

Three Birds, One Stone

Complying with the CRCC Code of Ethics through IDEA Processes and Educational Professionalism

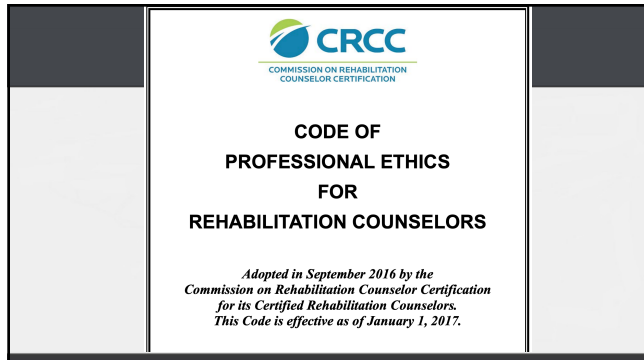
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Plan for Today

- The Counseling Relationship
 - Rehabilitation Counseling Plans
 - Employment Needs
 - Avocational and Independent Living Goals
 - Roles and Relationships with Clients
 - (And Other Provisions Regarding Social Media and Technology)
- Confidentiality, Privileged Communication, and Privacy

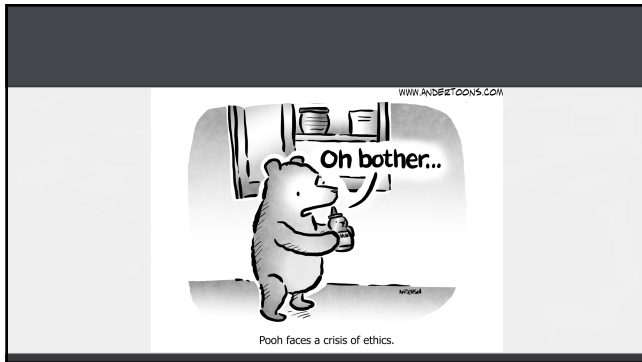


Advisory Opinion #41 (2002)

- Q 1: Is a certificant bound to the CRCC Code in performing his/her job as a service provider in an office for students with disabilities?
- Q 2: Are these activities considered rehabilitation counseling, whether the CRC should be used in this position?
- Q 3: What information was considered confidential?

Advisory Opinion #41 (2002)

- Answers to 1 and 2: YES!
 - The Committee responded that a number of aspects of the certificant's activities as described fall within the scope of rehabilitation counseling activities.
 - Therefore, given that the certificant is working as a rehabilitation counselor, the certificant is bound by the Code and may use the CRC designation in the performance of these activities.
- Answer to 3: Consider applicable laws and requirements.
 - Furthermore, there are relevant Federal, State, and agency laws regarding confidentiality and privileged information which must be complied with as directed by the Code.
 - FERPA and the IDEA (more on these later)



Recommended Foundation for Ethical Decision Making

- A modification of the steps included in Corey, Corey, Corey, & Callanan (2014) may be used as a foundation:
 - recognizing a problem;
 - collaborating with the client to define the problem;
 - developing solutions with the client;
 - choosing a solution;
 - reviewing the process with the client and re-choose;
 - implementing and evaluating with the client; and
 - continuing reflection

<https://www.cccertification.com/decision-making-models>

Must Be Conversant in Obligations

- Standard A.3.a
 - "Rehabilitation counselors review with clients, both orally and in writing, the rights and responsibilities of both the rehabilitation counselor and client. These are presented in a manner best suited to the needs of the client."

Standard A.3.a

- Disclosure at the outset of the professional relationship *minimally* includes:
 - the qualifications, credentials, and relevant experience of the rehabilitation counselor;
 - **purposes, goals, techniques, limitations, and the nature of potential risks and benefits of services;**
 - **frequency and length of services;**
 - confidentiality and limitations regarding confidentiality (including how a supervisor and/or treatment team professional is involved);
 - contingencies for continuation of services upon the extended absence, incapacitation, or death of the rehabilitation counselor;
 - fees and/or payment arrangements;
 - record preservation and release policies;
 - risks associated with electronic communication;
 - and legal issues affecting services.

