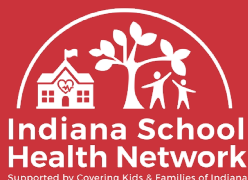




HIPAA OR FERPA?

A Primer on Sharing School Health Information in Indiana

FOURTH EDITION | 2026



What it does.

This Primer provides an overview of the pertinent federal and state confidentiality laws when health care is provided on school sites and addresses frequently asked questions regarding sharing information.

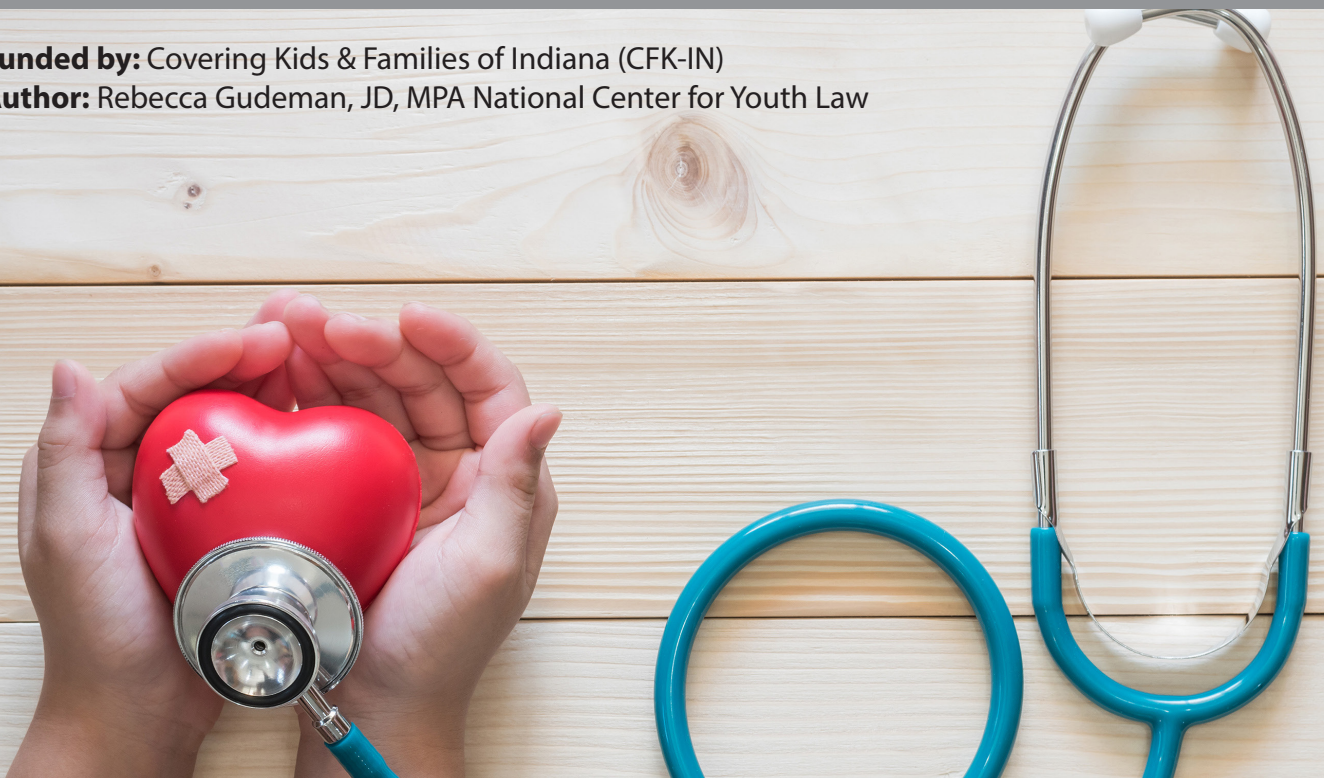
What it doesn't.

This Primer is not legal advice. This document provides legal information and does not provide legal advice or guidance. The document should be used as a reference only and not as policy, a best practice guide or as a substitute for advice from legal counsel.

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INTRODUCTION



Rory is in third grade at Parks Elementary. He has been distracted and fidgety in class recently. His teacher refers Rory and his family to the mental health counselor from a local nonprofit who comes to campus once a week. The counselor discovers that Rory's aunt recently passed away and that Rory is scared about losing other family members. He hasn't been sleeping well and is feeling anxious. Rory's teacher reaches out to the counselor to ask if there is anything she can do to help Rory. What may the counselor tell Rory's teacher? Would that answer change if Rory had been referred to a school nurse or psychologist instead?

School health programs and providers bring a range of needed health care services to a school campus. Providers may be school employees, such as school nurses, or community-based providers, such as employees of a community clinic or local hospital bringing services to the school site. These programs provide an exciting opportunity to increase health care access for youth and improve care coordination and collaboration among health providers and schools.

When developing school health programs, there are several considerations that health providers and education agencies should address early on. One of the most important is determining which confidentiality laws control access to and disclosure of the health care information created. While there may be multiple laws to consider, the first question to address is whether the program's information is subject to the federal Family Educational Rights and Privacy Act (FERPA) or the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

Whether FERPA or HIPAA applies and how those interact with state confidentiality law will impact school health service operations in large and small ways — from framing how school staff and health providers collaborate and share information; to shaping policies about how to deal with suicide threats and other emergencies; to determining the content of required notices and consent forms and other administrative issues.

HIPAA or FERPA?

The answer will impact school health operations in large and small ways, from administrative requirements to how collaboration occurs.

This Primer provides an overview of HIPAA, FERPA and state law and is current as of the date of publication. The goal of the Primer is to provide readers sufficient information so that they may start important conversations with their legal counsel about which law applies to their records and how to apply those laws.

The Primer does not review all aspects of the confidentiality laws it references. It also does not provide legal advice. As a result, it may raise a number of questions for readers. These questions can and should be directed to legal counsel. Further, laws can change. Content should be reviewed by legal counsel to ensure it is up to date as of the date an entity relies upon it.



AN OVERVIEW: HIPAA AND FERPA IN INDIANA

HIPAA Privacy Rule – The Basics

1. What is the HIPAA Privacy Rule?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule is a federal law that protects the privacy of individually identifiable patient health information held by “covered entities.”¹ In addition to the HIPAA Privacy Rule, HIPAA also has Security, Transactions and Enforcement Rules, as well as identifiers requirements. The **HIPAA Privacy Rule** sets national standards for the confidentiality of protected health information (PHI) held by covered entities. The **HIPAA Security Rule** imposes rules for the confidentiality, integrity, security, storage and exchange of *electronic* protected health information (ePHI) held by covered entities, including Electronic Health Records (EHRs).¹ It is important to understand whether, when, and how the HIPAA Security Rule applies when selecting health information systems and developing electronic data storage and exchange policies and practices. However, this Primer focuses on the Privacy Rule. Moving forward any reference to HIPAA should be understood to mean the HIPAA Privacy Rule unless explicitly stated otherwise.

2. What is a “covered entity?”

HIPAA defines “covered entity” as health plans, health care clearinghouses and health care providers who transmit health information in electronic form related to certain types of transactions.²

3. Which “health care providers” are covered entities?

Health care providers mean a provider of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. When health care providers “transmit health information in electronic form,” they are “covered entities” as defined by HIPAA.³ “Health care providers” include individual providers such as physicians, nurses, clinical social workers, and other medical and mental health practitioners, as well as hospitals, clinics and other organizations.⁴ Health care providers are only subject to HIPAA, however, if they transmit health information regarding certain types of health transactions electronically.

The transactions that will make HIPAA applicable include any of the following when done electronically: submitting claims to health insurers, making benefit and coverage inquiries to insurers, making inquiries about submitted claims and sending health care authorization requests, among others. The U.S. Department of Health and Human Services (HHS) provides additional guidance on what is considered a “transaction.”⁵ The fact that a health care provider does not use electronic records onsite does not automatically mean it is exempt from HIPAA. Health care providers may be transmitting health information electronically in another way, for example, by using a billing service that does.

That said, there will be providers who are not “covered entities” subject to HIPAA because they do not bill insurance for services or otherwise transmit health information in electronic form related to covered transactions. Indeed, in its 2019 Joint Guidance, the U.S. Department of Education (DOE) and HHS suggest that traditional school-employed health care providers, such as school nurses, will not be considered covered entities because of the electronic transaction requirement and the fact they do not get paid or bill insurance for the services they deliver in the normal course of business.⁶

HHS offers a “Covered Entity Decision Tool” to use to determine whether a provider is a covered entity subject to HIPAA.⁷

4. Must a “covered entity” always follow the HIPAA Privacy Rule?

No. There are situations in which a health care provider is a “covered entity,” but its health records are subject to FERPA protections and not subject to the HIPAA Privacy Rule. This can happen when schools deliver health care and bill insurance for those services in certain circumstances. In such cases, the school may be a “covered entity” and as such, may be required to follow the HIPAA Security Rule but not the HIPAA Privacy Rule. The Primer discusses this scenario more in response to question seven below.

5. What is a “business associate?”

Many covered entities work with other organizations and individuals in order to provide health care. Examples include attorneys, data processors and accountants. A “business associate” is an individual or organization that receives, creates, maintains or transmits “protected health information” as part of certain types of work it does on behalf of a “covered entity.” The type of work must be directly related to activities the covered entity does that are regulated by HIPAA, such as claims processing or billing, or services that support that work, such as legal, actuarial, transcription, accounting, consulting, management, accreditation or financial services.⁸ In most cases, the covered entity must enter into a business associate contract with this individual or organization in order to share protected health information.

6. Must a “business associate” comply with HIPAA?

Indirectly yes.⁹ A covered entity cannot share protected information with a business associate unless the covered entity has received written assurances from the business associate that the business associate will protect “protected health information” in compliance with HIPAA. HIPAA outlines what this written agreement must include before a covered entity may share health information with the business associate. These contracts cannot obligate a business associate to do something that otherwise conflicts with other laws, however, such as requiring the business associate to violate FERPA.¹⁰ The existence of a contract, on its own, does not make a contractor a “business associate.” Health care providers always should consult legal counsel to determine whether a partnership may qualify as a business associate relationship.

7. What information does HIPAA protect?

The HIPAA Privacy Rule limits covered health providers from disclosing what HIPAA calls “protected health information” (PHI).¹¹ “Protected health information” is individually identifiable health information created or received by a health care provider, health plan, employer, or health care clearinghouse in any form, including oral communications as well as written or electronically transmitted information.¹² HIPAA does not limit the disclosure of health information that is not individually identifiable, also known as “de-identified information.”¹³

Protected health information also does not include information subject to FERPA. The HIPAA Privacy Rule explicitly states that health information held in an education record subject to FERPA is not “protected health information.”¹⁴ In other words, if FERPA applies, the HIPAA Privacy Rule does not, even if the school provider otherwise qualifies as a covered entity under HIPAA.

