
Washington DC 20202

Via Email: FERPA.Comments@ed.gov

Re: Comments on August 18, 2015 Draft Guidance
Dear Colleague Letter to School Officials at Institutions of Higher Education

Dear Ms Styles,

On behalf of the American College Health Association (ACHA), the Association for University and College Counseling Center Directors (AUCCCD), and the American College Counseling Association (ACCA) we write in response to the Department of Education's August 18, 2015 Draft *Dear Colleague Letter to School Officials at Institutions of Higher Education* clarifying the Family Educational Rights and Privacy Act (FERPA) related protection of student medical records. ACHA is a non-profit national health association that represents multidisciplinary college and university health professionals whose principal collective interest is to advance the health of the nation's 20 million college students. Representatives of AUCCCD member schools are counseling center directors focused on leadership and advancing the mission of higher education through innovation, education and advocacy of college student mental health. The mission of ACCA is to be the interdisciplinary and inclusive professional home that supports emerging and state of the art knowledge and resources for counseling professionals in higher education. Together, our organizations have long supported the privacy of student medical and mental health records with only a few carefully and narrowly defined exceptions that permit disclosure of a student medical record without a court order or written consent. We believe strongly that such privacy is a critical component to providing quality care on campus, and building trust in the patient/provider relationship. This trusting relationship is the foundation of an effective treatment relationship and we appreciate the opportunity to offer comments on the draft guidance.

We commend the Department of Education for providing this important clarification regarding the protection of student medical records. Many of our colleagues are facing challenges in this area and guidance from the Department of Education on FERPA is an important first step towards ensuring privacy protection for college students across the country. As noted in the *Dear Colleague Letter*, campus health and counseling professionals are subject to specific confidentiality requirements based on professional licensing rules, professional ethics, and state and federal laws pertaining to professional records. At the heart of many of the recent campus challenges are situations where interpretations of FERPA contradict those of professional requirements and state laws. The acknowledgement that "FERPA's permissive exceptions do not preempt any state laws that may provide more stringent privacy protections..." is key in resolving these conflicts, and we would encourage the placement of that express statement be placed earlier in the document.

We appreciate and support the clarification provided in the letter that disclosure of a student's medical records to an attorney representing the institution is only permissible under FERPA when the litigation relates directly to the medical treatment itself or the payment for that treatment. We also concur with the Department's recommendation that "institutions give great weight to the reasonable expectations of students that [medical] records generally will not be shared, or will be shared only in the rarest of circumstances." In addition, we request that the Department provide guidance on the application of FERPA when a litigation hold is placed on a student's medical record.

Further, ACHA, AUCCCD and ACCA strongly urges that the Department provide additional guidance regarding the release of student medical records to the Offices of the Department including the Office of Civil Rights and the Office of the Inspector General, as well as the Department of Justice or other state or federal regulatory agencies. We believe such releases should conform to the standards above and are only permissible when an investigation relates directly to the medical treatment itself or the payment for that treatment.

In several places throughout the letter, the Department states that FERPA does not require a student's consent before disclosing medical records if that student poses an "articulable and significant threat" to self or others. This differs from the language more commonly used in the Health Insurance Portability and Accountability Act (HIPAA) and state laws that permit the release of private health information only to prevent or lessen a "serious and imminent threat" to self or others. We advocate for using similar language to avoid confusion.

We thank you for your consideration and the opportunity to comment. Please let us know if we can provide any additional information that would be helpful.

Sincerely,



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President, American College Health Association



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