

# Partnering with School-Based Health Centers: What Schools Need to Know

## HIPAA and FERPA Confidentiality and Disclosing Health Care Information

**The purpose of this section** is to help school personnel and health care providers understand what student health information can be shared and with whom it can be shared. Understanding this section however is only the start to ensuring that communication between your school and your school-based health center (SBHC) is seamless. It is recommended that key school and SBHC stakeholders use this information to inform school-specific policies and procedures. It is also useful for school and school-based health center staff to meet on an ongoing basis to identify any confusion or glitches in sharing information.

**Why do I need to understand HIPAA and FERPA?** - One of the most common challenges in schools with SBHCs is related to confidentiality and the sharing of student health information. Federal and state laws dictate who can share information and what information can be shared.

Health care and school personnel often operate under two different laws – HIPAA and FERPA. This can lead to confusion, misunderstanding, and at times conflict. For example, if a teacher or principal asks SBHC personnel for the health or mental health status of a student, by law the health care provider cannot share specific information without a signed consent. This may seem to school personnel like a rebuff or a disinterest in collaboration—but it is the law. By the same token, if a healthcare provider asks for immunization records from the school nurse or the main office, school personnel cannot share any part of the educational record without signed consent. This may be frustrating and may seem to the healthcare provider that the school is putting up a barrier— but it is the law.

It is critical that everyone – health care providers and school personnel – understand when HIPAA applies and when FERPA applies and how these interact with state laws. This is particularly important in a school that has a SBHC. Knowledge of what laws apply and their implications will facilitate relationships between school personnel and healthcare providers.

**HIPAA** - HIPAA, the Health Insurance Portability and Accountability Act of 1996, protects the privacy of patient information. HIPAA limits the disclosure of what it calls “protected health information” maintained by health care providers (including medical and mental health providers). “Protected health information” includes individually identifiable health information in any form, including oral communications as well as written or electronically transmitted information.

**Implications for school personnel:** Without a signed consent by the parent or legal guardian, the SBHC staff will not be able to share records, specific health status, conversations with students, mental health counseling information, etc. with school personnel.

**FERPA** - FERPA, the Family Educational Rights and Privacy Act, is a federal law that protects the privacy of students’ personal information held by educational agencies or institutions that receive federal funds under programs administered by the US Secretary of Education. FERPA limits disclosure of information in educational records maintained by the school and applies to school personnel. Education records are defined as written records, files, documents or other materials that contain information directly related to a student.

**Implications for school personnel:** Without a signed consent by the parent or legal guardian, school personnel cannot share written educational records with SBHC staff. Any oral communication, however, can be shared.

**How do I know which law applies to me?** - Student health information is subject to HIPAA if it is part of a program that is funded, administered or operated by or on behalf of a public or private health, social services or other non-educational agency or individual. In Chicago Public Schools (CPS) schools, health and mental health information kept in SBHCs is subject to HIPAA because all SBHCs in CPS schools are operated by health or social service organizations.

Student health records are subject to FERPA if it is part of a program that is funded, administered or operated by or on behalf of a school or educational institution. Student health records kept by the school nurse, the school, and the District are education records and are subject to FERPA.

HIPAA states that its rules do not apply to health information held in an educational record subject to FERPA. HIPAA and FERPA can never apply to the same information at the same time.

**Implications for school personnel:** In CPS schools, all school personnel are subject to FERPA and SBHC personnel are subject to HIPAA.

**Are the rules for medical and mental health professionals the same?** - The rules for mental health information are much stricter than those for medical information.

HIPAA provides the “floor” for privacy rights – meaning that it provides the most basic rules regarding confidentiality and disclosure of information. States may pass laws that extend more stringently protect privacy rights.

The Illinois Mental Health and Developmental Disabilities Confidentiality Act outlines comprehensive methods for handling mental health information and records. According to this act, mental health records have a higher degree of protection than medical records. Mental health practitioners can share information among providers of the same organization but must have signed consents or releases to share with anyone outside of their organization. The only time mental health records can be shared is in the case of an emergency, which is strictly defined as when a patient is at risk of harm to self or others or is the victim of child abuse.

**Implications for school personnel:** Mental health providers in the SBHC may at times seem to be stricter than the medical providers. Remember they are held to a more stringent set of guidelines as set forth in the Mental Health Act and Developmental Disabilities Confidentiality.