Obligations that Overlap



The Counseling Relationship



Introduction to Standard A: The Counseling Relationship

- Work in cooperation with clients
- Establish trust and respect/safeguard privacy and confidentiality
- Respect client autonomy and independence
- Make reasonable efforts to ensure client decisions are informed
- Understand cultural backgrounds, including own

Introduction to Standard A: The Counseling Relationship

- Work in cooperation with clients
 - IDEA transition planning requires input from student and parents
- Establish trust and respect/safeguard privacy and confidentiality
 - Underlies productive educational and professional relationship
 - FERPA and IDEA require confidentiality of education records
- Respect client autonomy and independence
 - Many IEPs will identify goals in the areas of independence and self-advocacy
- Make reasonable efforts to ensure client decisions are informed
 - Transition providers should provide input into IEP meeting where transition plans form
- Understand cultural backgrounds, including own
 - Relates to federal expectations of nondiscrimination in educational programs

Rehabilitation Counseling Plans

- Standard A.1.b
 - Rehabilitation Counseling Plans. The primary responsibility of counselors is to respect the dignity of clients and to promote their welfare. Clients are defined as individuals with or directly affected by a disability, who receive services from rehabilitation counselors. At times, rehabilitation counseling services may be provided to individuals other than those with disabilities. When employed to render an opinion for a forensic purpose, rehabilitation counselors do not have clients. In a forensic setting, the evaluatee is the person who is being evaluated.

Rehabilitation Counseling Plans

Standard A.1.b

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IDEA Eligibility

- Child with an enumerated disability who, by reason thereof, needs special education and related services
 - Autism behavior disorder (ED), deaf-blindness, developmental delay, hearing impairment, intellectual disability, multiple impairment, orthopedic impairment, other health impairment, specific learning disability, speech-language impairment, traumatic brain injury, or visual impairment

Rehabilitation Counseling Plans

Standard A.1.b

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Advisory Opinion #126 (2012)

- Committee considered three questions about the provision of vocational evaluation services to special education students
 - To whom do we disclose notice of evaluatee rights?
 - Who is the client? The parent or the child?
 - What is the appropriate involvement in consultation with parent/child in light of the IEP process?

Advisory Opinion #126 (2012)

- Committee:
 - Student is the recipient of services; however, if the student is a minor or otherwise unable to act on his/her behalf, disclosure is provided to the parent/guardian
 - Verbal disclosure should always be provided to the student in a manner consistent with his/her level of understanding
 - Consultations and meetings with child/parent may be beyond scope of agreement with school
 - Incumbent on CRC to establish practices regarding how to treat requests for such services

Advisory Opinion #42 (2002)

"The Committee considered a request for an advisory opinion as to whether development of vocational rehabilitation plans with no client interaction and no identification of vocational goals is appropriate. The Committee responded that the plan as described by the certificant is not considered a vocational rehabilitation plan because it is not a plan created jointly with the client nor does it identify goals. Instead, the plan is simply a product of a forensic evaluation with recommendations for placement services. Furthermore, those preparing such evaluations should delineate the basis on which the recommendations were made and should be certain to include notions regarding the limitations of this type of assessment that lacks client participation."

IDEA Requirements for Development

- Transition plan developed at IEP meeting, with all required participants
 - Parents
 - Regular education teacher
 - Special education teacher
 - Representative of the public agency
 - Individual who can interpret evaluation results
 - Other individuals who have knowledge/expertise
 - Whenever appropriate, the child with a disability***
 - To the extent appropriate (with consent) a representative of any participating agency likely responsible for transition services

Parental Participation and Implementation

- IDEA guarantees parents the right to participate in IEP process, including transition planning
 - Must consider suggestions, and incorporate as appropriate
 - Must discuss placement options and answer parent questions
- Failing to follow IEP, even after request of parent or based upon professional judgment violates FAPE and right to meaningfully participate
 - Definition of FAPE centers on following IEP
 - *Ada-Buorp Indep. Sch. Dist.*, 74 IDELR 120 (Minn. SEA 2018)
 - Speech clinician who unilaterally increased speech services based upon professional judgment denied parents meaningful participation
 - *M.C. v. Antelope Valley Union H.S. Sch. Dist.*, 858 F.3d 1189 (9th Cir. 2017)
 - "An IEP, like a contract, may not be changed unilaterally. . . Any such unilateral amendment is a per se procedural violation of the IDEA because it vitiates the parent's right to participate at every step of the IDEA process."