As described in question four above, there are situations in which a school employed health provider is considered a “covered entity” for HIPAA purposes, but the HIPAA Privacy Rule does not apply to the records they create because those records are subject to FERPA. In its 2008 Joint Guidance, the DOE and HHS provide this 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.”¹⁵

8. What does “de-identified information” mean in HIPAA?

The HIPAA Privacy Rule controls disclosure of individually identifiable health information. Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information, and HIPAA does not limit its release.¹⁶ HIPAA has its own standard for defining whether or not there is a reasonable basis to believe information can be used to identify an individual and establishes methods to meet this standard.¹⁷ A covered entity may assign a re-identification code to de-identified information to allow for matching of data but that coding must meet the requirements of HIPAA.¹⁸

9. Does HIPAA treat mental health information differently?

For the most part, health and mental health information are treated similarly under HIPAA; however, the HIPAA Privacy Rule does treat a subset of mental health records called “psychotherapy notes” differently. Many of the exceptions that allow disclosure of

other health information without a release do not apply to psychotherapy notes. Instead, psychotherapy notes require a written release in most circumstances.¹⁹ “Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual’s medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.”²⁰ It is important to note that Indiana law distinguishes between health and mental health information with special confidentiality rules that apply exclusively to “mental health” records. This is discussed further in the following pages.

10. What is the HIPAA confidentiality rule?

As a general rule, health care providers cannot disclose information protected by the HIPAA Privacy Rule without a signed authorization.²¹ An authorization form must include specific elements to be valid under HIPAA.²² (See Appendix B.) HIPAA also defines who must sign the authorization.²³ There are some exceptions to this general rule, discussed below.

11. Who signs an authorization to release health information under HIPAA?

Usually, a parent, guardian or other person with authority under the law to make health decisions for an unemancipated minor must sign authorizations to release the minor’s information because they are acting as the minor’s “personal representative.”²⁴ (Minor means a person under age 18.) However, HIPAA says that an unemancipated minor acts as an “individual” and must sign their own authorization in any of the following situations:

- a. The minor consented to the underlying health care, no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative.
- b. The minor lawfully may obtain care without the consent of a parent or person acting in place of the parent, such as a legal guardian, and the minor, a court or another person authorized by law consented for the care, or
- c. A parent, guardian or person acting in place of a parent assents to an agreement of confidentiality.²⁵

Thus, who signs will depend in part on what state and other laws say about who can consent for a minor’s care — in other words, it is important to understand state and other laws that describe whether and when other adults instead of, or in addition to, a parent may act on behalf of a minor in making health decisions, and as well, whether and when a minor may obtain care on their own. Some relevant federal and state consent laws are highlighted in Appendix D.

Who signs the authorization?

Case Example

Drew, who is 16, homeless, on his own and managing own affairs, is authorized to consent to his own health care under Indiana law. Because he can consent to his own care, he can sign authorizations to release the related health information. (See Appendix D for minor consent laws.)

12. Do exceptions in HIPAA allow release of information without an authorization?

The default rule in HIPAA is that release of protected health information requires a signed authorization; however, there are many exceptions to this rule. Exceptions in the HIPAA Privacy Rule allow, and sometimes require, health care providers to share health and mental health information without need of a signed release. Examples of these exceptions include:

- For treatment purposes²⁶
- To avert a serious and imminent threat²⁷
- For research²⁸
- For payment purposes²⁹
- For health care operations³⁰
- To public health authorities as authorized or required by law³¹
- To report child abuse as authorized or required by law³²
- When requested by the individual³³
- Additional exceptions also exist.³⁴

Different conditions must be met before information may be shared under each HIPAA exception. State law also may limit their application as described below. Thus, it is important to work with legal counsel to understand their application.

13. How do HIPAA and Indiana law intersect?

There are several ways that Indiana law intersects with the HIPAA Privacy Rule. First, the Privacy Rule grants the right to sign an authorization to release information and to access a minor's protected health information based in part on who is authorized to make health decisions for the minor. State law determines who has those consent rights in many situations. Similarly, parental access to records when the parent did not consent for the child's care will depend in part on state law. Appendix D includes some of Indiana's consent to treatment laws.

Second, Indiana has its own laws that protect the confidentiality of medical and mental health information.³⁵ These laws parallel HIPAA in many ways; however, in some situations they actually provide greater confidentiality protection than HIPAA. When state law provides greater confidentiality protection than HIPAA, HIPAA states that providers usually must follow the state law.³⁶

For example, both HIPAA and Indiana law require that a release of information form include specific elements.³⁷ Release forms must incorporate the elements required in both the HIPAA Privacy Rule and Indiana law to be valid. These requirements are listed in Appendix C. As another example, HIPAA authorizes health care providers to disclose protected health information for treatment purposes without an authorization. Indiana law also authorizes providers to disclose protected health information for treatment purposes without an authorization, but Indiana law limits with whom that information may be shared, saying that it can only be shared with another provider for such purposes.³⁸ Health care providers must follow the more protective state law. It is important to work with legal counsel to understand what state laws are applicable, when state law may offer greater protection, and how state law may intersect with the HIPAA Privacy Rule.

Finally, in addition to laws, licensed health professionals may practice under ethical and state licensing principles that also include obligations related to confidentiality. These principles may impose greater confidentiality obligations than HIPAA or state laws. For example, the law may permit certain disclosures without an authorization, but some providers may work under ethical, contractual or licensing obligations that require them to seek authorizations for every disclosure. Providers should do their best to comply with all obligations and consult legal counsel if they have questions or concerns about conflicts.

14. May parents access their minor child's protected health information?

Indiana law makes a distinction between health³⁹, mental health⁴⁰ and certain other records such as substance use⁴¹ records. Generally, both the HIPAA Privacy Rule and state law say that parents and legal guardians have a right to access their unemancipated minor child's health and mental health records when that person consented to the underlying care.⁴² However, there are exceptions as discussed in question 15.

15. May a health care provider ever withhold a child's health information from the child's parent under the HIPAA Privacy Rule and Indiana Law?

Yes. Although a parent or guardian generally has a right to access the health records of their unemancipated minor child when the parent or guardian consented for the unemancipated minor's health or mental health services, there are several situations in which a parent may be limited from accessing the protected health information of their unemancipated minor child. First, a parent does not have this right of access if a court has issued an order removing or restricting their access to health records.⁴³

Second, certain records, such as records related to substance use treatment and Title X funded family planning services, may be subject to additional federal confidentiality laws that limit disclosure to parents without the minor patient's consent to release.⁴⁴ Depending on the funding source and types of services provided by a clinic or provider, it may be important to consult legal counsel for assistance understanding whether additional federal confidentiality laws apply and what the parent access rules are under those regulations.

Third, where a minor has authority to consent to their own care under state or other law and is considered to be "the individual" under HIPAA in relation to their own health information, the HIPAA Privacy Rule adopts the following approach related to parent/guardian access:

- If, and to the extent, disclosure is permitted by an applicable state or other law (including a federal law), or applicable case law, a covered entity may disclose, or provide access to protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis, in accordance with HIPAA and the applicable law;
- If, and to the extent, disclosure is required by an applicable state or other law (including a federal law), or applicable case law, a covered entity may disclose, or provide access to protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis, in accordance with HIPAA and the applicable law;
- If, and to the extent, disclosure is prohibited (e.g. without the permission of the minor) by an applicable state or other law (including a federal law) or applicable case law, a covered entity may not disclose, or provide access to protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis, in accordance with the applicable law; and
- Where state and other law are silent, a covered entity may provide or deny access to a parent, guardian, or other person acting in loco parentis, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment. (See 45 C.F.R. § 164.502(g)(3)(ii).)

Thus, it is important to consult legal counsel for assistance understanding what other laws may be implicated to understand parent access.

Finally, even where a parent otherwise may have a right to access information, the HIPAA Privacy Rule authorizes a provider to limit parent access and choose not to disclose when:

- the provider has a reasonable belief that the minor has been or may be subject to domestic violence, abuse, or neglect by the parent, OR
- giving the parent the right to access to the minor's medical information could endanger the minor, AND the provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to provide the parent with access to the minor's medical information.

Along those same lines, Indiana law includes a similar exception that gives the health care professional discretion to withhold the child's "health" information from the parent where the "health care professional reasonably determines that the information requested is: (1) detrimental to the physical or mental health of the patient; or (2) likely to cause the patient to harm the patient or another."⁴⁵

Similarly, a health care provider may withhold a child's "mental health" information from the parent or legal guardian "if the provider that is responsible for the patient's mental health records determines for good medical cause, upon the advice of a physician, that the information requested under this section is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm the patient or another person, the provider may withhold the information from the [parent or guardian]."⁴⁶

16. What is the "treatment" exception in HIPAA?

As described above, the HIPAA Privacy Rule authorizes health care providers to disclose protected health information for treatment purposes without an authorization.⁴⁷ HIPAA defines "treatment" for this purpose to mean "the provision, coordination or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another."

Indiana law also authorizes providers to disclose protected health information without an authorization for treatment purposes, but Indiana law limits with whom that information may be shared as described below. Health care providers must follow the more protective state law.⁴⁸

Indiana has separate laws for "health" and "mental health" records, but both allow such disclosure as follows:

- HIPAA and Indiana law allow a health care provider to share a patient's "health records"⁴⁹ with another health care provider "if the health records are needed to provide health care services to the patient."⁵⁰
- HIPAA and Indiana law allow mental health records to be disclosed to another "health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient."⁵¹

May a health care provider share with another provider under HIPAA?

Case Example

Ginny, 14, visits her pediatrician. Her pediatrician believes Ginny may have asthma. The pediatrician would like to refer her to a specialist. May the pediatrician make a referral to a recommended specialist and share relevant information?

Yes. The pediatrician may do so with a signed authorization. In addition, an exception in HIPAA and Indiana law allow health providers to share with other providers if the information is needed to provide health care. Thus, the pediatrician also has the discretion to share with the specialist whatever information is necessary to make the referral, without need of an authorization.

