

## FERPA Considerations Implicated by Auditing of Online Classes

April 2, 2020

The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, popularly known as “FERPA”, provides important restrictions on the use and disclosure of student “education records”.

FERPA employs a broad definition of education records. They include “any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.” 34 C.F.R. § 99.3. The U.S. Department of Education (the “Department”) has confirmed that “a photo or video of a student is an education record, subject to specific exclusions, when the photo or video is: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.”

Generally, an institution may disclose “education records” without student consent only if it first fully “de-identifies” – i.e., redacts all “personally identifiable information” from the records. However, there are a number of exceptions to this general rule. One of these exceptions, the “Legitimate Educational Interest” exception, is especially apt to our analysis.

### **“Legitimate Educational Interest” Exception.**

FERPA allows disclosure of education records to “school officials . . . whom the . . . institution has determined to have legitimate educational interests.” 34 C.F.R. § 99.31(a)(1). The Department allows each institution to define who is a “school official” with “legitimate educational interests.” Per the operative Caltech catalog:

*Caltech permits disclosure of educational records, without consent of the student, to Institute officials with legitimate educational interests in them. An Institute official is a person employed by the Institute in an administrative, supervisory, academic or research, or support-staff position (including security personnel and health and diversity center staff), a person or company with whom the Institute has contracted (such as an attorney, auditor, consultants, contractors, or collection agent), a person serving on the Board of Trustees, or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another Institute official in performing his or her tasks. **An Institute official has a legitimate educational interest if he or she needs to review an educational record in order to fulfill his or her professional responsibility.***