

Student Confidentiality: HIPAA and FERPA in the School Setting

Presented by Tia Campbell, MSN, RN, NCSN
School Health Specialist
VA Department of Education

Objectives:

At the conclusion of this presentation the learner will be able to:

1. Define HIPAA
2. Define FERPA
3. Discuss the similarities and differences in the two privacy laws
4. Discuss the implications of confidentiality laws in the school setting

Confidentiality Best Practice

Obtain written consent!

What is HIPAA?

Health Insurance Portability and Accountability Act of 1996, Public Law 104-191

Key document: *The Standards for Privacy of Individually Identifiable Health Information*

The Privacy Rule

Who is a “covered entity” and must comply with HIPAA rules?

Health Plans

Health Care Providers

Health Care Clearinghouses

What information is covered?

The Privacy Rule protects all “individually identifiable health information” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral.

How does HIPAA Impact School Practices?

- ▶ Health care providers who electronically transmit health information in connection with certain transactions are covered entities.
- ▶ Schools could be covered entities if billing Medicaid for Medicaid covered services in the school setting.
- ▶ Health care professionals we collaborate with are subject to HIPAA standards.

What information can a covered entity share without written consent?

Information for treatment, payment, and health care operations

What is FERPA?

- ▶ Family Educational Rights and Privacy Act
- ▶ Enacted in 1974 to protect student education records
- ▶ Applies to all public and private schools that accept federal funds

What are education records?

- ▶ Records directly related to a student and maintained by an educational agency
- ▶ Student health records at the elementary and secondary level (immunization record, physical exam, health screening results, etc.)
- ▶ Nurses and Practitioners of the Healing Arts notes (documentation) in the official student file
- ▶ Special Education records

Rights of Parents and Eligible Students

Right to:
Inspect and Review

Request Amendment

Privacy of PII (Personally Identifiable Information)

File a complaint

What is Personally Identifiable Information?

- ▶ Student's name;
- ▶ Name of the student's parent or other family members;
- ▶ A personal identifier (SSN#, student number, etc.);
- ▶ Other direct identifiers– date of birth, place of birth, mother's maiden name;
- ▶ Information that alone, or in combination, can be linked to a specific student

What is Directory Information?

Examples include:

- ▶ Student's name
- ▶ Address
- ▶ Telephone number
- ▶ Date and place of birth
- ▶ Honors and awards
- ▶ Dates of attendance
- ▶ Grade level
- ▶ Most previous school attended

When is prior consent not required?

Exceptions which relate to K-12 schools and are of interest to school nurses districts are:

1. School officials , including teachers, within an agency with whom the agency has determined have legitimate educational interests.

When is prior consent not required?

2. To other schools to which the student is transferring;
3. To comply with a judicial order or lawfully issued subpoena;
4. To appropriate officials in cases of health and safety emergencies; and
5. The disclosure is information the agency has designated as directory information.

FERPA & Public Health

FERPA allows the disclosure of PII without parental consent to **appropriate officials** in cases of **health and safety emergencies**

An emergency means a situation in which there is an articulable and significant threat to the health or safety of students or other individuals.

HIPAA & FERPA Collide

It is possible that the health department or other health care providers would be able to share health information with the school nurse under HIPAA, in the treatment of a patient/student, but according to FERPA the school nurse would not be able to provide information back to the health department or other health care provider due to FERPA.

Sample Forms

- HIPAA Compliant Authorization
- Model Notification of Rights under FERPA
- Model Notice for Directory Information

Check your practice

- ▶ Are you properly storing health records?

- ▶ Does your school division provide
 - Annual notification of Rights under FERPA
 - Annual notice for Directory Information

- ▶ Are you requesting parental permission to share information on an annual basis, using a HIPAA compliant form?

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vLex (2007). 34 CFR 99.36—What conditions apply to disclosure of information in health and safety emergencies? Retrieved from <http://vlex.com/vid/19755424>.

vLex (2007). 34 CFR 99.37—What conditions apply to disclosing directory information? Retrieved from <http://vlex.com/vid/19755433>.

Additional Resources

Confident About Confidentiality? HIPAA/FERPA Made Easy (2009). NASN Radio, www.nasn.org.