17. What is the “emergency” exception in HIPAA?

The HIPAA Privacy Rule includes an exception that allows a health care provider to disclose otherwise protected health information without need of an authorization in order to avert a serious threat to health or safety. Specifically, HIPAA says that a provider may disclose information, consistent with applicable law and ethical principles, if the provider in good faith believes the disclosure:

- Is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public; and
- Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

There is a presumption that a provider acted in good faith in making such a disclosure if the provider’s belief is based on actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.⁵² The HIPAA Privacy Rule authorizes providers to disclose psychotherapy notes without authorization under these same conditions.⁵³

Indiana law also includes similar exceptions. For example, Indiana law authorizes providers to disclose mental health information “to another health care providers in a health care emergency.⁵⁴ It is important to review which Indiana law may apply to the records in question and under what circumstances and to whom disclosure absent written authorization is allowed in an emergency, as well as how emergency is defined under the applicable state law, as the conditions and circumstances may vary slightly under state law compared to HIPAA.

18. Does Indiana law treat mental health information differently?

Indiana has laws that specifically protect the confidentiality of mental health information and limit disclosures of such information.⁵⁵ Normally, disclosure of mental health information requires a release, but there are exceptions that in some case may be more protective, or operate differently, than HIPAA.⁵⁶ It is very important to consult legal counsel about how and when these laws may apply when discussing disclosure of protected health information that also qualifies as mental health information.

19. What administrative requirements must a health care provider satisfy under HIPAA?

If a health care provider or program is a “covered entity” subject to the HIPAA Privacy Rule, it must meet all the administrative requirements in the HIPAA Privacy Rule and applicable Indiana confidentiality law. This includes making sure that the provider has and distributes a “notice of privacy practices” and a HIPAA-compliant release of information form and that it maintains records with the appropriate security in place for the appropriate number of years, among many other things. Indiana law includes some similar administrative requirements.⁵⁷ Health care providers subject to HIPAA should always consult their legal counsel regarding the many administrative requirements in HIPAA.

If a health care provider or program is a “covered entity” under HIPAA, the covered entity also should assess whether other HIPAA rules may apply, such as the HIPAA Security Rule, and ensure that it is complying with all applicable regulations.

20. Are there rules for electronic health records?

HIPAA includes a Security Rule that requires use of appropriate administrative, physical and technical safeguards to ensure the confidentiality, integrity and security of “electronic protected health information”⁵⁸ (E PHI).⁵⁹ If a health care provider or program is a “covered entity” under HIPAA, it may need to comply with the HIPAA Security Rule. In addition, the provider may need to comply with regulations HHS issued under the 21st Century Cures Act in 2021.⁶⁰ These regulations contain provisions that create standards and implementation provisions for health information technology and IT systems related to electronic health information (EHI).⁶¹ Health care providers should consult with legal counsel regarding applicability and implementation of both the HIPAA Security Rule and the regulations under the 21st Century Cures Act.

Helpful Links and Resources



FERPA – The Basics

1. What is FERPA?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of students' personal records held by "educational agencies or institutions" that receive federal funds under programs administered by the U.S. Secretary of Education.⁶²

2. What is an "educational agency or institution?"

"Educational agencies or institutions" are defined as institutions that receive federal funds under programs administered by the U.S. Department of Education (DOE) and that either provide direct instruction or educational services to students, such as schools; or are educational agencies that direct or control schools, such as school districts and state education departments.⁶³ Almost all public schools and public school districts receive some form of federal education funding and must comply with FERPA. Organizations and individuals that contract with, or volunteer or consult for an educational agency also may need to follow FERPA if certain conditions are met and they can be deemed a "school official."⁶⁴ These conditions are discussed in greater detail later on.

3. What is a "school official?"

The term "school official" includes school staff, such as teachers, counselors and school nurses. It also can include a "board member, trustee, registrar, attorney, accountant, human resources professional or support or clerical personnel."⁶⁵ A school or district may define this term more broadly in its school policies so that it also includes outside consultants, contractors or volunteers to whom a school has outsourced a school function if certain conditions are met as follows.⁶⁶

According to the regulations, "A contractor, consultant, volunteer or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official [when] the outside party" — (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; (3) Is subject to the requirements of [FERPA] governing the use and redisclosure of personally identifiable information from education records" and meets the criteria for being a school official with a legitimate educational interest in the records as specified in the school or LEA's annual notification.⁶⁷

FERPA requires schools to include in their annual notices to parents a statement indicating which parties are considered school officials.⁶⁸

4. What information does FERPA protect?

FERPA controls disclosure of information maintained in the “education record.” “Education records” are defined as records, files, documents or other recorded materials that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution.⁶⁹ “Information directly related to a student” means any information “that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student with reasonable certainty.”⁷⁰

FERPA does not apply to all information at a school. For example, communications that are not recorded in any form, such as personal knowledge or the contents of a conversation between a teacher and student in a hallway that is not recorded, are not part of the education record and are not subject to FERPA.

There also are several types of records that are exempted from FERPA. For purposes of school health care, the most relevant exemptions include:

- Records that are kept in the “sole possession” of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record,
- Treatment records of a student 18 and older when used only in connection with treatment and not made available to anyone other than those providing treatment, and
- Law enforcement unit records.⁷¹



Education Records and Personal Knowledge:

Case Example

A teacher overhears a student making threatening remarks to another student. May this teacher disclose that information to third parties?

Yes. Personal knowledge that is not part of an education record is not subject to FERPA. The federal Department of Education says: "FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation, rather than from the student's education records. For example, if a teacher overhears a student making threatening remarks to other students, FERPA does not protect that information from disclosure. Therefore, a school official may disclose what he or she overheard to appropriate authorities, including disclosing the information to local law enforcement officials, school officials, and parents."⁷²

After hearing about these threats, the principal decides to suspend the student. May the Principal disclose this information to third parties?

No, because the personal knowledge became a basis for an official school action and becomes documented and part of the education record in that way. According to the federal Department of Education, "FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation unless that knowledge is obtained through his or her official role in making a determination maintained in an education record about the student. For example, under FERPA a principal or other school official who took official action to suspend a student may not disclose that information, absent consent or an exception in [FERPA] that permits the disclosure."⁷³

5. What are “sole possession records?”

Sole possession records are exempt from FERPA.⁷⁴ Sole possession records are records that are “kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute.”⁷⁵ Sole possession records are not considered part of the education record and are not subject to FERPA.

6. What are “law enforcement unit records?”

Records of the law enforcement unit of an educational agency are exempt from FERPA.⁷⁶ Records of a law enforcement unit means those records, files, documents and other materials that are (i) Created by a law enforcement unit; (ii) Created for a law enforcement purpose; and (iii) Maintained by the law enforcement unit.⁷⁷

The law enforcement unit of a school is any individual, office, department, division or other component of an educational agency or institution such as a unit of commissioned police officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to:

- Enforce any local, state, or federal law, or refer to appropriate authorities a matter for enforcement of any local, state or federal law against any individual or organization other than the agency or institution itself; or
- Maintain the physical security and safety of the agency or institution.⁷⁸

For information on how and when schools can disclose information to law enforcement and the law enforcement unit at a school, please consult school district counsel.

7. Are health records treated differently than other types of information in the education file?

Student health records maintained by a school or school employee, such as treatment records, IEP assessments or immunization documents, are part of the education file.⁷⁹ FERPA does not treat health and mental health records in a minor’s education file differently than it does any other information, such as grades or attendance information, in the file.⁸⁰ That said, FERPA generally limits access to all student records as described in this section.

8. Are records related to services under the Individuals with Disabilities Education Act (IDEA) treated differently than other types of information in the education file?

Student records maintained by a school or school employee, including IEP assessments, are part of the education file subject to FERPA.⁸¹ Information related to services provided as part of the IDEA additionally is subject to the confidentiality protections in the IDEA. In some cases, the IDEA provides greater confidentiality protections than FERPA.⁸² Educational agencies should work with their legal counsel to understand how these two laws work together.

9. Does FERPA protect “de-identified” records?

No. FERPA controls disclosure of personally identifiable information from an education record. If information is de-identified, then FERPA no longer limits its release. In order to be considered “de-identified,” all personally identifiable information must be removed, including any information that alone or in combination is linkable to an individual student and would allow a reasonable person in the school community to identify the student with reasonable certainty.⁸³ The risk of identification increases when reporting out aggregate data on small subpopulations in a school or system. The cumulative effect of multiple disclosures also can increase risk of identification as information from prior disclosures may be used in combination with information from later disclosures. There are certain techniques that a school or school system can adopt to help ensure that aggregate data cannot be used to identify an individual. Such techniques include “suppression,” “perturbation,” and “blurring,” among others. Once information has been de-identified, it is possible to attach a re-identification code to it to allow for matching back to the source and adding additional information later on. There are certain requirements for selecting re-identification codes.⁸⁴

10. What is the FERPA confidentiality rule?

Generally, FERPA prohibits educational agencies from releasing any individually identifiable information in the education record unless they have written permission for the release.⁸⁵ Releases must include specific elements to be valid. The requirements for a FERPA-compliant release can be found in Appendix B. There are exceptions that allow disclosure without a release in some cases.

11. Who must sign a release of records under FERPA?

In most cases, a “parent” must sign that release. FERPA defines parent broadly for this purpose to include a “natural parent, a guardian or an individual acting as a parent in the absence of a parent or guardian.”⁸⁸ When students are eighteen years old or older, or in post-secondary school, they are considered “eligible students” and as such, they must sign their own release forms.⁸⁹

12. Do exceptions in FERPA allow release of information without an authorization?

FERPA contains exceptions that allow educational agencies and schools to disclose information absent a written release in some circumstances. For example, schools may share “directory information”⁹⁰ about students with the public generally if the school and district have given public notice to parents about the types of information the school and district consider directory information, the parents’ right to refuse directory disclosures, and how long parents have to inform the school or district about their intent to opt out.⁹¹ (See footnote for definition of “directory information” in FERPA.) Another exception allows school staff to share information with “school officials”⁹² in the same educational agency who have a “legitimate educational interest” in the information.⁹³ Certain policies must be in place at the district level in order to implement both of these exceptions. Additional

exceptions also exist, including exceptions that allow sharing information in emergency situations, for accreditation, in response to judicial orders, and for school transfers, among others.⁹⁴ The school official and emergency exceptions are discussed further below.

