



FDM Legal Issues

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What are the issues?

- There are many, and no doubt more will be raised as this discussion proceeds.
- To some extent, the issues depend on what role you or your organization plays in the process...



University concerns:

- Can we collect the data on training flights?
 - Yes, nothing prohibits the collection of the data, the issue is what happens with that data and how is it used.
- Should we collect the data on training flights?
 - This is an issue to be resolved in consultation with general counsels at respective institutions...risk benefit analysis.

University concerns:

- If we collect the data, does it become a student academic record?
 - Yes, very little doubt that this information is considered an academic record if it is identifiable to a particular student.
- What does this mean?
 - It means that the data is protected under the Family Educational Rights and Privacy Act.

University concerns:

- What does that mean?
 - FERPA protects student educational records and only allows certain directory information to be released without a student's (or parent's if under 18) consent.
 - Directory information includes name, address, phone, place and date of birth, dates attended.
 - Students have the right to restrict this information as well.

University concerns:

- Are there any exceptions?
 - Yes, records can be disclosed to:
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;

University concerns:

- Continued
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

University concerns:

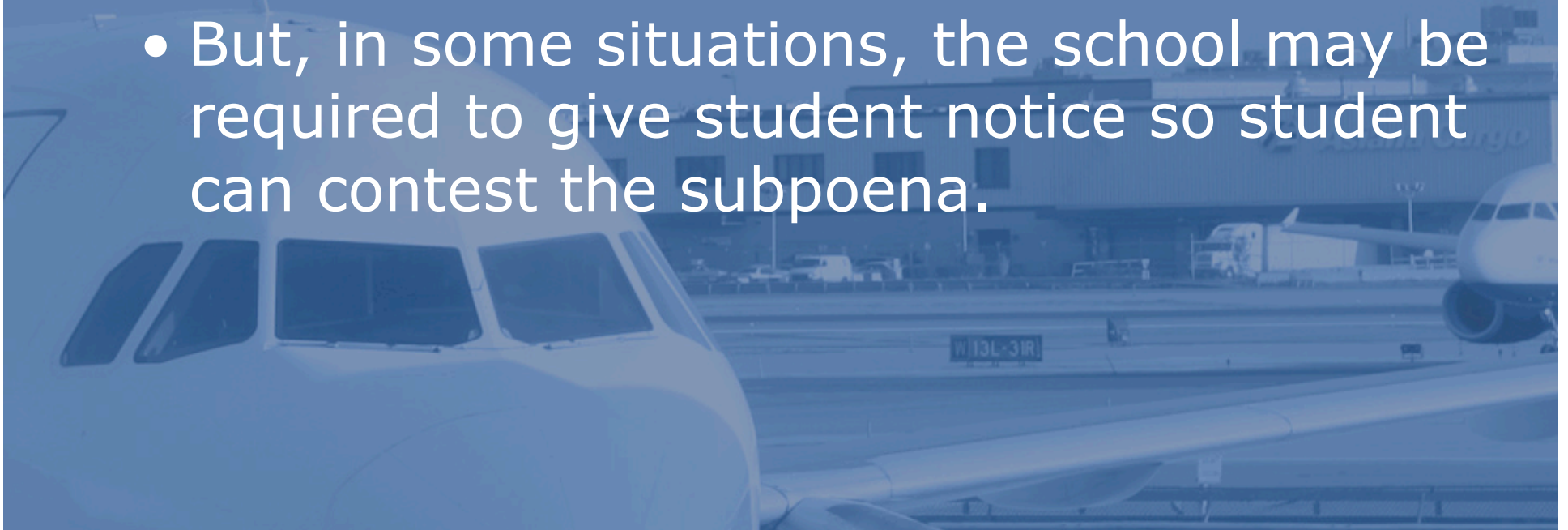
- Schools must use caution:
 - The protected information is broadly defined,
 - The permitted disclosures are narrowly defined.
- If the school wants to use the data, since most exceptions would appear to not apply, the key is to obtain consent.
 - But, do students really understand this???

Concerns for all:

- Can the collected information be subpoenaed?
 - Sure. In the Lexington case, the court made clear that ASAP documents are not privileged and are discoverable with a subpoena (at least by the litigants). FAA will not release under FOIA, but will under subpoena.
 - FDM data is arguably analogous to ASAP collected data.

Concerns for all:

- If student records are involved can they still be subpoenaed?
 - Yes, FERPA allows (but doesn't require) a school to comply with a valid subpoena.
 - But, in some situations, the school may be required to give student notice so student can contest the subpoena.



Concerns for all:

- Can we be sued?
 - Absolutely, that is the easy part.
- If the organization is negligent or otherwise culpable, it is possible that the gathered data could be used as evidence against the organization.
- There are probably more questions than answers at this point, much depends on what data is being collected and how will it be used.

- Questions?