### **How are HIPAA and FERPA similar?**

HIPAA and FERPA both:

- Protect the privacy of personal information
- Require signed authorization before records can be released
- Allow for sharing of information with certain individuals and agencies even without authorization in certain situations

## How are HIPAA and FERPA different?

HIPAA	FERPA
<b>Who has access to the student's records?</b>	
<ul style="list-style-type: none"> <li>▪ Parent/guardians have access to records of the minor child <b>except</b> in cases where:               <ul style="list-style-type: none"> <li>▪ SBHC provider determines that parent/guardian access would have detrimental effect on the provider's professional relationship with the minor</li> <li>▪ Minor's physical safety or psychological well-being would be impacted</li> <li>▪ Records relate to health care for which the minor consented or could have consented on his/ her own</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Parent/guardians have the right to access all records of their minor child.</li> </ul>
<b>Who can sign authorization for release of information?</b>	
<ul style="list-style-type: none"> <li>▪ Parent/guardian must sign for minors except in cases where records have to do with health care services for which the minor consented or could have consented under state law. In these cases, the minor patient must sign the release.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Parent/guardians must sign on behalf of their minor child.</li> </ul>
<b>Who can receive information without signed release?</b>	
<ul style="list-style-type: none"> <li>▪ SBHC medical providers can disclose information to any other health care provider (within the school, within the SBHC, or for referral purposes) working with the student for purposes of treatment or referral without release.</li> <li>▪ This does not apply to mental health providers in the SBHC. According to the Mental Health Code, they must have an authorized release to disclose information.</li> <li>▪ In cases of emergency, SBHC medical providers can share information without a release.</li> <li>▪ SBHC mental health providers can share information without a release in cases where the minor patient is at risk of harm to self or others or is the victim of child abuse.</li> </ul>	<ul style="list-style-type: none"> <li>▪ School health providers subject to FERPA can share information with any school staff that has "legitimate educational interest" in the information.</li> <li>▪ School districts must define the criteria for determining the legitimacy of the educational interest</li> <li>▪ In cases of emergency, information can be shared without release.</li> </ul>
<b>What types of records and information is covered?</b>	
<ul style="list-style-type: none"> <li>▪ All information (written and oral) is covered by HIPAA.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Any information considered part of the education record.</li> <li>▪ Oral information and personal notes are not considered part of the education record and are not covered by FERPA</li> <li>▪ Education records do NOT include notes made by a school professional (such as school psychologist or guidance counselor) that are in the professional's sole possession. As such they cannot be shared without consent.</li> </ul>

## Frequently Asked Questions about HIPAA and FERPA

### 1) When can information protected by HIPAA be shared?

Information protected by HIPAA cannot be disclosed without signed authorization. Some exceptions do apply such as:

- Medical health care providers may share health information with other health care providers for treatment and referral purposes without the need of a signed release. This does **not** apply to mental health providers who, under the Mental Health Code, cannot share information for treatment or referral without a signed release.
- Medical health care providers may share information without a signed release in emergencies and for billing, payment, and research purposes. Mental health providers can share information in the cases where the patient is at risk of harm to self or others or is the victim of child abuse.

### 2) When can information protected by FERPA be shared?

Generally FERPA prohibits schools from releasing any information in the education record unless they have written permission for the release. In most cases, parent/guardians must sign the release. Some exceptions apply such as:

- Schools may share directory information which includes name, address, telephone listing, date and place of birth, etc. The scope of what directory information can be released depends on individual school district policy. According to CPS policy, before any directory information is released, school officials must notify the parent/guardian/guardian about what Directory Information is to be released/posted and allow a reasonable amount of time for parents/guardians to opt out
- School personnel can share information with school officials and school personnel who have legitimate educational interest in the information.
- In connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or others.

### 3) Is mental health information treated the same as medical information?

No. The rules for mental health information are much stricter than those for medical information.

HIPAA provides the “floor” for privacy rights – meaning that it provides the most basic rules regarding confidentiality and disclosure of information. States may pass laws that extend more stringently protect privacy rights.

- The Illinois Mental Health and Developmental Disabilities Confidentiality Act outlines comprehensive methods for handling mental health information and records. According to this act, mental health records have a higher degree of protection than medical records. Mental health practitioners can share information among providers of the same organization but must have signed consents or releases to share with anyone outside of their organization. The only time mental health records can be shared is in the case of an emergency, which is strictly defined as when a patient is at risk of harm to self or others or is the victim of child abuse.

### 4) When can a minor give consent for services?

As a general rule, Illinois law requires a minor who seeks medical treatment to obtain the consent of a parent/guardian or guardian. However, there are several important exceptions, which are described below. If a minor fits one of the following categories, she/he may consent to ALL health care evaluation and treatment without the consent of a parent/guardian or guardian:

- The minor is legally married.
- The minor is a parent/guardian.
- The minor is pregnant.
- The minor has been legally emancipated by a court.

In Illinois, any minor 12 or older may give consent to the following care:

- **Reproductive health services** – Minors aged 12 and over can give consent for Emergency Contraception (also known as the morning-after pill); confidential testing, treatment and counseling for sexually transmitted diseases (STDs); confidential pregnancy tests and prescription of contraceptives; testing and treatment and counseling for human immunodeficiency virus (HIV). Chicago Department of Public Health regulations require disclosure of positive HIV results to school officials.
- **Mental health services** - Minors aged 12 and over may consent to confidential counseling or psychotherapy on an outpatient basis. If the minor is between 12 and 17, counseling or psychotherapy sessions are limited to five, forty-five minute sessions before parent/guardian consent must be obtained.
- **Substance abuse services** - Minors aged 12 and older may consent to confidential outpatient counseling and treatment if they or a family member abuses drugs or alcohol. Unlike mental health services, there is no limit to the number of substance abuse sessions a minor can receive.
- **Emergency care** - A minor may receive medical services without the prior consent of a parent/guardian when obtaining such consent is not reasonably feasible without adversely affecting the minor's health.

