

110TH CONGRESS  
2D SESSION

# S. 2859

To amend the Family Educational Rights and Privacy Act of 1974 to clarify limits on disclosure of student health records, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

APRIL 15, 2008

Mr. WEBB (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To amend the Family Educational Rights and Privacy Act of 1974 to clarify limits on disclosure of student health records, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Educational  
5 Rights and Privacy Act Amendments of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Federal authorities charged with examining  
9 the tragic shootings at Virginia Tech in April 2007

1 found that confusion and overly-restrictive interpre-  
2 tations of Federal privacy laws, State medical con-  
3 fidentiality laws, and regulations unnecessarily im-  
4 pede the effective transfer of information that could  
5 prove useful in averting tragedies. Some school ad-  
6 ministrators are unaware of exceptions to Federal  
7 privacy laws that could allow relevant information  
8 about a student’s mental health to be appropriately  
9 shared.

10 (2) The purpose of this Act is to eliminate am-  
11 biguity in Federal education privacy law to ensure  
12 that the Family Educational Rights and Privacy Act  
13 of 1974 (FERPA) is not interpreted as prohibiting  
14 information sharing between on-campus and off-  
15 campus health care providers when both are involved  
16 in treating a student. Such “consults” are generally  
17 permitted by State medical confidentiality law, and  
18 FERPA should not be interpreted as posing an addi-  
19 tional obstacle. The Virginia Tech Review Panel rec-  
20 ommended that changes to “FERPA should explic-  
21 itly explain how it applies to medical records held for  
22 treatment purposes”. The panel reported that mis-  
23 interpretation of how student treatment records are  
24 handled under FERPA as the main source of confu-  
25 sion. FERPA protects the privacy of both student

1 education records and student treatment records  
2 from being disclosed generally.

3 (3) The Virginia Tech Review Panel rec-  
4 ommended that Federal privacy laws should be  
5 amended to include “safe harbor” provisions that  
6 would insulate a person or organization from the  
7 loss of Federal education funding for making a dis-  
8 closure with a good faith belief that the disclosure  
9 was necessary to protect the health or safety of a  
10 student or member of the public at large. The Com-  
11 mission further recommended that the Federal Edu-  
12 cational Rights and Privacy Act of 1974 (FERPA)  
13 be amended to clarify the ability of educational insti-  
14 tutions to disclose information in emergency situa-  
15 tions and to facilitate treatment of students at off-  
16 campus facilities.

17 (4) Mental disorders frequently begin during  
18 youth. Research supported by the National Institute  
19 of Mental Health found that half of all lifetime cases  
20 of mental illness begin by age 14; three quarters  
21 have begun by age 24.

22 (5) In 2004, the Centers for Disease Control  
23 and Prevention reported 4,316 suicides among  
24 young adults aged 15–24, making it the third lead-  
25 ing cause of death in this age group. There were an

1 additional 5,074 suicides among those aged 25–34,  
2 making it the second leading cause of death in this  
3 age group.

4 (6) Depression, mental illness, and suicide are  
5 problems on college campuses. In 2006, 44 percent  
6 of college students reported feeling so depressed it  
7 was difficult to function and 9 percent seriously con-  
8 sidered suicide, according to a 2006 national survey  
9 conducted by the American College Health Associa-  
10 tion.

11 (7) While most people in the United States with  
12 a mental disorder eventually seek treatment, a Na-  
13 tional Institute of Mental Health study found perva-  
14 sive and lengthy delays in getting treatment, with  
15 the median delay across disorders being nearly a  
16 decade. Over a 12-month period, 60 percent of those  
17 with a mental disorder got no treatment at all.

18 (8) A 2006 survey sponsored by the American  
19 College Counseling Association found that 9 percent  
20 of enrolled students sought counseling last year and  
21 92 percent of counseling center directors reported an  
22 increase in the number of students with severe psy-  
23 chological disorders.

24 (9) Recent events, including the campus shoot-  
25 ings at the Virginia Tech and Northern Illinois uni-

1       versities, have further highlighted the deadly prob-  
2       lems of mental illness and violence in American  
3       schools. The Northern Illinois shooting resulted in 6  
4       deaths while the Virginia Tech killings left 32 people  
5       dead, making it the most lethal school shooting in  
6       United States history.

7       **SEC. 3. STUDENT HEALTH RECORDS.**

8       The Family Educational Rights and Privacy Act of  
9       1974 (20 U.S.C. 1232g) is amended by adding at the end  
10      the following:

11       “(k) CONSULTATION WITH OFF CAMPUS MEDICAL  
12      PROFESSIONALS.—Nothing in this section shall prohibit  
13      a physician, psychiatrist, psychologist, or other recognized  
14      healthcare professional or paraprofessional acting in the  
15      individual’s professional or paraprofessional capacity, or  
16      assisting in that capacity, from consulting with or dis-  
17      closing records described in subsection (a)(4)(B)(iv) with  
18      respect to a student, to a physician, psychiatrist, psycholo-  
19      gist, or other recognized healthcare professional or para-  
20      professional acting in the individual’s professional or para-  
21      professional capacity, or assisting in that capacity, outside  
22      the educational agency or institution in connection with  
23      the provision of treatment to the student.”.

1 **SEC. 4. SAFE HARBOR PROVISION.**

2       The Family Educational Rights and Privacy Act of  
3 1974 (20 U.S.C. 1232g) is amended in subsection (f) by  
4 adding at the end the following: “The release by an edu-  
5 cational agency or institution of education records or per-  
6 sonally identifiable information contained in such records  
7 in the good faith belief that such release is necessary to  
8 protect against a potential threat to the health or safety  
9 of the student or other persons, shall not be deemed a  
10 failure to comply with this section regardless of whether  
11 it is subsequently determined that the specified conditions  
12 for such release did not exist.”.

13 **SEC. 5. EMERGENCY EXCEPTION AMENDMENT.**

14       The Family Educational Rights and Privacy Act of  
15 1974 (20 U.S.C. 1232g) is amended in subsection  
16 (b)(1)(I) by striking “is necessary” and all that follows  
17 and inserting “is necessary, according to the good faith  
18 belief of the educational agency or institution or persons  
19 to whom such disclosure is made, to protect against a po-  
20 tential threat to the health or safety of the student or  
21 other persons; and”.

○