13. How does FERPA intersect with Indiana law?

Indiana has laws that protect the confidentiality of education, as well as medical and mental health information.⁹⁵ Whenever possible, educational agencies should comply with both FERPA and state law, even where state law may provide greater protection. For example, DOE has clarified that many of the exceptions in FERPA, such as the legitimate educational interests/school official exception, are permissive rather than mandatory, meaning the educational institution can choose to disclose pursuant to the exception or not. In such cases, DOE states that educational institutions must take state law into account, including state laws that may prohibit disclosures without written permission and attempt to honor both FERPA and state law: “[M]any states have privacy laws that protect the confidentiality of medical and counseling records. FERPA’s permissive exceptions to the requirement of consent do not preempt any state laws that may provide more stringent privacy protections for this information.”⁹⁶

To the extent that provisions of FERPA conflict with state law or regulation, FERPA usually preempts state law. However, if an educational agency believes there is an actual conflict between obligations under state law and its ability to comply with FERPA, the educational agency must notify the U.S. Department of Education’s Family Policy Compliance Office.⁹⁷

14. May parents access their child’s education record?

Parents of a student under age 18 may access their child’s education record.⁹⁸ FERPA defines “parent” to include “natural parent, a guardian or an individual acting as a parent in the absence of a parent or guardian.”⁹⁹ The only exception is if a court order explicitly limits a parent’s right to access the record. The school has a certain amount of time to make the record available after a request from a parent. If a school believes release of information may put a student at risk, then the school should contact the school district legal counsel for advice. Parents’ access to the records of an “eligible student” (student 18 years or older or in post-secondary school) is restricted.

Indiana education code also defines “parent” for educational purposes. Parent is defined as “the natural father or mother of a child; in the case of adoption, the adopting father or mother of a child; the court appointed guardian or custodian of the child if custody has been awarded to someone else in a court proceeding; or if the parents of a child are divorced, the parent to whom the divorce decree or modification awards custody or control with respect to a right or obligation.”¹⁰⁰ Like FERPA, Indiana law says that schools must allow both a custodial and noncustodial parent access to their child’s education record. However, the school may not allow a noncustodial parent access if the school has received a copy, or has actual knowledge, of a court order that limits the noncustodial parent’s access to education records.¹⁰¹

15. What is the “school official” exception in FERPA?

While FERPA typically requires a signed release to disclose information to third parties, an exception allows schools to share information in an education record with “school officials” within the same educational agency or institution who have a “legitimate educational interest” in the information.¹⁰² This exception does not authorize the school official to see all information in a student record. The school official only may access information to which they have a legitimate educational interest. The DOE says that “legitimate educational interest” can be defined broadly to mean that the school official needs the information to perform their official or professional duties.¹⁰³

In implementing legitimate educational interests, the educational agency or institution must implement *“reasonable methods to ensure school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective.”*¹⁰⁴

The term “school official” is defined in question three on page 19 of this Primer.

FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education file to school officials and, if so, which parties are considered school officials for this purpose as well as what the school considers to be a legitimate educational interest.

16. What is the “health or safety” exception in FERPA?

While FERPA typically requires a signed release for disclosures from an education record, an exception authorizes disclosures to “appropriate parties” if “knowledge of the information is necessary to protect the health or safety of the student or other individuals.”⁴ This exception allows disclosure in response to a specific situation that poses an imminent danger. The release may occur *“if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question.”*¹⁰⁵ The information may be disclosed to “any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals” as determined by the educational agency.

FERPA states: *“In making [this] determination, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it*

may disclose information from the education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department [of Education] will not substitute its judgement for that of the educational agency or institution in evaluating the circumstances and making its determination.”¹⁰⁶

Indiana law includes a similar exception but with a narrower scope. Indiana law allows disclosure from the “education records” of a child to “appropriate officials” in cases of health and safety emergencies as determined by school officials and defines appropriate officials for this purpose. “Appropriate officials” include “local or state law enforcement officials, department of child services officials, trained medical personnel and school administrators whose knowledge of information [related to the education record or the emergency] is necessary to protect the health or safety of students or other persons on school corporation property. The term “School administrator” includes a principal, an assistant principal, a superintendent and an assistant superintendent.”¹⁰⁷

17. What administrative requirements must a school satisfy to comply with FERPA?

If a school health program has records subject to FERPA, it must meet all the administrative requirements in FERPA. Among other things, this includes: making sure it has a FERPA-compliant release form; providing the appropriate annual notices to parents, including required notices regarding directory information, the school official exception, and inspection and confidentiality rights; ensuring it has local policies in place that address and define important FERPA terms such as “legitimate educational interest” and “parent;” and complying with recordkeeping requirements regarding release of information. It includes other considerations as well.¹⁰⁸ Requirements for a compliant release form can be found in Appendix C. The U.S. Department of Education provides several model notices of educational agencies, a link to which can be found at the end of this section.

18. Are education records in an electronic record system also subject to FERPA?

Yes. FERPA applies equally to electronic records. FERPA controls disclosure of recorded information maintained in the “education record.” “Education records” are defined as records, files, documents or other materials that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution.¹⁰⁹ Record means any information recorded in any way, including computer media.¹¹⁰ Thus, education records in an electronic system are subject to FERPA.

Educational agencies must implement electronic record systems in a way that protects records from unauthorized disclosures. “Unauthorized disclosure” means that individually identifiable information from a student’s education record is “made available to a third party who does not have legal authority to access the information.” This can “happen

inadvertently, as occurs when information about an individual is unintentionally revealed through, for example, a security breach of the electronic system.”¹¹¹

In its guidance, DOE says: *“While the law does not prescribe specific methods that should be used to protect education records from unauthorized access or disclosure, the prohibition in FERPA against disclosing or permitting access to education records without consent clearly does not allow an educational agency or institution to leave education records unprotected or subject to access by unauthorized individuals, whether in paper, film, electronic, or any other format. We interpret this prohibition to mean that an educational agency or institution must use physical, technological, administrative and other methods, including training, to protect education records in ways that are reasonable and appropriate to the circumstances in which the information or records are maintained.”*¹¹²

19. Does DOE provide any guidance regarding confidentiality and disclosure of health information in an education record?

Yes. In 2016, DOE issued what is deemed “significant guidance” to institutions of higher learning regarding confidentiality and disclosure related to campus health care services where records created are subject to FERPA. The guidance states:

“Many institutions offer their students on-campus access to medical services, including mental health services. These services can help comprehensively promote campus safety and health; improve academic achievement; and assist those who experience sexual violence, other violence, or harassment. These benefits cannot be fully realized in an environment where trust between students and the institution is undermined. Students should not be hesitant to use the institution’s medical services out of fear that information they share with a medical professional will be inappropriately disclosed to others. The Department urges that institutions inform students at the time they receive treatment of the privacy protections afforded to their medical records pursuant to Federal and State law as well as institutional policy...”

*Most disclosures under FERPA are permissive, rather than mandatory, meaning that institutions choose when to share education records, including medical records without consent under the exceptions set forth in [FERPA]. When institutions choose to disclose PII from education records, including medical records, without consent, they should always take care to consider the impact of such sharing, and only should disclose the minimum amount of PII necessary for the intended purpose. When making these decisions involving student medical records, the Department recommends that institutions give great weight to the reasonable expectations of students that the records generally will not be shared, or will be shared only in the rarest of circumstances, and only to further important purposes, such as assuring campus safety. Failure to meet those expectations could deter students from taking advantage of critical campus resources, and could undermine the integrity of the patient-doctor/provider relationship as well as trust between students and the institution.”*¹¹³

Helpful Links and Resources



HIPAA OR FERPA?

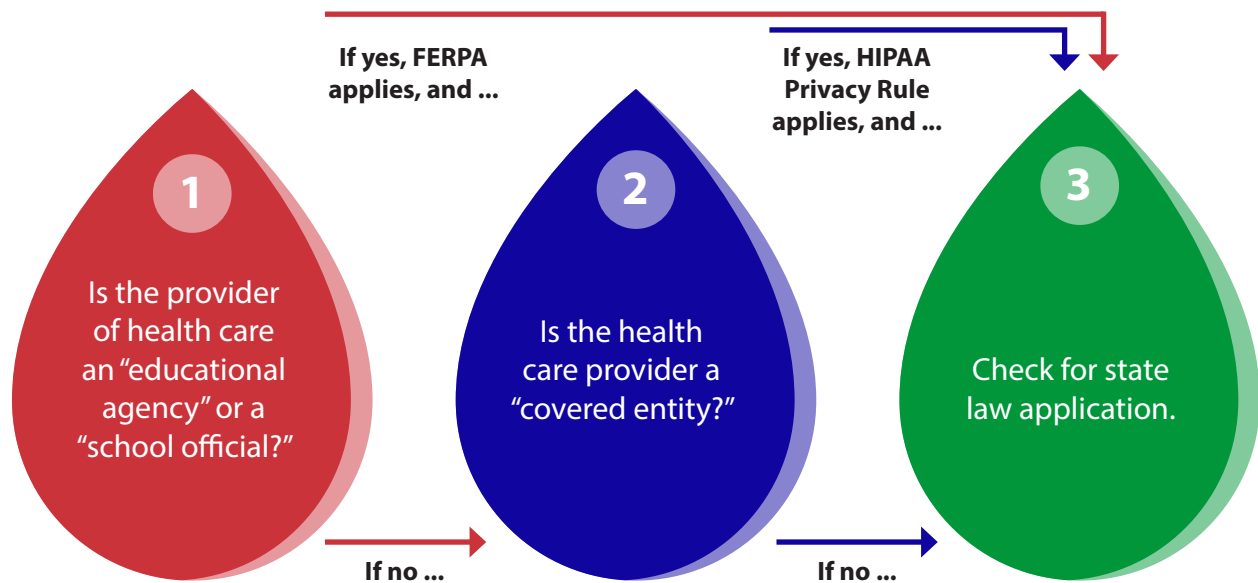
Is it possible for FERPA and the HIPAA Privacy Rule to both apply at the same time?

No. The two laws cannot apply to the same records at the same time. The HIPAA Privacy Rule explicitly states that its rules do not apply to health information held in an education record subject to FERPA. Therefore, if FERPA applies, HIPAA does not, even if the school provider otherwise qualifies as a covered entity under HIPAA. Indiana law may apply in either case.



The HIPAA Privacy Rule, FERPA, State Law or None of the Above: An Algorithm

How do you know which laws apply? Ask the following three questions:



1. Is the provider of health care an "educational agency," or an employee, agent or contractor of one and can be considered a "school official?"