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Have additional questions? Contact:

Tia Campbell, RN, MSN, NCSN
 School Health Specialist
 VA Department of Education
Tia.campbell@doe.virginia.gov
 804-786-8671

ABC PUBLIC SCHOOLS

HIPAA-Compliant Authorization for Exchange of Health & Education Information

Patient/Student Name: _____ **Date of Birth:** _____

I hereby authorize _____ [*insert health care provider name & title*]
and _____ [*insert name & title of school official*] to exchange
health and education information/records for the purpose listed below.

_____ [*insert address & telephone of school/school district*]

_____ [*insert address and telephone of health care provider*]

Description:

The health information to be disclosed consists of:

The education information to be disclosed consists of:

Purpose: This information will be used for the following purpose(s):

1. Educational evaluation and program planning
2. Health assessment and planning for health care services and treatment in school.
3. Medical evaluation and treatment
4. Other: _____

Authorization

This authorization is valid for one calendar year. It will expire on _____ [*insert date*]. I understand that I may revoke this authorization at any time by submitting written notice of the withdrawal of my consent. I recognize that health records, once received by the school district, may not be protected by the HIPAA Privacy Rule, but will become education records protected by the Family Educational Rights and Privacy Act. I also understand that if I refuse to sign, such refusal will not interfere with my child's ability to obtain health care.

Parent Signature Date

Student Signature* Date

*If a minor student is authorized to consent to health care without parental consent under federal or state law, only the student shall sign this authorization form. In Connecticut, a competent minor, depending on age, can consent to outpatient mental health care, alcohol and drug abuse treatment, testing for HIV/AIDS, and reproductive health care services.

Copies: Parent or student*
Physician or other health care provider releasing the protected health information
School official requesting/receiving the protected health information

PSA - Rev. 4/15/03

Model Notification of Rights under FERPA for Elementary and Secondary Schools

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. These rights are:

(1) The right to inspect and review the student's education records within 45 days of the day the School receives a request for access.

Parents or eligible students should submit to the School principal [or appropriate school official] a written request that identifies the record(s) they wish to inspect. The School official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

(2) The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.

Parents or eligible students who wish to ask the School to amend a record should write the School principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the School decides not to amend the record as requested by the parent or eligible student, the School will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

(3) The right to privacy of personally identifiable information in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the School has outsourced services or functions it would otherwise use its own employees to perform (such as an attorney, auditor, medical consultant, or therapist); a parent or student serving on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks.

A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the School discloses education records without consent to officials of another school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

(4) The right to file a complaint with the U.S. Department of Education concerning alleged failures by the School to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

**Family Educational Rights and Privacy Act (FERPA)
Model Notice for Directory Information**

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires that [School District], with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child’s education records. However, [School District] may disclose appropriately designated “directory information” without written consent, unless you have advised the District to the contrary in accordance with District procedures. The primary purpose of directory information is to allow the [School District] to include this type of information from your child’s education records in certain school publications. Examples include:

- A playbill, showing your student’s role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as for wrestling, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent’s prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the *Elementary and Secondary Education Act of 1965* (ESEA) to provide military recruiters, upon request, with the following information – names, addresses and telephone listings – unless parents have advised the LEA that they do not want their student’s information disclosed without their prior written consent.¹

If you do not want [School District] to disclose directory information from your child’s education records without your prior written consent, you must notify the District in writing by [insert date]. [School District] has designated the following information as directory information: [Note: an LEA may, but does not have to, include all the information listed below.]

- | | |
|--------------------------|---|
| -Student’s name | -Participation in officially recognized activities and sports |
| -Address | -Weight and height of members of athletic teams |
| -Telephone listing | -Degrees, honors, and awards received |
| -Electronic mail address | -The most recent educational agency or institution attended |
| -Photograph | -Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems that cannot be used to access education records without a PIN, password, etc. (A student’s SSN, in whole or in part, cannot be used for this purpose.) |
| -Date and place of birth | |
| -Major field of study | |
| -Dates of attendance | |
| -Grade level | |

¹ These laws are: Section 9528 of the Elementary and Secondary Education Act (20 U.S.C. § 7908) and 10 U.S.C. § 503(c).