**5) Who can sign a release of information for HIPAA?**

Generally, a parent/guardian must sign for a minor except in cases where the records have to do with medical and mental health care services for which the minor consented or could have consented under state law. In these cases, the minor must sign a release.

**6) Who can sign a release of information for FERPA?**

Under FERPA, parent/guardians must sign a written consent to release information for his/her minor child unless disclosure meets one of the exceptions to FERPA's general consent requirement. (See FAQ 2)

**7) Does FERPA or HIPAA apply to a school nurse's records?**

School health records maintained by a school nurse are part of the educational record and are subject to FERPA.

**8) Does FERPA apply if a school nurse is hired by the district with funds from an agency not subject to FERPA?**

Yes. FERPA still applies. If the nurse is hired as a school official (or contractor) the records maintained by the nurse are education records. The same rule applies to all employees hired by or contracting with the school.

**9) Can SBHC medical staff let a school nurse or school health professional know how a student is progressing with treatment without authorization?**

Yes, if the disclosure is for treatment purposes. "Treatment" is defined broadly in this context and includes "coordination or management of health care, consultation, and referral as well as direct treatment". It is important to note that once disclosed, if the school nurse or school health professional places the information in the pupil file, FERPA will apply not HIPAA.

**10) Can SBHC mental health staff let a school nurse or school health professional know how a student is progressing with treatment without authorization?**

No, according to the Mental Health Code, mental health providers can only provide mental health information with a signed release.

**11) Can a SBHC provider let a teacher or administrator know how a student is progressing with treatment without authorization?**

If the program operates under HIPAA, no. There is no exception under HIPAA that would allow a school health program to share protected health information with a teacher without authorization. The student must provide the authorization if the information is about a minor consent issue. The parent/guardian or guardian must provide the authorization in most other cases.

**12) Can a school or district share information from the educational record with a SBHC provider?**

Not without consent, unless it is deemed an emergency. A school employee may disclose information contained in the education record with appropriate parties in an emergency, without needing parent/guardian consent. However, the definition of emergency is strictly limited under FERPA to be “a specific situation that presents imminent danger” or requires an immediate need.

**13) Can a school nurse operating under FERPA promise students that their parent/guardians will not have access to their school records?**

For the most part, no. The records of school health programs operating under FERPA are part of the education record and under FERPA parent/guardians have a right to inspect the education record of their minor child if they choose to do so. There is no exception under FERPA that limits parent/guardians’ rights simply because the information in the record pertains to health care service or to minor consent services.

FERPA contains no affirmative obligation that requires schools to inform parent/guardians about minor consent health care services the student may have received.

**14) Can a SBHC provider (medical and mental health) disclose protected health information about a patient to law enforcement, family members, or others if provider believes the patient presents a serious danger to self and others?**

Yes – but only when the provider has a good faith belief that the disclosure is 1) necessary to prevent or lessen a serious or imminent threat to the health or safety of the patient or others and 2) if the disclosure is to a person reasonably able to prevent or lessen the threat.

**15) Can the SBHC provide services without parent/guardian consent?**

Schools are used to parent/guardians having open access to educational records and being the responsible party for signing consents. It is important for school personnel, particularly administrators, to understand that by law there are instances where the parent/guardian is not the consenting entity. Parent/guardians may be confused and angry if services are provided without their consent. School personnel must realize that the SBHC is following the law. It is always best to direct parent/guardian complaints of this nature directly to the SBHC administration.

**16) When the SBHC calls an ambulance for a student, can they share this information with school leadership?**

Yes, because calling 911 is considered an emergency, SBHC can and need to share this information. This is particularly important because in CPS, a designated school staff member must accompany the student in the ambulance, not a SBHC staff member. It is also important for school and SBHC staff to develop a policy and procedure for calling 911 and reporting the call (i.e. who at the school should be notified, how parents are notified, etc.).

**17) When the SBHC calls the Department of Child and Family Services, can they share this information with the school leadership?**

Yes, because this is about child abuse the SBHC can share the information. It might not be necessary, however, for the SBHC to share every call they make. It is important for the school and SBHC need to create school-specific policies on handling information sharing. For example, because SBHC personnel need to make so many calls to DCFS, some school administrators have decided that it is only necessary for them to be notified if a visit is being made to the school.

**Sources:**

- HIPAA or FERPA? A Primer on School Health Information Sharing in California – California School Health Centers Associations and National Center for Youth Law
- 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, November 2008 – US Department of Education and US Department of Health and Human Services
- Minors' Access to Confidential Reproductive Health Care in Illinois developed by Physicians for Reproductive Choice and Health® (PRCH) Copyright © 2004
- Children's Mental Health Fact Sheet - Illinois Consent & Confidentiality Laws developed by the Coalition of Illinois Counselor Organizations (CICO)
- Models for Change: Information Sharing Tool Kit: Overview of Federal Confidentiality Laws