

The Family Educational Rights and Privacy Act (FERPA): Access to Student Information

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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. FERPA is not HIPAA.
2. 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:

- » **De-identified data**
- » **Data shared with written consent**
- » **Data shared under a FERPA exception**

De-identifying records

- » **Remove personally identifiable information (PII) including:**
 - Names & Addresses
 - Personal identifiers such as. social security or student numbers
 - Personal characteristics that would make student's identity easily traceable
 - Other information that would make student's identity easily traceable
- » **Determine: Could a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, identify the student with reasonable certainty?**
- » **Might use “data masking” techniques to conceal identities**

Consent to disclosure

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



School Permission Slip

For completion of immunization records

Nevada has a computer system that medical practices use to help keep track of their patient's immunizations. This system is called NV WebIZ. They use this system to record vaccines given to patients and to access information about their patients' immunization histories, including vaccines given at other medical offices. NV WebIZ makes it easy to keep track of a patient's immunization status, even if the patient visits more than one medical practice. It also helps ensure doctors and nurses give the right vaccines at the right time, and allows them to remind their patients when vaccines are due or overdue.

The information in NV WebIZ is CONFIDENTIAL- only authorized users may access the system. Authorized users include health departments, medical practices, schools, childcare facilities, WIC Programs, and health care plans.

Some records in NV WebIZ may be incomplete or missing because an immunization was given in another state, or because the medical practice did not enter it into the system. Your child's school wishes to help improve our community's records by providing missing immunization information to NV WebIZ, but requires your permission to do so, in accordance with the Family Educational Rights and Privacy Act (FERPA).

***By signing below, you can make your child's immunization history more complete,
helping to ensure appropriate and timely future immunization.***

Please sign this form if you **agree** to grant permission for your child's school to provide your child's immunization history to NV WebIZ. This may include creating a new record, or updating an existing record. Please use a separate form for each additional child.

My Name: _____

My Child's Full Name: _____

My Child's Date of Birth: _____

School: _____ Grade: _____

My Mailing Address: _____

My Telephone Number: _____

Signature: _____ Date Signed: _____

Please submit this form to your school administrator/nurse- thank you!

Exception to Consent: Designated Directory Information

- » **Generally, not considered sensitive**
- » **Includes student's name, address, email, telephone number, date of birth, grade, similar information**
- » **Allows schools to provide class rosters and updated student contact information; school staff might directly update contact information in IIS**
- » **HOWEVER, schools may adopt a policy restricting or eliminating this exception**
- » **School must tell parents about directory information and allow them a reasonable amount of time to opt out (usually covered in the required annual notice)**

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 COVID, 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**

Exception to Consent: To Improve Educational Efforts

- » Schools may disclose student information to public health agencies and others to evaluate and improve health education programs and health accommodations in schools
- » Example: school may provide asthma information to public health agency to evaluate and improve efforts regarding students' attendance and performance
- » Key: Public health is assisting school with its mission (*student success*); data recipient must use and protect information consistent with data sharing agreement



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**

FERPA Resources



Protecting Student Privacy

U.S. DEPARTMENT OF EDUCATION

A Service of the Student Privacy Policy Office's
Privacy Technical Assistance Center

RESOURCES • TRAINING • BROWSE BY AUDIENCE • FAQS

<https://studentprivacy.ed.gov>

Thank you!

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