

Students

**MOUNT PLEASANT COTTAGE SCHOOL UNION FREE SCHOOL DISTRICT****SUBJECT: STUDENT HEALTH RECORDS**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of students' "education records." For Pre-K through grade 12 students, health records maintained by the School District, including immunization records and school nurse records, generally are considered "education records" subject to FERPA. In addition, records that the District or School maintains on special education students, including records on services provided to students under the Individuals with Disabilities Education Act (IDEA) are considered "education records" under FERPA because they are:

- 1) Directly related to a student;
- 2) Maintained by the School or a party acting for the School; and
- 3) Not excluded from the definition of "education records."

Since student health and medical information in education records is protected by FERPA, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule excludes such information from its coverage.

Generally, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to FERPA's general consent requirement. One exception permits the disclosure of education records, without parental consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Parents have a right under FERPA to inspect and review those health and medical records that are considered "education records" under FERPA. Individual records may be interpreted by the school's registered professional nurse to administrators, teachers and other school officials, consistent with law.

**Frequently Asked Questions and Answers****1) Does the HIPAA Privacy Rule apply to an elementary or secondary school?**

Generally, no. In most cases, the HIPAA Privacy Rule does not apply to an elementary or secondary school because either:

- a. The School is not a HIPAA covered entity. The HIPAA Privacy Rule only applies to health plans, health care clearinghouses, and those health care providers that transmit health information electronically in connection with certain administrative and financial transactions ("covered transactions"). Covered transactions are those for which the U.S.

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Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. Thus, even though a School employs school nurses, physicians, psychologists, or other health care providers, the School is not generally a HIPAA covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services. It is expected that most elementary and secondary schools fall into this category; or

- b. The School is a HIPAA covered entity but does not have "protected health information." Where a School does employ a health care provider that conducts one or more covered transactions electronically, such as electronically transmitting health care claims to a health plan for payment, the School is a HIPAA covered entity and must comply with the HIPAA Transactions and Code Sets and Identifier Rules with respect to such transactions. However, even in this case, many schools would not be required to comply with the HIPAA Privacy Rule because the School maintains health information only in student health records that are "education records" under FERPA and, thus, not "protected health information" under HIPAA. Because student health information in education records is protected by FERPA, the HIPAA Privacy Rule excludes such information from its coverage. For example, if a public high school employs a health care provider that bills Medicaid electronically for services provided to a student under the IDEA, the School is a HIPAA covered entity and would be subject to the HIPAA requirements concerning transactions. However, if the School's provider maintains health information only in what are education records under FERPA, the School is not required to comply with the HIPAA Privacy Rule. Rather, the School would have to comply with FERPA's privacy requirements with respect to its education records, including the requirement to obtain parental consent in order to disclose to Medicaid billing information about a service provided to a student.

2) **How does FERPA apply to health records on students maintained by elementary or secondary schools?**

At the elementary or secondary school level, students' immunization and other health records that are maintained by the School District or individual School, including a School-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are "education records" subject to FERPA, including health and medical records maintained by a school nurse who is employed by or under contract with a School or School District. Some Schools may receive a grant from a foundation or government agency to hire a nurse. Notwithstanding the source of the funding, if the nurse is hired as a school official (or contractor), the records maintained by the nurse or clinic are "education records" subject to FERPA.

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Parents have a right under FERPA to inspect and review these health and medical records because they are "education records" under FERPA. In addition, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to FERPA's general consent requirement. For instance, one of these exceptions allows schools to disclose a student's health and medical information and other "education records" to teachers and other school officials, without written consent, if these school officials have "legitimate educational interests" in accordance with school policy.

Another exception permits the disclosure of education records, without consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

**3) Does FERPA or HIPAA apply to elementary or secondary school student health records maintained by a health care provider that is not employed by a school?**

If a person or entity acting on behalf of a School subject to FERPA, such as a school nurse that provides services to students under contract with or otherwise under the direct control of the School, maintains student health records, these records are education records under FERPA, just as they would be if the School maintained the records directly. This is the case regardless of whether the health care is provided to students on school grounds or off-site. As education records, the information is protected under FERPA and not HIPAA.

Some outside parties provide services directly to students and are not employed by, under contract to, or otherwise acting on behalf of the School. In these circumstances, these records are not "education records" subject to FERPA, even if the services are provided on School grounds, because the party creating and maintaining the records is not acting on behalf of the School. For example, the records created by a public health nurse who provides immunization or other health services to students on School grounds or otherwise in connection with School activities but who is not acting on behalf of the School would not be "education records" under FERPA. In such situations, a School that wishes to disclose to this outside party health care provider any personally identifiable information from education records would have to comply with FERPA and obtain parental consent.

With respect to HIPAA, even where student health records maintained by a health care provider are not education records protected by FERPA, the HIPAA Privacy Rule would apply to such records only if the provider conducts one or more of the HIPAA transactions electronically, e.g., billing a health plan electronically for his or her services, making the provider a HIPAA covered entity.

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**SUBJECT: STUDENT HEALTH RECORDS (Cont'd.)****4) Are there circumstances in which the HIPAA Privacy Rule might apply to an elementary or secondary school?**

There are some circumstances in which an elementary or secondary school would be subject to the HIPAA Privacy Rule, such as where the school is a HIPAA covered entity and is not subject to FERPA. Most private schools at the elementary and secondary school levels typically do not receive funding from the U.S. Department of Education and, therefore, are not subject to FERPA.

A School that is not subject to FERPA and is a HIPAA covered entity must comply with the HIPAA Privacy Rule with respect to any individually identifiable health information it has about students and others to whom it provides health care. For example, if a private elementary School that is not subject to FERPA employs a physician who bills a health plan electronically for the care provided to students (making the School a HIPAA covered entity), the School is required to comply with the HIPAA Privacy Rule with respect to the individually identifiable health information of its patients. The only exception would be where the School, despite not being subject to FERPA, has education records on one or more students to whom it provides services on behalf of a School or School District that is subject to FERPA. In this exceptional case, the education records of only those publicly-placed students held by the private School would be subject to FERPA, while the remaining student health records would be subject to the HIPAA Privacy Rule.

**Assistance**

The HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA. When making determinations as to whether personally identifiable information from student health records maintained by the educational agency or institution may be disclosed, District officials should refer to FERPA and its requirements. While the District has the responsibility to make the initial, case-by-case determination of whether a disclosure meets the requirements of FERPA, the Department of Education's Family Policy Compliance Office is available to offer technical assistance to school officials in making such determinations.

For quick, informal responses to routine questions about FERPA, school officials may email the Department at [FERPA@ed.gov](mailto:FERPA@ed.gov). For more formal technical assistance on the information provided in the joint guidance on FERPA and HIPAA in particular or FERPA in general, please contact the Family Policy Compliance Office at the following address:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Ave. S.W.  
Washington, D.C. 20202-8520

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Additional information and guidance may be found on the U.S. Department of Education's website at: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

For more information on the HIPAA Privacy Rule, please visit the Department of Health and Human Services' HIPAA Privacy Rule website at: <http://www.hhs.gov/ocr/hipaa/>. This website offers a wide range of helpful information about the HIPAA Privacy Rule, including the full text of the Privacy Rule, a HIPAA Privacy Rule summary, over 200 frequently asked questions, and both consumer and covered entity fact sheets.

To submit additional questions not covered by the guidance document or suggestions for future guidance, please send an email to [OCRPrivacy@hhs.gov](mailto:OCRPrivacy@hhs.gov) and [FERPA@ed.gov](mailto:FERPA@ed.gov).