IDEA Requirements for Development

- Plan is based upon appropriate evaluation and assessment
 - Authorities look for both informal and formal assessment tools
 - Informal assessments require more subjectivity to complete and yield the best data when used on an ongoing basis and by more than one person to improve their validity. - Transition Planning Guidance Document (Feb. SEA 2018)
 - Assessments must be appropriate to the age and skill level of the student
 - The individualization aspect of IDEA services should permeate all levels of planning and implementation
 - Generally doesn't require parental consent under IDEA
 - Letter to Olex (OSEP 2019)

Other Pertinent Advisory Opinions

- Advisory Opinion #25 (2000)
 - "Omission of pertinent data is not consistent with Standard A.1.b and can be just as much a disservice to the client."
- Advisory Opinion # 98 (2007)
 - CRC obligated to withhold judgment on a particular matter until sufficient evaluative data would allow the CRC to provide informed advice.
- Advisory Opinion # 43 (2002)
 - Indicated that a CRC may need to request or review other expert opinions, such as medical opinions regarding an individual, to prepare an appropriate vocational plan.

IDEA Transition Plan Contents

- Transition statement must include three areas:
 - Instruction
 - Community Experiences
 - Development of employment or other post-school living objectives
- Must include, where appropriate, the acquisition of
 - Daily living skills and
 - Functional vocational evaluation
- Avoid ambiguous language
 - ~~As appropriate~~
 - ~~As needed~~

34 C.F.R. 300.320(b)

- Beginning no later than the first IEP in effect when the child turns 16 . . . the IEP must include:
 - Appropriate measurable postsecondary goals
 - Based upon age-appropriate transition assessments related to training, education, **employment and where appropriate, independent living skills**; *and*
 - The transition services (including courses of study) needed to assist the child in reaching those goals

Individualization under IDEA

- Central mandate of the IDEA and focus of the court in *Endrew F.*
- Services *and* assessments or evaluations must be individualized to the student's unique circumstances
 - Only providing generally available services, such as a gen. ed. career class, is insufficient
- Resultant plan's goals must be individualized
 - Do not use the same goals across student groups

Jefferson Cty. Bd. of Ed.

581 F. App'x 760 (11th Cir. 2014)

- Teenager with SLD was reading at a first-grade level when he entered 9th grade
- District failed to utilize transition assessments, but "checked the box" on a form IEP indicating assessments were completed
- IEP included form goals

Jefferson Cty. Bd. of Ed.

581 F. App'x 760 (11th Cir. 2014)

11th Circuit

- Postsecondary goals and transition services were obviously not created in compliance with the IDEA or individualized when District failed to assess
- Did not align with student's abilities or academic goals
 - "We further agree with the district court that this lack of individualized planning and programming for M.S.' education deprived him of a FAPE. For example, the vague language used to describe M.S.' postsecondary goal – "student will be prepared to participate in post-secondary education" – did not match M.S.' diploma track."

Employment Needs



Employment Needs

Standard A.1.c

- Rehabilitation counselors work with clients to consider employment consistent with the overall abilities, functional capabilities and limitations, general temperament, interest and aptitude patterns, social skills, education, general qualifications, transferable skills, geographic locations, and other relevant characteristics and needs of clients. Rehabilitation counselors facilitate the placement of clients in positions consistent with their interests, culture, and welfare. Rehabilitation counselors assist clients in understanding potential constraints on employment and placement choices (e.g., organizational policies, policies of external funding sources, legal requirements).

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District of Columbia Public Schools

115 LRP 40497 (SEA DC 2015)

- Student's transition plan listed his interests in becoming a mechanic, a business professional, or a basketball player
- Nothing specific in the plan about how the Student would become any of those things, or work towards them
- IHO: Plan is deficient given the absence of a concrete plan for the student to achieve goals and receive services related to those goals

Central Bucks Sch. Dist.

114 LRP 38149 (SEA Penn. 2014)

- Student with autism and speech-language impairment is interested in career in agriculture
- District provided transition services in a 1:1 educational setting with curriculum related to agriculture
 - Initially considered providing practical experiences at jobsites, but winter weather initially interfered with those and parents expressed reluctance
 - School didn't push, because they were concerned student would act inappropriately or aggressively in a jobsite setting
 - Never proposed or seriously considered any work-site training for the spring or summer

Central Bucks Sch. Dist.

