



Welcome to Today's
PaperClip Communications
Webinar



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10 Compliance Mistakes
Student Mental Health:
 FERPA, HIPAA, ADA & more

Wednesday, October 5, 2011
 2:00-3:30pm ET

A PaperClip Communications Webinar



Panelists



- Carolyn Reinach Wolf, Esq. is the Senior Partner, Mental Health Law, Hospital Litigation Practice at Abrams, Fensterman, Fensterman, Eisman, Greenberg, Formato & Einiger, LLP



- Dr. Brian Van Brunt serves as the Director of Counseling at Western Kentucky University. He is past president of the American College Counseling Association (ACCA). He has worked in higher education for over twelve years.

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Introduction

- Navigating the minefields of FERPA, HIPPA, ADA and state confidentially laws can be a daunting task for student affairs administrators, judicial affairs officers, campus BIT members and counseling center staff.
- This presentation will provide clear and practical advice on how to avoid top ten mistakes when staff and faculty attempt to follow these regulations. The program will help avoid legal missteps and improve communication between departments on campus.

Introduction

- FERPA – Family Educational Rights and Privacy Act of 1974.
- HIPAA – Health Insurance Portability and Accountability Act of 1994.

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Orientation & Parents

HIPAA Entity & FERPA Medical

Crisis Notification & BIT/TAT

Active Client & Record Requests

ADA Avoidance & Accommodations

Orientation Announcements

- **Imagine the scene:**
 - Orientation for the new school year
 - Classroom packed with parents
 - A staff member announces:



Orientation Announcements

Your child is now an adult, ready to begin college. We often get calls from parents asking us to tell you about their grades, roommate troubles, conduct problems and counseling status.

FERPA protects all of these records. We can't tell you anything, so don't ask...

Orientation Announcements

Mistake One:

FERPA protects students educational records from third parties. It is designed to help the student maintain privacy.

FERPA is not in place to drive a wedge between the student and parent.

Separating Parents

- Parents on one side; students on the other



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Separating Parents

- Each of the laws and regulations we are going to talk about today have exceptions to allow communication between administrators and parents.
- None of these regulations were designed with the intention of excluding parents and hamstringing educators.

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Orientation Announcements

Mistake Two:

There are many exceptions and ways for educators to communicate with parents while respecting the developmental growth of the student.

FERPA, HIPAA, ADA and state confidentiality laws each have ways to communicate



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HIPAA Entity & FERPA Medical

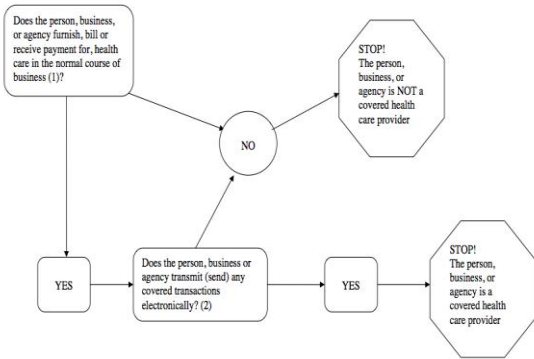


- HIPAA only applies if you are submitting electronic bills for health care to a third party.
- Most schools don't do this.

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Is a person, business, or agency a covered health care provider?



<https://www.cms.gov/hipaageninfo/downloads/coveredentitycharts.pdf> www.paper-clip.com

HIPAA Entity & FERPA Medical

Mistake Three:

*HIPAA rarely applies.
If you are a covered entity, there is an emergency exemption.*

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HIPAA Entity & FERPA Medical

Mistake Four:

FERPA does not cover counseling or medical record treatment notes.

Period.

They are covered by state law.

(the only exception is when they are released and included in conduct or BIT/TAT records)

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Crisis Notification

Mistake Five:

Not sharing information in a crisis event to keep a student safe because of FERPA or HIPAA

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Crisis Notification

• **FERPA**

- FERPA's health or safety emergency provision permits such disclosures, without the consent of the parent or eligible student, if necessary to protect the health or safety of the student or other individuals. See 34 CFR §§ 99.31(a)(10) and 99.36.
- "articulable and significant threat."

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

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Crisis Notification

• HIPAA

- "Covered entities may disclose protected health information that they believe is necessary to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat)."
- "Minimum necessary" use and disclosure.

www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html

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BIT/TAT

Mistake Six:

Not sharing information with the BIT/TAT because we are prevented by HIPAA, FERPA, ADA or state confidentiality laws.

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Active Client

Mistake Seven:

A professor shares with a campus nurse that a student may be at risk for suicide. The nurse doesn't report this to anyone because of confidentiality.

A students come to a counselor who is teaching a class and tells them about a suicidal friend.

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Record Requests

Mistake Eight:

A student requests their record from counseling. The center copies his entire chart and gives it to him.



Don't over release...

- 1) Summary*
- 2) Do no harm*

ADA Avoidance



- There can be a temptation to avoid the ADA office with hopes that all the paperwork and hassle can just be dealt with through a one time accommodations "off the record" with the professor.

ADA

Mistake Nine:

Once accommodated, required to keep it up
No review process or evaluation
Creates tension with other professors
Outside BIT/TAT reporting



Accommodations

Mistake Ten:

Consider "reasonable accommodations"

We can be too helpful:

- companion animals vs. service animals
- cutting in class
- delusions

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Additional Resources

HIPPA and FERPA Guide

- www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/hipaaferpajointguide.pdf

HIPPA Primer for University Administrator

- www.acenet.edu/AM/Template.cfm?Section=Home&TEMPLATE=/CM/contentdisplay.cfm&CONTENTID=8499

FERPA NACUA Guide

- www.nacua.org/documents/ferpa1.pdf

Q/A

How Do I Call-in with a Question?

If you would like to ask a question of our panelist(s) please press **21** and you will be put in a call queue until it is your turn to ask your question.

OR

You can write in a question or comment anytime during the event by clicking on the "Chat" Bubble in the left hand corner of your screen.

For Questions that Arise After the Conference

If you have a question that you were unable to ask of our presenter(s), please feel free to email us at:

info@paper-clip.com

...and we will be happy to forward it to our panelists!

Feedback

We want your feedback on today's event!

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email Tamie Klumppan at:

tamie@paper-clip.com

and she will send you the link to our brief online survey.

Thank you for your participation,
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- *Advising Student Organizations* – October 20, 2011
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- *The ADA & Preparing for Change* – October 27, 2011
- *Student Demonstrations & Activism* – November 3, 2011
- *Title IX and Due Process* – November 9, 2011

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