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The Balkanization of University Support Systems: FERPA's Chilling Effect on Campuses and How Honors Administrators Can Break the Ice

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The Family Educational Rights and Privacy Act of 1974 ("FERPA") was signed into law by President Ford on August 21, 1974. It is difficult to state with authority now, some thirty-five years later, exactly why Congress created the law; it was offered as an amendment on the Senate floor, was not the subject of Committee consideration, and therefore is without the traditional legislative history that would help us divine Congressional intent. Surely, though, Congress never intended that FERPA would foster tragedy by creating confusion and preventing critical communication among school officials.

Sadly, however, it appears that confusion over the contours of FERPA, similar state privacy laws, and also the federal Health Insurance Portability and Accountability Act ("HIPAA") has in the past hindered university officials, including those in honors colleges and programs, from helping students who are in trouble. In the wake of the tragedy at Virginia Tech, then-President Bush asked several of his cabinet members to "travel to communities across our nation and to meet with educators, mental health experts, law enforcement and state and local officials to discuss the broader issues raised by this tragedy" (Leavitt, Spellings, and Gonzales, 1). One of their key findings was that "confusion and differing interpretations about state and federal privacy laws and regulations impede[d] appropriate information sharing" and that "there was significant misunderstanding about the scope and application of [FERPA and HIPAA] and their interrelation with state laws" (7). The report of the Review Panel presented to Governor Kaine of Virginia included similar

discussions of the confusion caused by these privacy laws and concluded that they "need amendment and clarification" (Massengill, *et al*., 68).

These calls for amendment and clarification were heard and answered. On December 9, 2008, the Department of Education amended its regulations implementing FERPA. The Section-by-Section Analysis issued by the Department makes clear that certain of these changes were made as a direct result of the Virginia Tech tragedy (13). One critical change includes specifically adding "parents" to the list of "appropriate parties" who can be notified in the event of a health or safety emergency. The Department's analysis noted that "this change will clarify to colleges and universities that parents may be notified when there is a health or safety emergency involving their son or daughter, notwithstanding any FERPA provision that might otherwise prevent such a disclosure" (13). This important change should reduce the fear of repercussions regarding FERPA and other privacy laws that prevented communication with parents in the past, even when honors administrators were worried that a student might be experiencing a mental health emergency.

One of the outcomes of the way FERPA has frequently been interpreted was the Balkanization of student support services that exist on a university campus, particularly at large universities. As the cabinet members noted in the Report to the President on the Virginia Tech tragedy, "information silos" at universities "impede appropriate information sharing" and "are heightened by confusion about the laws that govern the sharing of information" (Leavitt, Spellings, and Gonzales, 7). At our institution, by the first day of classes a first-year student will have signed up to five separate FERPA forms, each one pertaining to a particular aspect of the student's life at the institution. While it may make sense from a legal point of view that units addressing different components of student life (such as financial, social, judicial, and academic) limit information to university officers who work in that unit, such a lack of sharing can have devastating consequences. In dealings with a troubled student, interactions between officers and administrators in various areas of a student's life, in addition to interactions with parents, are essential.

For example, a student who is showing reclusive behavior in a residence hall may cause some concern among the administrators of the residence hall, but such behavior does not necessarily suggest a mental health crisis. However, if this behavior is added to information from professors that the student is not attending classes and information from the financial aid office that the student is not using work-study opportunities, together these three items may suggest that a student is suffering from depression. In a vacuum, each piece of information can be easily explained away. From the point of view of residence life, the student may simply be a loner; from the point of view of financial aid, the student may have decided that work-study is damaging her

academic performance and therefore chosen to forego it; and from the point of view of the professor, the student could just be goofing off. Placing all of these pieces of information together, however, will heighten the awareness of a vigilant administrator that this student might need some type of intervention. A belief that FERPA and other privacy laws may prohibit critical information sharing, whether accurate or not, can harm a university's ability to identify students who are in trouble.

Those of us who work in honors colleges or programs must understand the parameters of FERPA, including what information can be shared and when, as we are often uniquely positioned to identify students who are potentially in trouble. First, at institutions such as ours with residential honors colleges, certain administrators may live on-site with the students, be familiar with their lives and routines, and be quickly able to notice any disruptions or changes. Second, even where administrators do not live with the students, honors colleges and programs often function as smaller colleges within a large university setting, creating closer relationships between administrators and students and allowing a better chance for an administrator to notice warning signs.

For the same reasons that an honors college administrator may be in a better position than many other university officials to have important information about a student who is in trouble, those of us who work at honors colleges may also have important insights about whether a situation has risen to the level of an "emergency" for FERPA purposes. The 2008 amendments attempted to clarify the leeway an honors college or other academic institution would be afforded in determining if a health or safety emergency is occurring. The regulations direct that the educational institution is to consider "the totality of the circumstances" in making this determination and that, if it "determines that there is an articulable and significant threat," the institution may disclose information "to any person whose knowledge of the information is necessary to protect the health and safety of the student or other individuals" (34 CFR Part 99.36(c)). For the reasons discussed previously, we as honors administrators may have the best vantage point for assessing the "totality of the circumstances" bearing upon our students. "If, considering the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making the determination" (Simon). As the Department noted, "the Secretary determined that greater flexibility and deference should be afforded to administrators so that they can bring appropriate resources to bear on circumstances that threaten the health or safety of individuals" (Section-by-Section Analysis, 13).

