

The Family Educational Rights and Privacy Act (FERPA): Its Impact on Data Sharing by Schools

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Overview

» FERPA Basics

» FERPA's impact on immunization information that schools can provide to public health

- Information that can be shared
- Information that cannot be shared

» Recognizing FERPA's limitations, strategies to engage schools

FERPA Basics

- » **Federal statute: 20 U.S.C. § 1232g**
- » **HHS regulations: 34 CFR Part 99**
- » **Protects privacy students' education records**
- » **Grants parents rights regarding education records (rights belong to student 18 or older or attending post-secondary school)**
- » **Applies to schools and educational programs that receive U.S. Department of Education funds**
- » **Does not limit what public health or health care providers can disclose to schools**

What information would assist you to protect students against vaccine preventable diseases?

- » **Updated contact information for students and parents**
- » **Immunization history**
- » **Waiver information (medical, religious, philosophical)**
- » **List of students who are overdue for immunization**
- » **Class roster of students that health department might cross-check against IIS (names, contact information)**
- » **Coverage rates (aggregate data)**
- » **Identification of student(s) with reportable diseases**
- » **During an outbreak, identification of students who are not immunized against that disease**

Preliminary points

1. If it ain't broke, don't fix it.

2. FERPA is not HIPAA.

3. Immunization data sharing supports both education's and public health's missions.

Education Records

Records that are

- Directly related to a student; and
 - Maintained by a school or a party acting for the school,
(includes a nurse employee and a nurse contractor)
- » **Includes student records such as transcripts, disciplinary records, and similar records.**
- » **Includes immunization and other medical or health related records**
- » **Personal knowledge and observation are not governed by FERPA, unless entered into record**

Exceptions to Education Records

» School-based health clinics (K-12)

- Outside party provides health care services directly to students and is not employed by, under contract to, or otherwise acting on behalf of the school.
- Examples: public health department operates a school-based clinic; public health nurse provides immunizations or other health services to students on school grounds.

» University student health centers

- Medical and psychological treatment records are not education records if they are made, maintained, and used only in connection with treatment of the student and disclosed only to professionals providing the treatment.
- FERPA would apply if report regarding student made to public health department (public health not a treatment provider).

Privacy of student records and information in student records

» **FERPA allows disclosure of:**

- Non-personally identifiable information
- Personally-identifiable information with parent's consent
- Personally-identifiable information without parent's consent when allowed by an exception

De-identifying school records

» **Must remove personally identifiable information (PII) including**

- Student's name
- Name of student's parent or other family member
- Address of student or student's family
- Personal identifiers, e.g. social security number or student number
- List of personal characteristics that would make the student's identity easily traceable, or
- Other information that would make the student's identity easily traceable

» **Could a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, identify the student with reasonable certainty?**

Consent to disclosure

- » **Written consent required before school discloses PII.**
- » **Consent must:**
 - Specify the records that may be disclosed
 - State the purpose of the disclosure; and
 - Identify the party or class of parties to whom the disclosure may be made
- » **Consent to provide immunization information, should specifically identify disclosure to IIS, public health officials, and IIS authorized users**

Exception to Consent: Designated Directory Information

- » **Information that would not generally be considered harmful or an invasion of privacy if disclosed**
- » **Includes student's name, address, email, telephone number, date of birth, grade and similar information**
- » **School must tell parents about directory information and allow them a reasonable amount of time to opt out (this is usually covered in the required annual notice)**
- » **This exception allows schools to provide class rosters and updated student contact information; school staff might directly update contact information in IIS**

Exception to Consent: Health & Safety Emergency

- » **Disclosure must be necessary to protect the health or safety of the student or others**
- » **Must be related to an actual, impending, or imminent emergency**
- » **Limited to period of the emergency** (generally, would not allow for a blanket release of PII from a student's education records)
- » **School must make case-by-case determination, taking into account the totality of circumstances**
- » **Determination must be based on “an articulable and significant threat”** (i.e. school official must be able to explain, based on information available at the time, what the significant threat is; may consider expert sources, e.g. public health)

Health & Safety Emergency, continued

- » **Disclosure must be made to “appropriate parties”** (party whose knowledge of such information is necessary to protect the health or safety of the student or others)
- » **If rational basis for school’s determination, the U.S. Department of Education will not substitute its judgment for that of the school**
- » **Health emergency might include disease outbreaks such as measles, rubella, mumps; does not include routine nonemergency reporting**
- » **Recordkeeping: School must record in the student’s education record the articulable and significant threat that formed the basis for the disclosure and the parties to whom the information was disclosed**

What can schools do to maintain and improve compliance with immunization requirements?

- » **Obtain parent consent to disclosure of immunization information to public health / IIS**
 - Routine part of annual enrollment
 - Frame as school-health department partnership
 - Consent should be specific to whom the information can be communicated (e.g. health care provider, local public health, IIS, etc.)
- » **Provide non-personally identifiable information and directory information to public health, per request**
- » **Enroll in IIS, access immunization information regarding students, if state law allows**

What can schools do to maintain and improve compliance with immunization requirements?

continued

» **Collaborate with health department**

- Review aggregate data; note trends
- Schedule immunization clinics

» **Join local immunization coalitions, participate in activities including public awareness campaigns**

» **Review waivers from immunization for accuracy**

» **Enforce compliance with immunization requirements, use exclusion as a strategy of last resort**

Thank you!

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