


Student Health Information: The Basics of HIPAA & FERPA

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Summary Comparison

FERPA	HIPAA Privacy Rule
<ul style="list-style-type: none"> Applies to educational agencies & institutions that receive federal assistance Addresses confidentiality and rights of access to "education records" 	<ul style="list-style-type: none"> Applies to "covered entities," including health insurers & most health care providers Addresses confidentiality and rights of access to "protected health information"

Family Educational Rights & Privacy Act,
20 U.S.C. § 1232g, 34 C.F.R. Part 99

FERPA

Education Record

Definition	Exclusions
<p>Records, files, documents, and other materials that:</p> <ol style="list-style-type: none"> contain information directly related to a student, and are maintained by an educational institution or agency, or by a person acting for the institution or agency. 	<ul style="list-style-type: none"> Sole possession notes A school/LEA's law enforcement records Records related to the student as an employee Certain records of students who are at least 18 years old

Rights under FERPA

- Right to inspect and review records
- Right to request amendment of records believed to be inaccurate or misleading
- Right to control disclosure of information in most situations
- Right to complain to federal Department of Education

Disclosures under FERPA

General rule:
Disclosure of education records or the information in them requires the written consent of the parent or eligible student

Disclosures under FERPA

Exceptions:

- Directory information (must have right to opt-out)
- School officials with legitimate educational interest
- School to which student transfers
- School audits/evaluations, accrediting organizations
- Studies (if particular criteria met)
- Health or safety emergency
- Subpoena or judicial order
- State & local juvenile justice agencies pursuant to state law

Health Insurance Portability & Accountability Act,
42 U.S.C. §1320d, 45 C.F.R. Parts 160 & 164

HIPAA

Protected health information (PHI)

Definition

Individually identifiable health information in any form (paper, oral, electronic) that relates to:

- (1) Health status or condition of an individual, or
- (2) Provision of health care to an individual, or
- (3) Payment for provision of health care to an individual.

Exclusions

- Education records covered by FERPA
- Certain treatment records of students ≥ 18 or in post-secondary school
- Employment records held by covered entity as employer
- Person deceased for more than 50 years

Rights under HIPAA

- Right to access and obtain copies of PHI
- Right to permit or refuse to permit disclosure of PHI when permission is required
- Right to request additional privacy protections
- Right to receive Notice of Privacy Practices
- Right to an accounting of disclosures of PHI
- Right to amend inaccurate PHI
- Right to notice of breaches of PHI

Disclosures under HIPAA

General rule:

Disclosure of PHI requires the permission of the individual or personal representative

Minor children: Parent/guardian is personal representative unless:

- minor consented to own treatment, or
- parent agreed to a confidential care relationship between minor and health care provider

Disclosures under HIPAA

Exceptions:

- Disclosures for treatment purposes
- Disclosures that are required by law
- Disclosures for public health activities that are authorized by law
- Other disclosures expressly authorized by Privacy Rule



Taking it to school ...

Common threads

- Which law applies – HIPAA or FERPA?
- Who may have access to the information within the school?
- Does disclosure of the records or information require permission? If so, whose permission?
- May parents have access to the records or information?

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Discussion 1: Providing Immunization Records to School

A child is going to be excluded from school if the parent does not provide an immunization record within a few days. The parent has told the school nurse that the child received immunizations at the local health department, but the parent has been unable to go to the health department to retrieve the record. Can the school get the record from the health department directly?

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Discussion 2: Reportable Communicable Disease

A child in a school has pertussis (whooping cough), a reportable communicable disease.

- a. Can the school report the case to the health department?
- b. As part of investigating the case and containing a possible outbreak, health department staff want the names of the students who are in classes with the ill child, so that those children's parents may be contacted and advised about appropriate medical follow-up. Should the school provide this information?

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Discussion 3: Non-Reportable Communicable Disease

Several children in a school have varicella (chickenpox), a communicable disease that is not reportable.

- a. Can the school notify the health department and provide the ill children's names?
- b. Varicella is a required vaccine, but a child can attend school without it if the child has a medical or religious exemption. However, the local health director may order children with exemptions to stay home from school during an outbreak. Can the school give the health department the names of children in the school who have exemptions, so that the health director may order them to stay home?

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Discussion 4: Teen Needs Follow-up to Minor's Consent Services

A 16-year-old who receives family planning services at a local health department has a positive STD test. The health department wants to provide the appropriate treatment to the student but is unable to reach her at the cell phone number she provided.

- a. May the health department ask the school nurse at the teen's high school to notify the teen that her recent health department test requires follow-up?
- b. Does the teen's parent have a right to access information about this issue that is recorded in the school nurse's records?

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References

Websites with links to laws and other resources

- U.S. Dept. of Health & Human Services, HIPAA for Professionals: <https://www.hhs.gov/hipaa/for-professionals/index.html>
- U.S. Dept. of Education, Laws & Guidance: Family Educational Rights and Privacy Act (FERPA): <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Guidance documents

- U.S. Dept. of Health & Human Services & U.S. Dept. of Education, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) to Student Health Records (Nov. 2008), at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa-hipaa-guidance.pdf
- U.S. Dept. of Education, Family Educational Rights and Privacy Act (FERPA) and H1N1 (October 2009), at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/ferpa-h1n1.pdf