Health records are subject to FERPA if they are part of an education record. They become part of an education record if the person or agency that created the record is an education institution, or the employee or agent or contractor of one and can be considered a school official. A contractor, consultant or volunteer could be considered a "school official" whose record would be subject to the use and disclosure requirements of FERPA if the contractor, consultant or volunteer:

- Performs an institutional service or function for which the agency or institution would otherwise use employees;
- Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- Is subject to the requirements of [FERPA] governing the use and redisclosure of personally identifiable information from education records and
- Meets the criteria for being a school official with a legitimate educational interest in the records as specified in the school or LEA's annual notification.¹¹⁵

The existence of a contract is not determinative on its own. DOE provides case examples that suggest factors that the agency would look at to determine whether a provider of care meets the above criteria and should be considered a school official. These factors include administrative and operational control as well as financing.¹¹⁶

2. Is the health care provider a “covered entity?”

HIPAA defines “covered entity” as health plans, health care clearinghouses and health care providers who transmit health information in electronic form related to certain types of transactions.¹¹⁸

“Health care providers” include individual providers of medical or health services and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business, such as hospitals, clinics and other organizations.¹¹⁹ Health care providers are only “covered entities,” however, if they transmit health information regarding certain types of health transactions electronically.

The transactions that will make HIPAA applicable include but are not limited to any of the following when done electronically: submitting claims to health insurers, making benefit and coverage inquiries to insurers, making inquiries about submitted claims, and sending health care authorization requests, among others. The U.S. Department of Health and Human Services (HHS) provides additional guidance on what is considered a “transaction.”¹²⁰ The fact that a health care provider does not use electronic records onsite does not automatically mean it is exempt from HIPAA. Health care providers may be transmitting health information electronically in another way, for example, by using a billing service that does.

That said, there will be providers who are not subject to HIPAA because they do not transmit health information in electronic form related to covered transactions. Indeed, in its 2019 Joint Guidance, the DOE and HHS suggest that most school-employed health care providers will not be considered covered entities because they do not bill for health services: *“[E]ven 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.”*¹²¹

HHS offers the “Covered Entity Decision Tool” to use to determine whether a provider is a covered entity subject to HIPAA.¹²²

3. Do state laws apply?

Whether FERPA applies, HIPAA applies or neither, it is still possible for state confidentiality laws to apply. Indiana has laws that protect the confidentiality of education records, as well as medical, and mental health information.¹²³

Application of state law when FERPA applies: Whenever possible, educational agencies should comply with both FERPA and state law, even where state law may provide greater protection. For example, DOE has clarified that many of the exceptions in FERPA, such as the legitimate educational interests/school official exception, are permissive rather than mandatory, meaning the educational institution can choose to disclose pursuant to the exception or not. In such cases, DOE states that educational institutions must take state law into account and attempt to honor both FERPA and state law: “[M]any states have privacy laws that protect the confidentiality of medical and counseling records. FERPA’s permissive exceptions to the requirement of consent do not preempt any state laws that may provide more stringent privacy protections for this information.”¹²⁴

To the extent that provisions of FERPA conflict with state law or regulation, FERPA usually preempts state law. However, if an educational agency believes there is an actual conflict between obligations under state law and its ability to comply with FERPA, the educational agency must notify the U.S. Department of Education’s Family Policy Compliance Office.¹²⁵

Application of state law when HIPAA applies: Indiana’s own confidentiality laws protect the confidentiality of medical and mental health information.¹²⁶ These laws parallel HIPAA in many ways; however, in some situations, they actually provide greater confidentiality protection than HIPAA. When state law provides greater confidentiality protection than HIPAA, providers usually must follow the state law.¹²⁷ Further, state medical consent laws will influence who has the authority to sign authorizations to release information, as well as the right of parents to access the protected health information of a minor student. This is discussed on page 12 of the Primer.

Other state regulations and guidance: Finally, in addition to laws, licensed health professionals may practice under ethical and licensing principles that also include obligations related to confidentiality. These principles may impose greater confidentiality obligations than HIPAA, FERPA or state laws. For example, the law may permit certain disclosures without an authorization, but some providers may work under ethical, contractual or licensing obligations that require them to seek authorizations for such disclosure. Providers should do their best to comply with all obligations and consult legal counsel if they have questions or concerns about conflicts.

Are records from health care services provided on a school campus always subject to FERPA?

No. Health records are subject to FERPA if the person or agency that created the record is an educational institution, the employee of an educational institution, or the agent or contractor of an educational institution and can be considered a “**school official**.” The term “school official” includes school staff, such as teachers, counselors, and school nurses. Individuals and agencies, including health agencies that contract with an educational agency, can be considered school officials in some cases – but not all.

The 2008 Joint Guidance from HHS and DOE provides this explanation: *“Some outside parties provide services directly to students and are not employed by or otherwise acting on behalf of the school. In these circumstances, the records created 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.”*¹²⁸ HHS and DOE provide these examples:

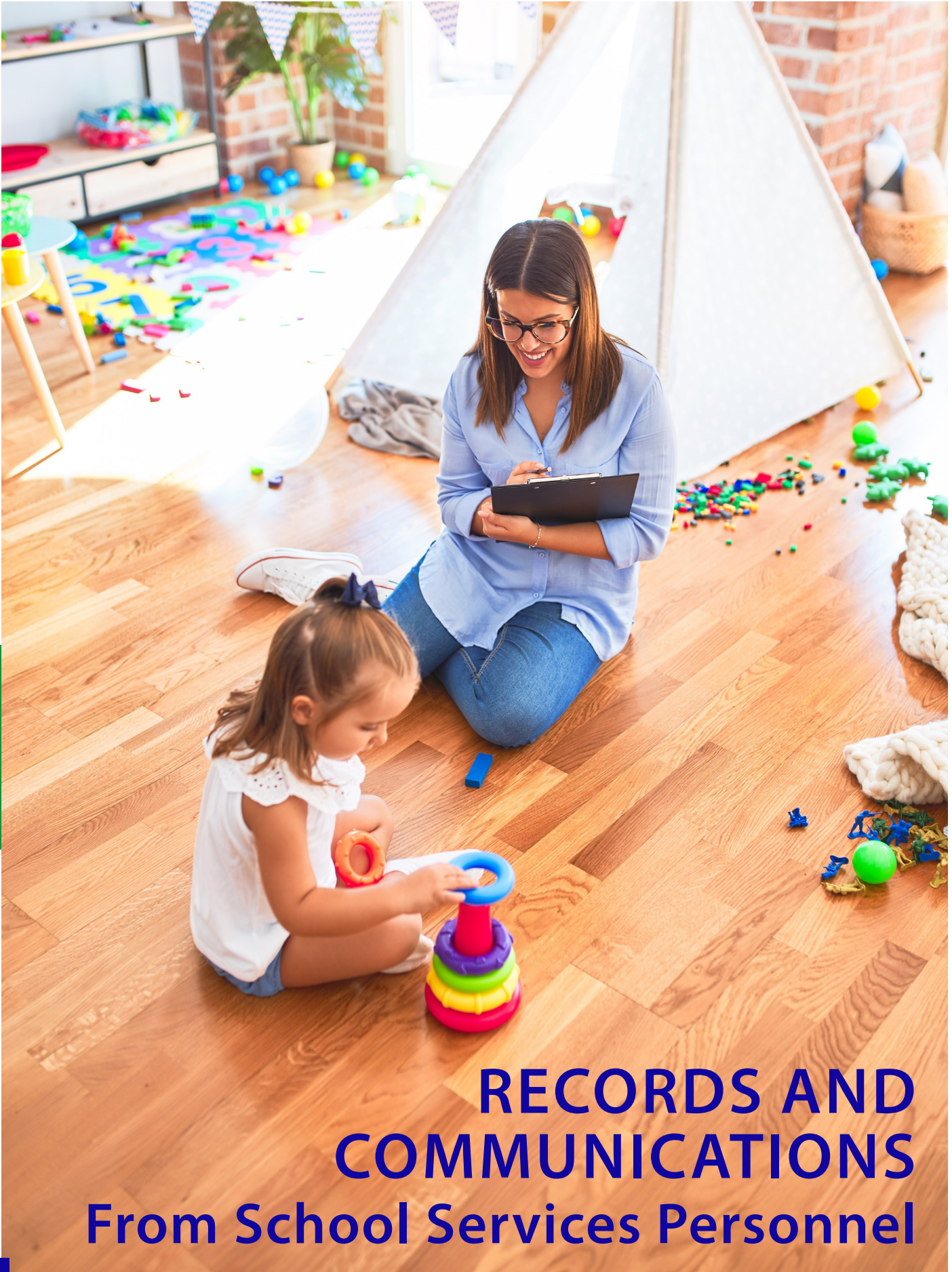
- “The records of a campus-based student health center would not be subject to FERPA if the center is funded, administered and operated by or on behalf of a public or private health, social services, or other non-educational agency or individual.”¹²⁹
- “Student health records that are maintained by a health care provider that provides services directly to students and that is not acting for a FERPA-covered educational agency or institution do not constitute FERPA-protected education records. For example, the records created and maintained by a public health nurse who provides immunizations to students on a FERPA-covered elementary or secondary school’s grounds, but who is not acting for the school, would not qualify as “education records” under FERPA.”¹³⁰



If a school provider is funded by a third-party agency and not an educational institution, are the records created outside the scope of FERPA?

Not necessarily. The records will be subject to FERPA if the provider can be considered an agent of the school, acting as a “school official.” The response to question one on page 29 describes the key criteria for determining whether a provider is acting as a school official. The 2008 Joint Guidance provides this example suggesting that third-party funding does not, on its own, bring records outside the scope of FERPA:

“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 a contractor), the records maintained by the nurse or clinic are ‘education records’ subject to FERPA.”¹³¹



RECORDS AND COMMUNICATIONS

From School Services Personnel

For purposes of this section, “student services personnel” are professionals who hold credentials in school counseling, psychology, nursing and social work and are providing “health services” on behalf of a school corporation pursuant to 511 I.A.C. 4-1.5-6 which requires school corporations to provide health services at the elementary and secondary level.¹³²

1. Does FERPA or HIPAA apply to student service personnel’s (SSP) records?

Indiana requires school corporations to provide certain health services at the elementary and secondary level. These services are delivered by “student services personnel” - Indiana law says that all records from services provided by student services personnel shall be maintained and released in accordance with FERPA.

This Indiana law aligns with FERPA. Education records are subject to FERPA. Education records are records that contain information directly related to a student and are maintained by a school or school employee. In general, the records of SSP fall into this category, because, by definition, an SSP is a school employee acting on behalf of the school, and the SSP’s records contain information related to a student.¹³³ These records are not covered by the HIPAA Privacy Rule because HIPAA specifically exempts from its coverage health information in an education record. Indiana law explicitly states that student services records provided by SSP are subject to FERPA.¹³⁴

Indiana confidentiality law, including licensing rules, also may apply to some information held by the SSP. If FERPA and Indiana law provide conflicting obligations regarding disclosure or protection, SSP should seek guidance from their legal counsel about which rule to follow.

