

Resolving conflicts between FERPA and public health data collection



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ASHA Testimony to NCVHS Privacy
Subcommittee

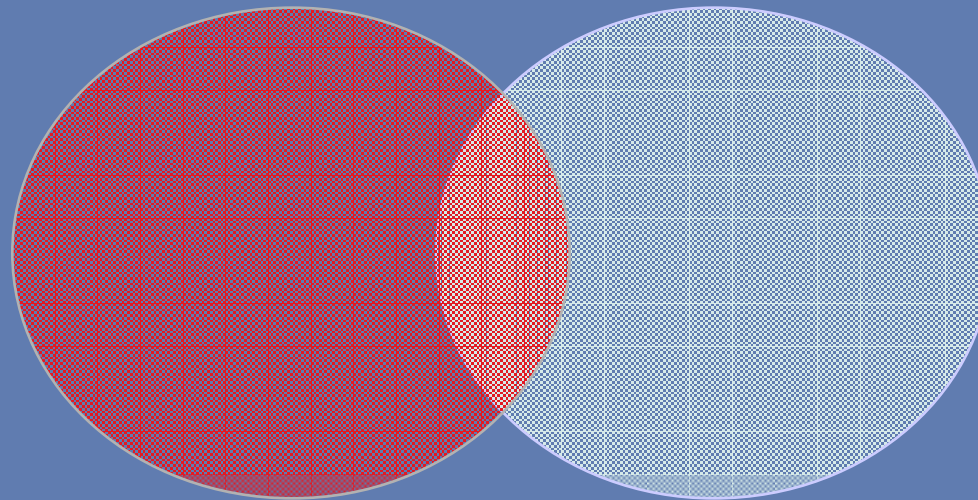
Federal Laws & Privacy

**FERPA – Family Education
Rights and Privacy Act**

**HIPAA – Health Insurance
Portability &
Accountability Act**



Interface:



Public Schools :
FERPA

Student's health care
providers &
agencies: HIPAA

Family Educational Rights & Privacy Act

- FERPA – passed in 1974
- Protects the privacy of students and families
- Sets standards of confidentiality for all education records
- Does not address health records

www.ed.gov/policy/gen/guid/fpco/ferpa/index.html

FERPA: No TPO Exemption

- Treatment
 - HIPAA providers share information with schools for Treatment without authorization
 - FERPA does not allow sharing information with prescribers of Treatment without authorization
 - Immunizations, physical exams, & education assessments = No treatment = no exemption

FERPA: No TPO Exemption

- Payment

Letter to Iowa Department of Education re:
Disclosure of Education Records to Medicaid Agency
for Reimbursement Purposes (10/25/05)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/iowa101205.html>

- If submitting for Medicaid reimbursement, **MUST** have parent consent

FERPA

- Annual notice of rights to students
- Right to inspect education records
- Right to request amendment
- Record access log
- Transfer of ed records to new school

HIPAA

- Notice of Information Practices
- Right to access information
- Right to request amendment
- Disclosure logs

FERPA EXCEPTIONS

- Directory
- Emergencies
- Research
- Judicial order/subpoena
- Audit by state/federal officials

- *School officials with legitimate educational interest*

HIPAA EXCEPTIONS

- Directory
- Emergencies
- Research
- Judicial order/subpoena
- Audit by state/federal officials

- *Quality Assurance*
- *Body Identification*
- *Public Health*
- *TPO*

FERPA

- Internal release: OK for “legitimate educational interest”
- Educational purposes
- No policies/ procedure

HIPAA

- Internal release: OK for Treatment. Payment, Operation
- Health purposes
- Policies & procedures detailed

FERPA: No TPO Exemption

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*** State exceptions

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FERPA: No Public Health Exemption

Letter to Alabama Department of Education re: Disclosure of Immunization Records (2/25/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/alhippaa.html>

Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements (11/29/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/baiseunmslc.html>

Letter to Pennsylvania Department of Education re: Disclosure of Education Records to CDC Grantees (2/25/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/pacdc.html>

Letter to California Department of Education re: Disclosure of Education Records to CDC Grantees (2/18/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/ca21804.html>

FERPA: No Public Health Exemption

Letter to Alabama Department of Education re:
Disclosure of Immunization Records (2/25/04)
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/alhippaa.html>

- Cannot disclose without written consent
- Emergency
 - Strictly construed
 - Narrow interpretation
 - Imminent danger

*** State exceptions

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FERPA: No Public Health Exemption

Letter University of New Mexico: Applicability of FERPA to Health & Other State Reporting Requirements (11/29/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/baiseunmslc.html>

- State law requires principals, teachers, school nurses report immediately:
 - Communicable diseases, vaccine preventable & STDs
 - Bio-terrorism & chemical agents: anthrax, smallpox
 - Food, waterborne & environmental
 - Tic, encephalitis, hepatitis, Legionnaires, etc
 - Spinal cord, TBI, tumor registry

- Decision: Subject to all FERPA requirements

FERPA: No Public Health Exemption

Letter University of New Mexico: Applicability of FERPA to Health & Other State Reporting Requirements (11/29/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/baiseunmslc.html>

Emergency:

- Imminent danger
- Immediate need
- Narrow interpretation
- Case-by-Case determination

Decision: NO routine reporting = written consent

FERPA: No Public Health Exemption

Letter to Pennsylvania Department of Education re:
Disclosure of Education Records to CDC Grantees
(2/25/04)

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/pacdc.html>

Letter to California Department of Education re:
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<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/ca21804.html>

- Interagency agreements autism
- Decision: Unless a SOE agency or official:
 - NO exception to written consent

- February 2004 DOE memorandum:
 - CDC state-related activities using student records without individual parent consent do not comply with FERPA
- Options, passive consent & local record review, were not acceptable. Report made to Congress
- Preempted inter-agency data sharing agreements

FERPA Dilemmas

- Measuring & sharing student health information:
 - Height, weight, BMI
 - Mental health screening
 - Lifestyle
 - Chronic and acute illnesses mandated reports
 - Environmental Surveillance
- Must have authorization

FERPA: Child Abuse Reporting

FERPA superseded by CAPTA

Child Abuse Prevention, Adoption and Family Services Act of 1988 amended the Child Abuse Prevention and Treatment Act (CAPTA)

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Balancing school privacy and safety

- October 30, 2007
- Empowers school officials to act quickly when need arises
- Disclose without consent for health or safety of students
- Release without consent to law enforcement, public health, trained medical personnel

Balancing school privacy and safety

- Law enforcement units
 - Not covered by FERPA
 - No release needed
 - Access to student education records
- Security video not FERPA

Balancing school privacy and safety

- Observed or personal knowledge, not covered by FERPA
- Transfer all records without consent (IDEA 2004)

HIPAA De - identify information

- Name
- SS#
- State, zip
- DOB, DOE.....
- Vehicle #
- Record number
- Serial number
- Device number
- Fax and phone number
- Email, IP address
- Web address
- Certificate and license number
- VIN & registration

FERPA De - identify information

- Name
- ID#
- Gender
- DOB, place
- Religion
- Country of origin
- Sports & clubs
- Academic performance
- Employer
- Discipline
- “Anything else traceable”

Only acceptable strategies

- De-identify
- Obtain parental authorization for ANY sharing outside school

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