

The USA PATRIOT Act: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. (HR3162) (Public Law 107-56; 115 Stat. 272.)

The USA Patriot Act is a broad reaching law that amends many areas of U.S. law, with a specific focus on enhancing the ability of law enforcement to combat terrorism. A number of different areas of higher education law were affected by passage of the PATRIOT Act. What follows is a quick summary of the various higher education laws (or areas of operation) that were affected by this law.

FERPA: The amendment to FERPA permits educational agencies and institutions to disclose -without the consent or knowledge of the student- personally identifiable information from the student's education records to the Attorney General of the United States or his designee, but only in response to an *ex parte* order in connection with the investigation or prosecution of terrorism crimes specified in sections [2332b\(g\)\(5\)\(B\)](#) and [2331 of title 18, U.S.Code](#). An *ex parte* order is an order issued by a court without notice to an adverse party.

In order to obtain the order, the Attorney General must certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain relevant information. The new law gives schools immunity when the institution releases information in good faith under this provision. Records obtained under this provision are not subject to the FERPA requirement that records be kept of each request for access to and each disclosure of personally identifiable information from the education records of each student. [\[1\]](#)

Although the Family Policy Compliance Office has stated the health and safety emergency provision can be used in national emergencies such as the September 11th attacks, release of records under that provision are limited to situations where there is imminent danger and an immediate need for the release of records. Now that this legislation has been adopted, schools met with requests for student record information in connection with the terrorist attacks should expect to be served with a court order.

The text of the amendment is as follows:

SEC. 507. DISCLOSURE OF EDUCATIONAL RECORDS. [115 Stat. 367-68]

Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), is amended by adding after subsection (i) a new subsection (j) to read as follows:

“(j) Investigation and Prosecution of Terrorism.-

“(1) In general.--Notwithstanding subsections (a) through (i) or any provision of State law, the Attorney General (or any Federal officer or employee, in a position not lower than an Assistant Attorney General, designated by the Attorney General) may submit a

written application to a court of competent jurisdiction for an ex parte order requiring an educational agency or institution to permit the Attorney General (or his designee) to-

“(A) collect education records in the possession of the educational agency or institution that are relevant to an authorized investigation or prosecution of an offense listed in section 2332b(g)(5)(B) of title 18 United States Code, or an act of domestic or international terrorism as defined in section 2331 of that title; and
“(B) for official purposes related to the investigation or prosecution of an offense described in paragraph (1)(A), retain, disseminate, and use (including as evidence at trial or in other administrative or judicial proceedings) such records, consistent with such guidelines as the Attorney General, after consultation with the Secretary, shall issue to protect confidentiality.

“(2) Application and approval.-

“(A) In general.--An application under paragraph (1) shall certify that there are specific and articulable facts giving reason to believe that the education records are likely to contain information described in paragraph (1)(A).

“(B) The court shall issue an order described in paragraph (1) if the court finds that the application for the order includes the certification described in subparagraph (A).

“(3) Protection of educational agency or institution.-An educational agency or institution that, in good faith, produces education records in accordance with an order issued under this subsection shall not be liable to any person for that production.

“(4) Record-keeping.--Subsection (b)(4) does not apply to education records subject to a court order under this subsection.”.

Immigration Law

The effect of the changes to foreign student monitoring are not so much a change in the law (although a few changes have been made) but rather a mandate to implement earlier legislation by Jan. 1, 2003. A 1996 law, the Illegal Immigration Reform and Immigrant Responsibility Act required implementation of an electronic record keeping system for data on foreign students. The PATRIOT ACT appropriated \$36,800,000 to the Department of Justice to fully implement by January 1, 2003 the foreign student visa monitoring program (which is now known as SEVIS).