2. May an SSP maintain a separate confidential health file at school?

Generally, treatment records of a minor student created by an SSP are part of the education record and subject to FERPA, even if the records are kept in a separate file cabinet or file. Thus, while an SSP may maintain a separate file as a means to limit accidental and unauthorized disclosures, the file still is subject to FERPA in most cases, in terms of who may and may not access the information contained therein. That said, there are certain types of records created by a school employee that are exempt from FERPA. These include:

- Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record, and
- Treatment records of a student 18 and older when used only in connection with treatment and not made available to anyone other than those providing treatment.¹³⁵

More information about the “sole possession” exemption can be found on page 20 of this Primer. Whether and when either of these two exceptions applies is something to address with legal counsel. If FERPA does not apply, HIPAA may. SSP and their legal counsel should evaluate whether the SSP can ever be considered a covered entity subject to HIPAA.

Indiana confidentiality law, including licensing rules, also may apply to some information held by the SSP. If FERPA and Indiana law provide conflicting obligations regarding disclosure or protection, SSP should seek guidance from their legal counsel about which rule to follow.

3. Does FERPA still apply if an SSP is hired with funds from an agency not subject to FERPA, such as a foundation or the Department of Health?

Yes, FERPA still applies because, an SSP by definition is providing an institutional service and their use and disclosure of records is under the direct control of an educational agency, making them a school official. The 2008 Joint Guidance from DOE and HHS address a similar question about school nurses: *“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 a contractor [of the educational agency]), the records maintained by the nurse or clinic are ‘education records’ subject to FERPA.”*¹³⁷

4. May a health care provider whose information is subject to the HIPAA Privacy Rule disclose protected health information to an SSP?

Examples:

- *Pediatrician wants to share medication dosage information with school nurse for a student who is required to take medication during the school day.*
- *Community-based therapist wants to confirm for a school psychologist that a student they are both providing with care is receiving therapy in the community for anxiety.*

In most cases, yes. The information always may be disclosed pursuant to a HIPAA and Indiana law compliant written authorization. If there is no such authorization in place, HIPAA and Indiana law also permit health care providers to disclose protected health information pursuant to certain exceptions. As an example of one such exception, HIPAA and Indiana law allow providers to disclose information to other health care providers for “treatment” purposes. HIPAA defines “treatment” broadly in this context to include coordination or management of health care, consultation, and referral as well as direct treatment.¹³⁸ Indiana law includes a similar exception for health and mental health information. The treatment exceptions under HIPAA and Indiana law are described in more detail on pages 13-14 of the Primer.

In their joint guidance, DOE and HHS provide a similar hypothetical and offer this conclusion related to the HIPAA treatment exception in application: *“[A] student’s primary care physician may discuss the student’s medication and other health care needs with a school*

nurse who will administer the student's medication and provide care to the student while the student is at school."¹³⁹

HIPAA includes other exceptions that may be relevant in this situation, such as the HIPAA emergency exception. The Joint Guidance from 2019 provides this example: "A parent tells their child's therapist they are worried because the child threatened to kill a teacher and has access to a weapon. HIPAA permits the therapist to contact school officials if, based on a credible representation by the parent, the therapist believes the disclosure to school officials is necessary to prevent or lessen a serious and imminent threat to the teacher."¹⁴⁰ The HIPAA emergency exception is described on page 17 of this Primer. It is important to review which Indiana law may apply to the records in question and under what circumstances and to whom disclosure absent written authorization is allowed in an emergency, as well as how emergency is defined under the applicable state law, as in some cases, such as disclosures of mental health records in an emergency, state law may vary slightly from HIPAA.¹⁴¹

It also is important to note that once disclosed to the SSP, if the SSP places the information in the education record, FERPA likely will apply when determining access to the information in the file, not HIPAA, which can change who may access the information without authorization.¹⁴²

5. May an SSP disclose information from the education record to a health care provider not employed or in contract with the school?

Examples:

- *School nurse wants to share student's seizure action plan with the student's primary care physician.*
- *In order to make a referral, school nurse wants to share name of student and relevant health information with the local children's hospital.*

In limited circumstances, yes. The information always may be disclosed pursuant to a FERPA compliant written authorization. If there is no authorization in place, information can only be disclosed to an outside party who is not a school official pursuant to an exception in FERPA. As an example of one such exception, the SSP may be able to provide the health provider with access to directory information about a specific student. What that would include will depend on how directory information has been defined by that school district in its annual notice to parents and whether parents have opted out of directory information disclosures.

As another example, in an emergency, information in the education record may be disclosed to appropriate persons pursuant to the health or safety exception in FERPA, if disclosure to that person is necessary to protect the health or safety of the student or

other persons. The health or safety exception is described on page 25 of the Primer and in question 6 below.

The SSP also may disclose information that is not contained in the education record, such as information from personal observation that has not been recorded, as long as the disclosure does not violate any applicable Indiana confidentiality law, professional code of conduct or contract obligation.

6. May an SSP disclose information from the education record, including health information, in an emergency?

Example:

- *Student has a seizure at school and falls. The school calls 911 and parents. When the ambulance arrives, the school nurse tells the emergency medical technicians that the student has epilepsy, after determining that this disclosure is necessary to protect the student's health or safety from imminent threat.*

In limited circumstances, yes. The information always may be disclosed pursuant to a FERPA compliant written authorization. If there is no authorization in place, information can only be disclosed to an outside party who is not a school official pursuant to an exception in FERPA. One such exception, an exception authorizes disclosures to "appropriate parties" if knowledge of the information is necessary to protect the health or safety of the student or other individuals. This exception allows disclosure in response to a specific situation that poses an imminent danger. The release may occur *"if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question."*¹⁴³ The information may be disclosed to "any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals" as determined by the educational agency.

FERPA states: *"In making [this] determination, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from the education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department [of Education] will not substitute its judgement for that of the educational agency or institution in evaluating the circumstances and making its determination."*¹⁴⁴

Indiana law includes a similar exception that applies to its broader “education records” but this exception has a narrower scope. Indiana law allows disclosure from the education records of a child to “appropriate officials” in cases of health and safety emergencies as determined by school officials and defines appropriate officials for this purpose. “Appropriate officials” include “local or state law enforcement officials, department of child services officials, trained medical personnel, and school administrators whose knowledge of information [related to the education record or the emergency] is necessary to protect the health or safety of students or other persons on school corporation property. The term “School administrator” includes a principal, an assistant principal, a superintendent and an assistant superintendent.”¹⁴⁵ Indiana law explicitly states that student services records provided by SSP are subject to the maintenance and release provisions of FERPA.¹⁴⁶

Educational agencies may wish to consult with legal counsel to understand the scope of the emergency exception when both FERPA and Indiana law are taken into account.

Providers also should consult their ethical and licensing rules for applicable guidance.



For more questions relevant to SSP, see the section in this Primer entitled “More FERPA Questions.”

COMMUNITY-BASED PROVIDER RECORDS AND COMMUNICATION



1. We are a community-based health provider (CBHP) that runs a School-Based Health Center (SBHC) on a local school campus. Are the SBHC records subject to FERPA?

Whether the SBHC records are subject to FERPA depends on whether the CBHP can be considered an agent of the educational institution acting as a school official. Health records are subject to FERPA if they are part of an education record. They become part of an education record if the person or agency that created the record is an education institution or the employee or agent or contractor of one and can be considered a school official.

A contractor, consultant or volunteer could be considered a “school official” whose record would be subject to the use and disclosure requirements of FERPA if the contractor, consultant or volunteer:

- Performs an institutional service or function for which the agency or institution would otherwise use employees;
- Is under the direct control of the agency or institution with respect to the use and maintenance of education records;
- Is subject to the requirements of [FERPA] governing the use and redisclosure of personally identifiable information from education records and
- Meets the criteria for being a school official with a legitimate educational interest in the records as specified in the school or LEA’s annual notification.¹⁴⁷

The existence of a contract on its own is not determinative. The above criteria must be demonstrated as well. DOE provides case examples that suggest factors that the agency would look at to determine whether a provider of care meets the above criteria and should be considered a school official. These factors include administrative and operational control as well as financing.¹⁴⁹

DOE and HHS provide this example in their 2008 Joint Guidance:

- *“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 maintain 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.”¹⁵²*

The 2019 Joint Guidance highlights that if FERPA does not apply, the CBHP should evaluate whether the HIPAA Privacy Rule does. It says: *“HIPAA would apply to student records maintained by a health care provider that are not subject to FERPA only if the provider*

transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, e.g., health care claims, and the records contain PHI.”¹⁵³

2. May a school or district share information from student education records with a CBHP for purposes of service provision?

Example:

- *SSP wants to refer a student and their family to a health care specialist in the community and wants to send the student’s name and family contact information to the provider’s office.*
- *SSP wants to share student’s seizure action plan with the student’s primary care physician.*

Yes, but how they may do so will depend on whether or not the CBHP is considered an agent of the school acting as a school official.

- ***When the CBHP is an agent of the school and can be treated as a school official:***
This information always can be disclosed with parental consent and a FERPA compliant authorization. If there is no authorization in place, the information can only be disclosed pursuant to an exception in FERPA. FERPA permits a school to disclose information in the education record to other school officials as long as they have a legitimate educational interest in the information. FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education file to school officials and, if so, which parties are considered school officials for this purpose and what the school considers to be a “legitimate educational interest.” Thus, the school may share the information with the CBHP if the CBHP has a legitimate educational interest in access to the information in question, and the school notice includes definitions for school official and legitimate educational interest that would allow for this kind of disclosure.

As well, the school may be able to provide the CBHP/health provider access to directory information about a specific student. What that would include will depend on how directory information has been defined by that school district in its annual notice to parents and whether parents have opted out of directory information disclosures.

In addition, FERPA authorizes disclosures to “appropriate parties” if “knowledge of the information is necessary to protect the health or safety of the student or other individuals” in response to a specific situation that poses an imminent danger under the health or safety exception to FERPA, described on page 25. The release may occur “if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the

community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals.” The person receiving the information will be required to protect the information subject to FERPA.

