

Arguing that the Virginia Tech shootings in 2007 suggested, in part, that stakeholders and lawmakers need a better understanding of and approach to information privacy and mental health issues on college campuses, this note makes three recommendations. Firstly, at the common law, rather than relying on property-based tort concepts in which “safety” is a sword for imposing liability on institutes of higher education (IHEs) and “privacy” is a liability shield, courts should create a coherent foreseeability framework specific to the mental health and IHE context that balances safety and privacy concerns. Secondly, by amending the Family Educational Rights and Privacy Act of 1974 (FERPA) to include a safe harbor that clearly allows IHEs to share information in education records with parents when students threaten to harm themselves or others, Congress could fulfill FERPA’s legislative intent, eliminate the bias toward nondisclosure, and reconcile the demands of the common law with those of FERPA. Thirdly, as these tensions within and between the common law and FERPA are resolved, the U.S. Department of Education should make several changes regarding the guidance it provides so that IHEs can see FERPA applied to situations they currently confront when attempting to balance safety and privacy.