114 LRP 38149 (SEA Penn. 2014)

- IHO: District failed to provide FAPE
 - 1:1 instruction on agriculture, which was poorly planned/detailed in IEP, would not provide student necessary practical experience to pursue employment
 - No evidence to indicate student would have similar behavior issues exhibited at school in a work setting
 - Awarded compensatory education that could be used until the student's 24th birthday

Avocational & Independent Living Goals



Avocational & Independent Living Goals

- Standard A.1.d
 - Rehabilitation counselors work with clients to develop avocational and independent living goals consistent with their abilities, interests, culture, needs, and welfare

Sumner County Board of Education

54 IDELR 68 (SEA Tenn. 2010)

- Student with sever cognitive disabilities and an IQ of 40
- District proposed placing student in a program designed to develop independent living skills
 - Focused on social, vocational, and independent living skills
 - Parents wanted focus on areas of core academics through ABA methods; file complaint
- ALJ: Transition plan focusing on independent, life, and social skills clearly appropriate in light of circumstances

Dracut School Committee

55 IDELR 66 (D. Mass. 2010)

- Student with Asperger syndrome exhibited significant issues with social skills and pragmatic language
 - Issues well known to the district; significant behavior issues in school
- Transition plans consistently failed to address issues with social skills and language
 - Developed without transition assessment
 - Court found these issues presented clear barriers to postsecondary transition

Dracut School Committee

55 IDELR 66 (D. Mass. 2010)

- Court: Failure to conduct assessments to determine student's individualized needs, to develop goals related to his social/language needs, and to provide services related to his social/language skills
 - School failed to assess and address social skills and independence outside *educational* environment
 - Determined that the appropriate remedy was compensatory education
 - Rejected idea that student's IDEA eligibility could be extended

Roles and Relationships with Clients



Roles and Relationships with Clients

- Prohibited from engaging in *electronic* and/or in-person sexual or romantic interactions or relationships with current clients, their romantic partners or their immediate family members
 - Standard A.5.a
- Prohibited from engaging in electronic and/or in-person sexual or romantic interactions or relationships with former clients, their romantic partners, or their immediate family for 5 years and thereafter only if certain conditions are met*
 - Standard A.5.b
 - *Which likely won't apply in circumstances with former students
 - Never permitted where former client considered vulnerable (Standard A.5.c)

Roles and Relationships with Clients

- Prohibited from providing services to previous sexual or romantic partners and friends or family with whom they may have an inability to remain objective
 - Standards A.5.d and A.5.e
- Prohibited from engaging in personal virtual relationships with current clients (e.g., through social media)
- Must document and follow ethical procedures prior to extending professional boundaries

The Grooming Process

1. Identifying vulnerable child
2. Gaining child's trust through gifts or engaging child in peer-like conduct
3. Desensitizing child to inappropriate conduct – violating boundaries
4. Isolating the child – requiring child to keep secrets
5. Engaging in sexual conduct (and then blaming the child for "wanting it")

Grooming & Social Media

- Percentage of students abused by school staff member
 - 7% (3.5 million students) (2004 USDOE study)
 - 9.6% (American Assoc. of Univ. Women Study 2009)
- 99% of sexual misconduct committed by school employees was accompanied by grooming

Exacerbated By Lack of Supervision

- 47% of parents “do little or nothing” to monitor online behavior
- 67% of teenagers know how to hide what they do online from parents
- 43% of teens would change their online behavior if they knew that their parents were watching them
- 39% of teens think their online activity is private

Victimization of Students with Disabilities

- Report aggregated studies on sexual abuse of children with disabilities
 - Children with disabilities almost 3x more likely to be sexually abused
- Report in *Journal of Child Sexual Abuse*
 - Surveyed victims of sexual abuse with disabilities
 - Adults identified as abusers in 51% cases
 - Teaching personnel in 30%
 - 22.4% of victims received sexual messages
 - 16.6% of victims received sexual images

In re: Student With a Disability

119 LRP 31852 (SEA PA 2019)

- 8th grade Student with ADHD and ODD
- BIP permitted the Student to seek out a "trusted adult"
- Through this process the dean of the school began grooming the Student and ultimately initiated a sexual relationship
 - Dean was found guilty of statutory sexual assault, institutional sexual assault, indecent assault against a child less than 16 years old, corruption of minors and two counts of involuntary deviate sexual intercourse of an individual less than 16 years of age