The acknowledgement by the Department of Education that institutions may have been overly cautious in their interpretations of FERPA and should be given greater deference and flexibility is encouraging. The opinions and judgments of honors administrators should be given due weight given our exceptional closeness to our students. The new standards of "articulable and significant threats" and "rational basis," however, are so vague as to give no real guidance, especially to non-attorneys. As one commentator put it, "the revised regulation merely introduces new ambiguous language for universities to decipher" (Chapman, 361). The new standard also does not seem to address the problem of Balkanization. Ultimately, what is and is not an emergency for purposes of FERPA is likely to be decided by legal representatives on campus, not by those people who have the day-to-day working knowledge of the students and their problems. Honors administrators may be in the best position to know what constitutes an emergency regarding the students they work with so closely. Accordingly, honors administrators need to be part of the dialogue on their campuses about policies that implement FERPA and to feel confident about their knowledge of those policies.

While a step in the right direction, the 2008 amendments have clearly not alleviated all confusion over how FERPA applies when administrators are attempting to help an honors student who is in trouble. Further, the amendments are only going to make a difference if administrators at honors colleges know about them and have meaningful discussions with their general counsel offices about what the amendments mean and how they affect existing university policy.

One of the unique aspects of the position of honors dean or director is that we frequently have our feet in at least two institutional camps, academics and student life. We may thus be uniquely positioned to help break down the Balkanization of student support services by being able to communicate across the barriers set up artificially within the institution. If we are to serve our students well, we should at the very least take an active part in campus discussions on the interpretation of FERPA, HIPAA, and other state or federal privacy laws. We need to help with the development of policies that, while still protecting the privacy rights of the individual, allow increased communication between the academic, student life, and administrative units of our campuses.

Given that many honors directors and deans (and their staffs) do, by virtue of their position, have a broader view of the student than many others on campus, we are in a better position than most to overcome any barriers to appropriate information sharing posed by FERPA. As we consider the plight of the troubled student, we should ask ourselves, in light of the structure of our own particular program or college, to what extent we can bring together

the many facets of a student's life in order to better understand and help if the student is at risk. Colleges such as ours that have an established residential component should ask whether we have, perhaps even inadvertently, committed the sin of Balkanization simply through habit, perhaps as a result of both appropriate professional caution and the perceived dictates of FERPA and or HIPAA. For example, where there is one staff member whose primary responsibility is identifying and working with students in academic trouble and another staff member in the residence hall who is likely to be aware of students showing signs of social isolation or depression, a system should be in place for these staff members to communicate in an appropriate way that respects the requirements of FERPA and other privacy laws. If these individuals are not in regular and formal communication with each other, then we may already be failing our students.

We can only reach out to troubled students if we have strategies in place to identify them. As a threshold matter, we should be aware of and use the resources that are already provided by our institution. While these resources vary by institution, mid-semester grade reports, for instance, tend to be common. At WVU, early in each semester the central administration produces an analysis, based purely on demographic data and previous performance, that can identify students who might be at academic risk. The number of honors students who appear is always somewhat surprising: these are typically students who, while having performed well in previous educational experiences, show social, financial, and academic characteristics that suggest a likelihood of academic problems during the next semester. The student life side of the university also generates a report on students who, because of behavioral issues, may also be considered at risk. While both these sources of information are, to a certain extent, "soft," the intersection of the two indicates a student for whom care and intervention might be necessary.

Within honors colleges, especially those with residential components, some types of data are easy to collect and collate, possibly leading to appropriate early interventions. Care should be given to respecting the contours of FERPA and other privacy laws, and it is a good idea to work with the general counsel in developing such plans, but some ideas our honors college has used include:

- Early grade reports: Given the small size of most honors classes, it is reasonable to ask honors professors to provide the honors office with grade reports on the first assessment taken in a class.
- An attendance report: Poor attendance is one of the first "flags" for the at-risk student, and an attendance report is not an onerous request of the professor.

- Residence hall RA reports: RAs are required to monitor their residents at WVU and report any who seem to be showing "at-risk" behaviors, particularly those associated with suicide risk. There is a significant literature on this topic, and RAs should be trained to recognize the more obvious warning signs.
- Financial reports: While FERPA restricts access to certain detailed information, WVU asks academic units to alert students who are in danger of being removed from classes for non-payment of tuition.

These or other tools should make it possible by mid-semester to collate the information that identifies students who are potentially at risk. The path one follows at this point depends on the individual program or college. At West Virginia University, when we receive reports of poor performance regarding our honors students, we ask that they have interviews with either the dean or an assistant. During those face-to-face interviews, we have the greatest probability of identifying the truly troubled student. Most students simply need reference to our learning centers, in-hall tutors, or other support systems that can help a student who is struggling with either life problems or academic problems and needs help to turn poor grades around.

Although monitoring of student grades, attendance, financial difficulties, and behaviors may add to the burden of a small, stressed honors administration, it might be one of the best services we can offer our students, and we seem frequently to be in the best position to do it. Early identification of any sort of problem is likely to lead to a successful outcome. If honors administrators do not institute programs that assess our students for potential problems, we are failing in one of our most important roles, that of caring for each student as an individual. Tragic events such as the one at Virginia Tech as well as student suicides that occur on many of our campuses—approximately 1,100 college students die by suicide each year (Wilcox *et. al.*)—make it imperative that we as honors deans and directors be continually vigilant.

With the best will in the world no campus can be completely prepared for events such as those that tragically struck Virginia Tech. We can, however, learn from that experience and work together with others on our campuses, including our general counsel offices, to ensure that no law hampers our ability to improve our support to students before they reach a crisis point.

Note: Ms. Cyphert is a licensed attorney.

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