

Confidentiality and Colorado Public School Health Records

What laws and rules regulate confidentiality of health information in public schools? FERPA, HIPAA, and the confidentiality required by one's nursing license all may contribute to the constraints placed on public school nurses.

What is FERPA? The Family Education Rights and Privacy Act is a federal law that outlines who has access to education records. It applies to all schools that receive federal funds from a program administered by the U.S. Department of Education.

Does FERPA apply to school health records? YES, "education records" is broadly defined under FERPA to include a student's health records, including immunization records, records maintained by a school nurse, as well as records maintained concerning services provided to students under the Individuals with Disabilities Education Act.

Exempted from the definition of education records are those records which are kept in the sole possession of the maker of the records and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.

What about HIPAA? How does that affect school health services? The Health Insurance Portability and Accountability Act is another federal law that dictates how health records are to be handled. A school is subject to HIPAA only if it provides medical care and electronically transmits health information as part of a "covered transaction" (e.g. billing)

For most schools, HIPAA will only be an issue when communicating with a student's medical provider. While school health records are not regulated by HIPAA, almost all medical practitioners are covered by HIPAA. "Treatment purposes" is one of the exceptions: a practitioner may relay or clarify treatment orders to individuals involved in the treatment of that patient, such as to the school nurse without obtaining authorization of the student or parent. Best practice, however, is that the parent/guardian signs a release of information allowing communication between provider and the school.

Protection of personally identifiable health information contained in medical or treatment reports from an outside provider is the responsibility of the requester. Ideally the school nurse summarizes the educationally relevant information from the outside record source into the student's cumulative health record and then destroys the outside record.

Since most school records are covered by FERPA, who can access this information without parental consent? Under the FERPA regulations, "eligible students" and parents of minor students have a right to see their records. "Eligible students" are those that are at least 18 or those who are attending a postsecondary institution. In general, parental consent is required for others to access information in students' health records. Importantly, in Colorado, the age of majority for education purposes is 21, and the Individuals with Disabilities Education Act provides that parental consent is required for the release of special education records unless the child has reached the age of majority under state law.

References:

Department of Health and Human Services. (2008). [*Joint Guidance on the Application of the Family Educational Rights and Privacy Act \(FERPA\) And the Health Insurance Portability and Accountability Act of 1996 \(HIPAA\) To Student Health Records.*](#)

Department of Education. [*FERPA Frequently Asked Questions – FERPA for School Officials*](#)



Accordingly, students 18 and older have the right under federal law to access their education records, except for special education records, for which they must wait until they are 21.

There are certain circumstances where consent is not required:

- School officials, including teachers, that have a “legitimate educational interest”
- In an emergency “if knowledge of the information is necessary to protect the health or safety of the student or other individuals
- Instances of abuse or neglect
- Information that is required by a school to which the student is transferring
- Certain legal situations including subpoenas or investigations of criminal offenses

Can immunizations records be shared? You can share immunizations records with parents or with a school where the student is transferring without obtaining consent. However, before providing immunizations records to an outside medical office or state/local public health, you must get written consent. You can share de-identified or aggregate data such as immunization rate or exemption rate. A recent HIPAA advisory requires schools to get parental consent either verbal or email when requesting immunizations records from providers or health department.

So can a list of students’ health issues be distributed to teachers or other staff? A school-wide health concerns distribution list violates FERPA and is not best practice. If individual staff needs to be informed of a student’s condition, that student would require an Individualized Health Care Plan (IHP). Nurses can ensure that confidentiality is respected by revealing only necessary health concerns and only to those individuals whose knowledge may affect the student’s health.

One major misconception about FERPA. FERPA does not protect the confidentiality of information in general. FERPA prohibits the improper disclosure of information contained in the education record. FERPA does not apply to one’s opinion or observations unless it is entered into the record. However, you must consider the fact that confidentiality of facts learned in the course of nursing duties may be required by the virtue of a nursing license.

This CDE guidance document is meant for clarification, is not legally binding, and is not to be confused with legal advice. This guidance reflects CDE’s recommendations, but Administrative Units (AUs) may have developed their own policies or procedures that differ from those described herein. Be sure to refer to your local AU’s policies and procedures through the Director of Special Education. If you are seeking legal advice, please contact your legal counsel.

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