In re: Student With a Disability

119 LRP 31852 (SEA PA 2019)

- Family initiated due process alleging IEP and BIP inappropriate
 - Student permitted to take long breaks and missed instruction
 - Any improvement in behavior was due to sexual relationship with dean
- Hearing Officer
 - Student denied FAPE
 - Awarded 2.5 hours of comp ed for each day of prior school year

Duty to Report

- Standard L.1.d
 - When an informal resolution is not appropriate or feasible, is not resolved, or if an apparent violation has substantially harmed or is likely to substantially harm persons or organizations, rehabilitation counselors take further action appropriate to the situation. Such action might include referral of the matter to applicable committees on professional ethics (e.g., voluntary certification bodies, licensure boards, organizational authorities). Referral may not be appropriate when the reporting would violate confidentiality rights (e.g., when clients refuse to allow information or statements to be shared) or when rehabilitation counselors have been retained to review the work of another rehabilitation counselor whose professional conduct is in question (e.g., consultation, expert testimony).

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Title IX

- All educational programs receiving federal funding subject to Title IX prohibiting sexual harassment
- While many counselors are likely contractors rather than employees, important that all counselors are aware of school's obligation to respond to sexual harassment
 - Reporting knowledge to a school employee will trigger Title IX obligation to respond

Roof v. Newcastle Sch. Dist., 116 LRP 5059 (W.D. Okla Feb. 8, 2016)

- High school special ed student sexually targeted by history teacher
 - Sent student explicit pics on Snapchat
- Custodian discovered student and teacher in locked classroom with lights off
 - Teacher had been kissing and fondling student
 - Told custodian it was an active shooter drill and lights off because using projector
- Principal counseled teacher not to be alone with students in his classroom

Roof v. Newcastle Sch. Dist.,
116 LRP 5059 (W.D. Okla Feb. 8, 2016)

- Student posted on Twitter that victim "was late to 6th hour because she was busy making out with the history teacher"
- District suspended teacher and contacted law enforcement
- Parents sued school under Title IX
- Court: district properly responded to the alleged assault

Roles and Relationships with Clients

- Prohibited from providing services to previous sexual or romantic partners and friends or family with whom they may have an inability to remain objective
 - Standards A.5.d and A.5.e
- Prohibited from engaging in personal virtual relationships with current clients (e.g., through social media)
- Must document and follow ethical procedures prior to extending professional boundaries

No Good Deeds Go Unpunished



Advisory Opinion #134 (2018)

- Client without a vehicle or internet unable to search for job
 - Unable to establish internet account due to outstanding balance
- Can counselor establish account in his/her own name to assist client?
 - No, it would be an improper extension of professional boundaries

Advisory Opinion #117 (2010)

- Emphasized that the use of sites such as Facebook, Twitter, Skype, or other social networking venues would only permissible for *professional* purposes
- Even then, must take steps to ensure that it remains appropriate, within professional boundaries, and secure/confidential.

Other Requirements Related to Social Media and Technology



Introduction to Section J: Technology, Social Media, and Distance Counseling

- Rehabilitation Counselors must:
 - Realize that service provision is not limited to in-person, face to face interactions
 - Actively attempt to understand evolving technology and resources to better serve clients
 - Appreciate the implications for legal and ethical practice when using technology/social media
 - Be particularly mindful of issues related to confidentiality, accessibility and online behavior

Most Pertinent Technology Standards

- J.1.a
 - Must serve clients with same level of competence regardless of use of technology
- J.2.a
 - Must make reasonable efforts to ensure any technology or equipment used, purchased, or recommended for a client meets current standards of accessibility under the law
- J.2.b
 - Must guide clients in obtaining reasonable access to pertinent applications when providing technology-assisted services

Standard J.4. Social Media

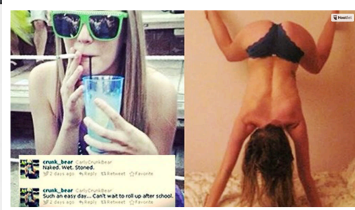
- J.4.a
 - In cases where rehabilitation counselors maintain both professional and personal presences for social media use, separate professional and personal pages and profiles are created to clearly distinguish between the two kinds of electronic presence.