Indiana law includes a similar exception but with a narrower scope. Indiana law allows disclosure from the “education records” of a child to “appropriate officials” in cases of health and safety emergencies as determined by school officials and defines appropriate officials for this purpose. “Appropriate officials” include “local or state law enforcement officials, department of child services officials, trained medical personnel, and school administrators whose knowledge of information [related to the education record or the emergency] is necessary to protect the health or safety of students or other persons on school corporation property. The term “School administrator” includes a principal, an assistant principal, a superintendent and an assistant superintendent.”¹⁵⁴ Indiana law explicitly states that student services records are subject to the maintenance and release provisions of FERPA.¹⁵⁵

- ***When the CBHP is not a school official or agent of the school:***

The information always may be disclosed pursuant to a FERPA compliant written authorization. If there is no authorization in place, information can only be disclosed pursuant to an exception in FERPA. The school may be able to provide the health provider access to directory information about a specific student. What that would include will depend on how directory information has been defined by that school district in its annual notice to parents and whether parents have opted out of directory information disclosures.

School staff also may disclose information to the CBHP that is not contained in the education record, such as information from personal observation that have not been recorded, as long as the disclosure does not violate any applicable Indiana confidentiality law, professional code of conduct or contract obligation.

In an emergency, information in the education record may be disclosed to appropriate persons pursuant to the health or safety exception, if disclosure to the health care provider is necessary to protect the health or safety of the student or other persons, as described above.

3. May a CBHP whose records are subject to the HIPAA Privacy Rule share information with school employees in an emergency?

The HIPAA Privacy Rule includes an exception that allows a health care provider to disclose otherwise protected health information without need of an authorization in order to avert a serious threat to health or safety. Specifically, HIPAA says that a provider may disclose information, consistent with applicable law and ethical principles, if the provider in good faith believes the disclosure:

- Is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public; and
- Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

There is a presumption that a provider acted in good faith in making such a disclosure if the provider's belief is based on actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.¹⁵⁶ The HIPAA Privacy Rule authorizes providers to disclose psychotherapy notes without authorization under these same conditions.¹⁵⁷

It is important to review which Indiana law may apply to the records in question and under what circumstances and to whom disclosure absent written authorization is allowed in an emergency, as well as how emergency is defined under the applicable law, as the conditions and circumstances may vary slightly under state law compared to HIPAA.¹⁵⁸

4. May a CBHP whose records are subject to the HIPAA Privacy Rule disclose protected health information to an SSP?

Examples:

- *Pediatrician wants to share medication dosage information with school nurse for a student who is required to take medication during the school day.*
- *Community-based therapist wants to confirm for a school psychologist that a student they are both providing with care is receiving therapy in the community for anxiety.*

In most cases, yes. The information always may be disclosed pursuant to a HIPAA and Indiana law compliant written authorization. If there is no such authorization in place, HIPAA and Indiana law also permit health care providers to disclose protected health information pursuant to certain exceptions. For example, HIPAA and Indiana law allow providers to disclose information to other health care providers for "treatment" purposes. HIPAA defines "treatment" broadly in this context to include coordination or management of health care, consultation and referral, as well as direct treatment.¹⁵⁹

The treatment exceptions under HIPAA and Indiana law are described in more detail on pages 13-14 of the Primer.

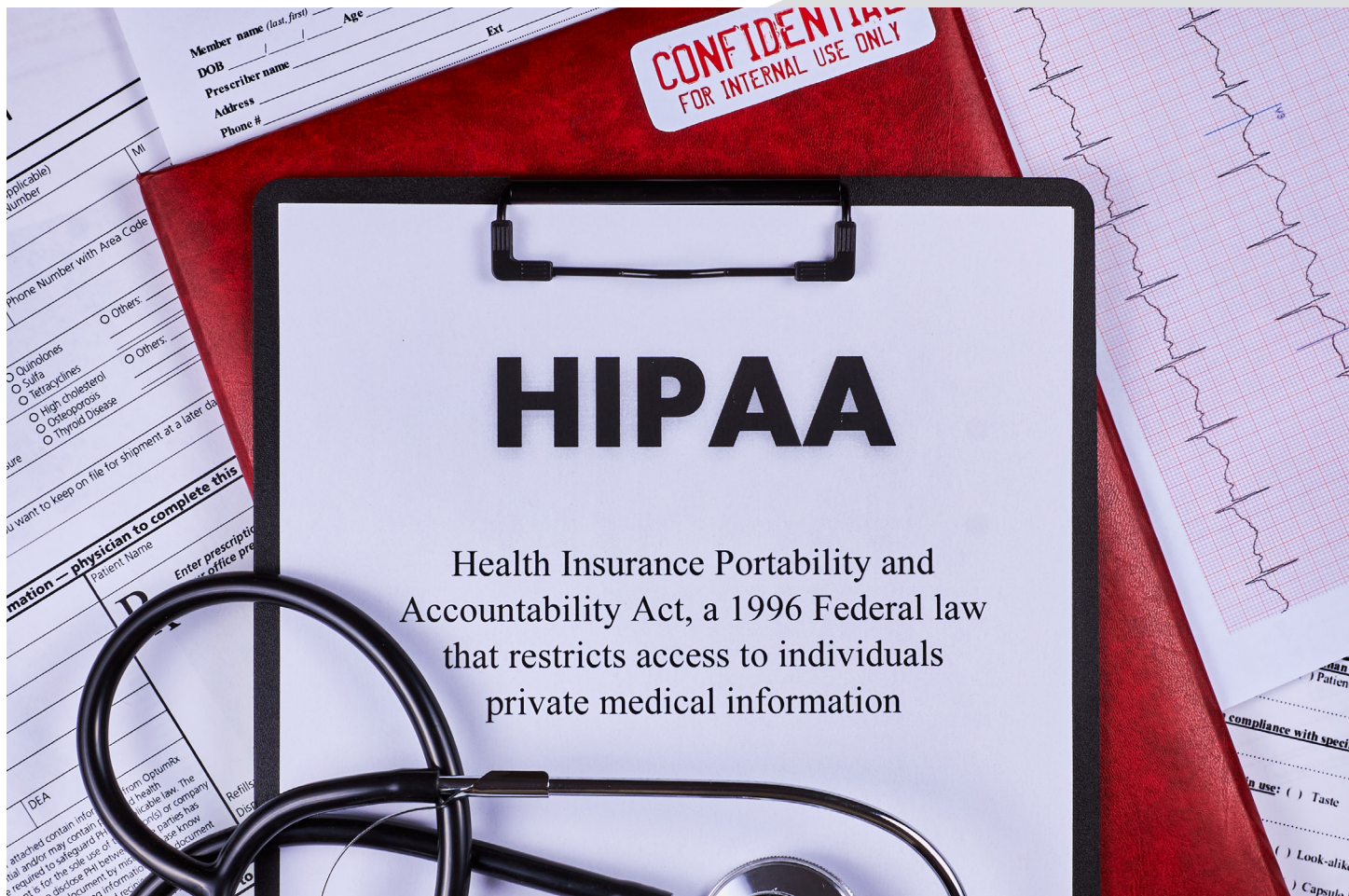
DOE and HHS provide this example of the HIPAA treatment exception in application: "[A] student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school."¹⁶⁰

Other exceptions to the HIPAA Privacy Rule may be relevant as well, including the emergency exception. The HIPAA emergency exception is described on pages 15-16 of the Primer. It is important to review which Indiana law may apply to the records in question and under what circumstances and to whom disclosure absent written authorization is allowed in an emergency, as well as how emergency is defined under the applicable law, as in some cases, state law may vary slightly from HIPAA.¹⁶⁴

It is important to note that once disclosed to the SSP, if the SSP places the information in the education record, FERPA likely will apply when determining access to the information in the file, not HIPAA.¹⁶⁵

5. May a CBHP whose records are subject to the HIPAA Privacy Rule shared protected information with a teacher who wants to find out how a student is progressing in treatment?

The health care provider may share information with teacher pursuant to a signed authorization. There is no exception under HIPAA that would allow a provider to share protected health information with a teacher for this purpose.





MORE FERPA QUESTIONS

1. May a school or district share information from the education record, such as the student's schedule, attendance or grades, with an SSP for purposes of health care provision?

It depends. This information always can be disclosed with signed parental consent. Without that written authorization, FERPA permits a school to disclose information in the education records to other school officials, such as an SSP, as long as they have a legitimate educational interest in the information. This exception does not authorize the school official to see all information in a student record. The school official only may access information to which they have a legitimate educational interest. The DOE says that "legitimate educational interest" can be defined broadly to mean that the school official needs the information to perform their official or professional duties.¹⁰³

In implementing legitimate educational interests, the educational agency or institution must implement *"reasonable methods to ensure school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective."*¹⁰⁴

FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education records to school officials and, if so, which parties are considered school officials for these purposes and what the school considers to be a "legitimate educational interest." Thus, the school may share the information with school services personnel if that individual has a legitimate educational interest in access to the information, as legitimate educational interest is defined by the district.

In addition, FERPA authorizes disclosures to "appropriate parties" if "knowledge of the information is necessary to protect the health or safety of the student or other individuals" in response to a specific situation that poses an imminent danger. This exception allows disclosure in response to a specific situation that poses an imminent danger. The release may occur *"if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question."*¹⁴³ The information may be disclosed to "any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals" as determined by the educational agency. The person receiving the information will be required to protect the information subject to FERPA.

2. May an SSP let a teacher know about a student's medical condition, such as a chronic disease, documented in the education file?

It depends. This information always can be disclosed with written parental consent. If there is no authorization in place, FERPA permits a school or school employee to disclose information in the education record to other school officials, such as teachers, as long as they have a legitimate educational interest in the information. This exception does not authorize the school official to see all information in a student record. The school official only may access information to which they have a legitimate educational interest. The DOE says that "legitimate educational interest" can be defined broadly to mean that the school official needs the information to perform their official or professional duties.¹⁰³

In implementing legitimate educational interests, the educational agency or institution must implement *"reasonable methods to ensure school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective."*¹⁰⁴

FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education file to school officials and, if so, which parties are considered school officials for this purpose and what the school considers to be a "legitimate educational interest." Thus, the school may share the information with the teacher if that individual has a legitimate educational interest in access to the information, as legitimate educational interest is defined by the district.

In addition, FERPA authorizes disclosures to "appropriate parties" if "knowledge of the information is necessary to protect the health or safety of the student or other individuals" in response to a specific situation that poses an imminent danger. This exception allows disclosure in response to a specific situation that poses an imminent danger. The release may occur *"if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals. Any release must be narrowly tailored considering the immediacy and magnitude of the emergency and must be made only to parties who can address the specific emergency in question."*¹⁴³ The information may be disclosed to "any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals" as determined by the educational agency. The person receiving the information will be required to protect the information subject to FERPA.

3. May a school disclose information held in an individual student's education record to an individual or agency contracting to provide health care at the school?

