

August 30, 2023

Meeting Notes

Review of Virtual Meeting Policy Document

- Proposed Amendment – 1st Section Authority and Scope amend to 2.2-3708.3
- Section B - Proposed Strike of Board of Supervisor (2nd line)
- Under Definitions – change “Board” to “Campus Threat Assessment Task Force”
- Section 3A – Strike Board of Supervisors
- All-virtual workgroups? – When meeting as a workgroup, not a decision-making body it is for conversation level not to make any decisions. Full body task force makes decisions.

Review of Remote Participation Document

- Section 1B – strike Board of Supervisors (2nd line)
- Section 2 Definitions – replace “Board” with “Campus Threat Assessment Task Force”

Unanimously voted to adopt all changes to both documents

- Presentation by Marc Dawkins (Campus Threat Assessment Team Task Force PowerPoint)

Comments:

- Legal Team is looking at what legislation needs added/changed
- This group represents all colleges
- Report Due December 1, 2023

Action Steps for each workgroup outlined:

- List of recommendations
- Preparation of Final Report

Presentation by Mike Melis (Key Points of New Legislation and Overview of FERPA and HIPAA)

- This is not an act of providing legal advice, nor is he commenting on decisions made by the General Assembly; he is sharing his thoughts on each section.
- Statute – Subsection A – change identifies who is on the TA team – are there missing members that should be included? - invitation of college or university counsel (good idea to provide legal advice, but not as a member to make decisions)
- Subsection F – “articulable and significant threat” – certain notifications need to be made - making sure LE and outside entities are aware
- Are there examples in case law about FERPA and interpretation - the information dissemination (is it okay?) (regs say when making this determination the agency may take into account the totality of the circumstances relating to the threat – it may disclose information to protect) – no private right of action under FERPA
- Language in regulations that implement FERPA - “take into account the totality of the situation,” “health/safety of a student or other individuals,” it “may disclose information.” Key language - “if

based on the information available at the time... rational basis for determination... institution will not substitute its..." Language is giving a lot of leeway. No Prior Right of Action with FERPA.

- Does this exclude suicidal intentions? FERPA is inclusive of self-harm. High likelihood of self-harm affecting others. **Maybe a suggestion is needed to broaden the horizon to include self-harm.** Notifications to all in every situation? Commonwealth's Attorney is not notified of self-harm now.

Subsections G and I are new

- Virginia's Healthcare and Privacy, HIPPA (Subsection G)
- Training – suggest that it's like K-12, lessened, added to? (Subsection I)

Subsection J

- improve to have it match how TA teams work
- addresses silos that exist beyond the university – if student or employee transfers and threat is no longer a part of the university – how to get that information to a new place – how do we implement this intent (transfer of knowledge) – how does the institution know the student is leaving and was deemed a threat
- case happening now at a member's university – student is leaving, nothing is flagged on the transcript
- concern of unintended consequence – how long is it on the record (2 years, 3 years?) – place timeframe in context of FERPA (knowing something is imminent – if something might happen, that is not sufficient) or give TA Team ability to determine if this person transferring still has some threat associated with them (might recommend language to give that to TA team)
- "Employer" is not exclusive to the educational realm
FERPA allows this notification to institutions, this statute (J) requires it
- must give student a copy or give them a hearing if requested (student may not know that TA team has a record of them) – legislation misplaced – creating incredible liability if wrong – student may not know that they were determined to be a threat, so student could say that they could not contest the determination that they were a threat – defamed and did not have due process – notice as long as consistent with federal and state law (this language is trying to cover that)
- FERPA Questions – protects student records – education records (LE records, employee records, healthcare records, personal notes, and observations are not included in FERPA) – exceptions to FERPA – allows you to use it without consent of the student

Helpful Resources – Information Sharing Guide for IHE, Model Policy and Procedures (page 111), Joint Guidance on FERPA and HIPAA (Department of Health), FERPA Protections for Student Health Records (Mike can send to Mac to circulate)

Discussion of Draft Best Practices Document

- Problematic Language/Information
 - Pg. 15 – those are the 4 roles that constitute the team, but that's contrary to Best Practices. Missing a representative from Housing, Academics. Cannot receive the protected information.

- Chief Compliance Officer, Title IX, removed from teams because of legislation. Suggested “team can add others as appropriate”? Sexual Violence states Title IX must be included and can act as a Threat Assessment.
- Better defining the role of non-members? Assisting vs. Serving/being a member of the team
- Back-ups? There is nothing in the code, but it is needed. They should be trained.
- “...was determined” to pose a threat, why would we want to damage their future if they’ve successfully completed 2 years without any other indication of a threat
- Notification—but what does it consist of? “...shall notify... results of the investigation.” How much should be disclosed? Might ID witnesses that the subject didn’t know you had information from (circumstances, if not, names)
- TA is likely to be educational records, and there is a duty to notify if the institution has the knowledge, not just the TA team. If the Registrar doesn’t have access to TA records, how does notification occur?
- Is duty for notification required if moving to another state? Country? Specification is needed on who to notify. (Ex- Virginia Tech has an affiliation with every county in the Commonwealth; they don’t need to notify every county.)
- Over legislate professional judgment – they know this work better; the team relies heavily on FERPA. Separate meetings, separate records, difficult to make sense of.
 - Leaving the decision to notify to the people on the team, expertise of who/when to notify?
- What about Campus Security? Does local law enforcement include them? The K-12 code states, “...expertise in...”, involvement of SRO (must participate), and if not, local law enforcement. Could do the same for IHE.
 - LE is required, as stated in the code. Including Campus Security is implied? Should it be clearly stated?
- Can we suggest a strikethrough of much of this to make it more palatable?
 - Change it to a number of hours or type of course so that when e-learning is available, various names of training change, etc.
- Donna Michaelis proposed we make notes of issues with legislation
- **unanimously voted to collectively work together about concerns rather than sub-committees**

Lunch Provided

Workgroup Meetings

Workgroup Reports and Next Steps

Public Comment

Wrap Up