Standard J.4. Social Media

▪ J.4.b

- Rehabilitation counselors recognize that information posted on social media sites is largely permanent and easily shared beyond the privacy settings of any particular site. Rehabilitation counselors take reasonable steps to monitor for and remove or correct potentially harmful information shared on sites they establish for their professional presence.

Some cases are obvious...



Cooler Teacher Ever Fired For Tweeting Twerk Photos, Calling Students Jail Bait And Smoking Weed

Standard J.4. Social Media

▪ J.4.d

- Rehabilitation counselors respect the privacy of their client's presence on social media and avoid searching a client's virtual presence unless relevant to the rehabilitation counseling process. If a rehabilitation counselor may search a client's virtual presence, this is disclosed in advance. Rehabilitation counselors caution clients of the potential impact that social media use may have on the counseling relationship and discuss the benefits and risks of using social media within the rehabilitation counseling process.

Our Advice to Professionals

- Use social media to increase engagement and for other positive purposes
- Keep separate personal and professional pages/feeds/etc.
- Do not friend clients/students Think twice, post once
- Model the behavior you expect/encourage from your clients/students
- Think and talk through communication protocol/policy of employer and contracting schools

Confidentiality & Privacy Requirements



Standard J.4.e: Privacy and Social Media

"Rehabilitation counselors protect the confidentiality of clients by avoiding the posting of any personally identifiable information, unless the client has provided written consent to do so. In no circumstance should protected or highly sensitive information be shared via social media platforms."

Introduction to Standard B:**Confidentiality, Privileged Communication, and Privacy**

- Rehabilitation Counselors:
 - Recognize that trust is the cornerstone of the counseling relationship
 - Aspire to earn trust of clients by an ongoing partnership, establishing and upholding appropriate boundaries, and maintaining confidentiality
 - Communicate the legal and ethical parameters of confidentiality to their clients

Standard B.1: Respecting Client Rights

- Solicit private information only when beneficial to the counseling process
- Make reasonable efforts to ensure sharing or transmitting of information is secure
- Hold ongoing discussions with clients regarding how, when, and with whom information is shared and limitations of confidentiality
- Do not share confidential information without consent or without sound legal or ethical justification

Standard B.2:**Relevant Exceptions to Confidentiality**

- Confidentiality does not apply where disclosure is required to protect clients or identified others from serious and foreseeable harm, or when legal requirements demand that confidential information must be revealed
- When clients disclose they have a disease commonly known to be both communicable and life-threatening, rehabilitation counselors may be justified in disclosing information to identified third parties if they are known to be at demonstrable and high risk of contracting the disease

Standard B.3.b

Interdisciplinary Teams

- When services provided to clients involve the sharing of their information among team members, clients are advised of this fact during the professional disclosure process and are informed of the team's existence and composition.
 - I.e., IEP/MDT teams

Compare to FERPA Obligations

- FERPA generally requires that the confidentiality of all personally identifiable information in education records be maintained unless consent is provided for disclosure or an exception to consent applies
 - Receive student records as a "school official" under FERPA
 - Means school maintains direct control over your use, maintenance, and redisclosure of education records

Advisory Opinion #99 (2007)

- Request for advisory opinion regarding whether self-injurious behavior warrants a breach of confidentiality, for both minor and adult students
- Committee: Disclosure takes place consistent with other state/federal laws
 - "CRC always has the responsibility to ensure the safety of the client and others, *this is essential information to disclose to the members of the IEP team in a school setting*, which may include the parent(s) or other legally responsible party, so that team members may determine an appropriate course of action."

In Practice

- Recognize dual duty of confidentiality under ethics and FERPA
 - As "school official" contracting school will retain direct control over education records
- Recognize and discuss disclosure of information to the school and team members
- Maintain records carefully, with appropriate safeguards

Letter to Anonymous

116 LRP 22852 (FPCO 02/03/16)

- Parent complained school uploaded student's PII on Facebook
- FPCO: Unless the parent opted out, "the District may disclose your child's designated directory information to Facebook absent your consent"

Letter re: Timberlane Regional School

22 FAB 25 (FPCO 05/29/18)

- Parent filed complaint with FPCO
- District:
 - Argued this was all directory information
 - Took down video
 - Improved process for notifying parents of directory information policy
- FPCO: no violation

Questions?

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