Example:

- A CBHP providing health services on the school campus asks to access the school's online records so that it can see student schedules and coordinate appointments.
- A CBHP providing health services on the school campus asks the school to share the attendance history of a particular student so that the clinic can evaluate whether its services are improving school outcomes for this youth.

Yes, but how will depend on whether or not the CBHP is considered an agent of the school and a school official.

- **When the CBHP is an agent of the school and can be treated as a school official:** Information always can be disclosed with parental consent. If there is no authorization in place, FERPA permits a school to disclose information in the education record to other school officials as long as they have a legitimate educational interest in the information, under the exception described on page 25. FERPA requires schools to include in their annual notices to parents a statement indicating whether the school has a policy of disclosing information from the education file to school officials and, if so, which parties are considered school officials for this purpose and what the school considers to be a "legitimate educational interest." Thus, the school may share the information with the CBHP if the CBHP has a legitimate educational interest in access to the information in question, as legitimate educational interest is defined by the district.

In addition, FERPA authorizes disclosures to "appropriate parties" if "knowledge of the information is necessary to protect the health or safety of the student or other individuals" in response to a specific situation that poses an imminent danger under the health or safety exception to FERPA, described on page 25. The release may occur "if the agency or institution determines, on a case-by-case basis, that a specific situation presents imminent danger or threat to students or other members of the community, or requires an immediate need for information in order to avert or diffuse serious threats to the safety or health of a student or other individuals." The person receiving the information will be required to protect the information subject to FERPA. Indiana law includes a similar exception but with a narrower scope. Indiana law allows disclosure from the "education records" of a child to "appropriate officials" in cases of health and safety emergencies as determined by school officials and defines appropriate officials for this purpose. "Appropriate officials" include "local or state law enforcement officials, department of child services officials, trained medical personnel and school administrators whose knowledge of information [related to the education record or the emergency] is necessary to protect the health or safety of students

or other persons on school corporation property. The term “School administrator” includes a principal, an assistant principal, a superintendent, and an assistant superintendent.”¹⁶⁶ Indiana law explicitly states that student services records are subject to the maintenance and release provisions of FERPA.¹⁶⁷

- **When the CBHP is not a school official or agent of the school:**

The information always may be disclosed pursuant to a FERPA compliant written authorization. If there is no authorization in place, information can only be disclosed pursuant to an exception in FERPA. For example, the school could provide the health provider access to directory information about a specific student. What that would include will depend on how directory information has been defined by that school district in its annual notice to parents and whether parents have opted out of directory information disclosures.

School staff also may disclose information to the CBHP that is not contained in the education record, such as information from personal observation that have not been recorded, as long as the disclosure does not violate any applicable Indiana confidentiality law, professional code of conduct or contract obligation.

In an emergency, information in the education record may be disclosed to appropriate persons pursuant to the health or safety exception, if disclosure to the health care provider is necessary to protect the health or safety of the student or other persons, as described above.

4. May school services personnel assure minor students that parents will not have access to their health records in the education file?

For the most part, no. The records of school services personnel are part of the education record, and as described on page 24, parents of a student under age 18 may access their child’s education record.¹⁶⁸ “Parent” includes a parent, guardian or person acting in the role of parent.¹⁶⁹ The only exception is if a court order explicitly limits a parent’s right to access the record. The school has a certain amount of time to make the record available after a request. If a school believes release of information may put a student at risk, then the school should contact the school district legal counsel for advice.

5. May school services personnel assure minor students that teachers and other school staff will not have access to their health records in the education file?

For the most part, no. The records of school services personnel are part of the education record and as described herein, there are several exceptions in FERPA, including the “school official” and “health or safety” exception, that might allow school staff to see health information in the education record. That said, DOE encourages educational institutions to remember that most of these exceptions are “permissive” rather than “mandatory” and to take this into consideration when determining disclosure policies so that students and

families feel encouraged to fully realize the benefits of health care at a school site. DOE offers this advice:

“Many institutions offer their students on-campus access to medical services, including mental health services. These services can help comprehensively promote campus safety and health; improve academic achievement; and assist those who experience sexual violence, other violence or harassment. These benefits cannot be fully realized in an environment where trust between students and the institution is undermined. Students should not be hesitant to use the institution’s medical services out of fear that information they share with a medical professional will be inappropriately disclosed to others. The Department urges that institutions inform students at the time they receive treatment of the privacy protections afforded to their medical records pursuant to Federal and State law as well as institutional policy.

Most disclosures under FERPA are permissive, rather than mandatory, meaning that institutions choose when to share education records, including medical records without consent under the exceptions set forth in [FERPA]. When institutions choose to disclose PII from education records, including medical records, without consent, they should always take care to consider the impact of such sharing, and only should disclose the minimum amount of PII necessary for the intended purpose. When making these decisions involving student medical records, the Department recommends that institutions give great weight to the reasonable expectations of students that the records generally will not be shared, or will be shared only in the rarest of circumstances, and only to further important purposes, such as assuring campus safety. Failure to meet those expectations could deter students from taking advantage of critical campus resources, and could undermine the integrity of the patient-doctor/provider relationship as well as trust between students and the institution.”¹⁷⁰

6. May a school or school district participate in an integrated data exchange with other agencies?

Integrated data systems (IDS) allow linkage of administrative data from multiple government agencies. They may be used to “better understand the complex needs in communities, inform the design of new strategies and interventions, and evaluate the effectiveness of programs and policies on the desired outcomes.”¹⁷¹ Each IDS has a “lead” organization. This is the organization that will receive protected information from the other participating agencies and ‘integrate’ it. The lead organization may be a university, school district, or any other agency, as long as that agency can provide the appropriate data protections required by HIPAA, FERPA or other applicable law and the appropriate written agreements are in place. A school or school system may participate in an integrated data system and release individually identifiable information from education records to the IDS lead agency if the disclosure complies with FERPA.

APPENDIX



A: Key Points about FERPA and the HIPAA Privacy Rule in Indiana

Basics

- FERPA and HIPAA can never apply to the same records at the same time.
- FERPA and Indiana medical confidentiality law can apply to the same records at the same time.
- HIPAA and Indiana medical confidentiality law can apply to the same records at the same time.
- HIPAA or FERPA may apply to the health records created when health services are provided on a school campus.

FERPA or HIPAA?

- A school health program's records are likely subject to FERPA if the program is funded, administered and operated by, or on behalf of, a school or educational institution and the program can be considered a "school official."
- Some health care providers who contract with an education institution are "school officials" – but not all.
- The HIPAA Privacy Rule applies to protected health information created when a covered entity delivers services on a school campus – as long as FERPA does not apply.
- Health records are not subject to FERPA just because the services were provided on a school campus.

Why does it matter?

- A parent's right to access health records is different under HIPAA and FERPA.
- The individuals and agencies with whom a school health provider can exchange protected health information without a release differ under HIPAA and FERPA.
- The administrative rules, including requirements for release of information forms, differ under HIPAA, FERPA and Indiana law.

B: Comparing HIPAA and FERPA

TOPIC	FERPA	HIPAA
Does the law usually require a signed release to disclose protected information?	Yes	Yes
Who signs the release?	“Parent” signs authorization for minor student in elementary or secondary school.	Parent or legal guardian signs authorization in most cases, but minor must sign in some situations.
Does it prescribe what must be included in the release?	Yes	Yes
Does the law allow disclosures without need of a signed release?	Yes, in limited circumstances.	Yes, in limited circumstances.
Does the law allow disclosures of health information to teachers for referral and care coordination without a signed release?	Yes, if the teacher is in the same educational agency and has a “legitimate educational interest” in the information as defined in school policy. The information disclosed must be limited to the information that meets that legitimate educational interest.	No
Does the law allow disclosures of health information to other health providers for treatment and care coordination without a signed release?	Yes, if the health provider is in the same educational agency and has a “legitimate educational interest” in the information as defined in school policy. The information disclosed must be limited to the information that meets that legitimate educational interest.	Yes, providers may share health information with other providers of health care for treatment purposes, if the records are needed to provide services.
Does the law allow disclosures in order to prevent harm?	Yes, under the “health or safety” exception.	Yes, under the “health or safety” exception.
Are there administrative requirements?	Yes, including but not limited to: <ul style="list-style-type: none"> • Annual notice of rights • Required local policies • Record retention rules • Documenting access to records • Required forms 	Yes, including but not limited to: <ul style="list-style-type: none"> • Notice of Privacy Practices • Document retention requirements • Documenting access to records • Required forms • Record security requirements

C: Requirements for Release of Information Forms

If records are subject to any of the following laws, a release form must include all the elements described to be valid. Please consult legal counsel to determine which of these laws apply in your situation.

1. Requirements under FERPA, 34 C.F.R. 99.30 (as of March 2026)

To comply with FERPA, a written consent to release education records must:

- Specify the records that may be disclosed;
- State the purpose of the disclosure;
- Identify the party or class of parties to whom the disclosure may be made; and
- Be signed and dated.

“Signed and dated written consent” under this part may include a record and signature in electronic form that (1) identifies and authenticates a particular person as the source of the electronic consent; and (2) Indicates such person’s approval of the information contained in the electronic consent.

2. Requirements under HIPAA, 45 CFR 164.508(c) (as of March 2026)

A. A valid authorization under this section must contain at least the following elements:

- A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
- The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.
- A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
- An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement “end of the research study,” “none,” or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository.
- Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative’s authority to act for the individual must also be provided.

- B. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:
- The individual's right to revoke the authorization in writing, and either:
 - The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
 - To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.
 - The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization by stating either:
 - The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or
 - The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.
 - The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.
- C. The authorization must be written in plain language.
- D. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

3. Requirements under Indiana Code 16-39-1-4 (health records)(as of March 2026)

"Except as provided in IC 16-39-5, a patient's written consent for release of the patient's health record must include the following:

1. The name and address of the patient.
2. The name of the person requested to release the patient's record.
3. The name of the person or provider to whom the patient's health record is to be released.
4. The purpose of the release.
5. A description of the information to be released from the health record.
6. The signature of the patient, or the signature of the patient's legal representative if the patient is incompetent.
7. The date on which the consent is signed.
8. A statement that the consent is subject to revocation at any time, except to the extent that action has been taken in reliance on the consent.
9. The date, event or condition on which the consent will expire if not previously revoked."

4. Requirements under Indiana Code 16-39-2-5(c) (mental health records)

"A patient's written request for the release of the patient's mental health record under this section must include the following:

1. The name of the patient.
2. The name of the person requested to release the patient's mental health record.
3. The name of the person, provider or organization to whom the patient's mental health record is to be released.
4. The purpose of the release.
5. A description of the information to be released from the mental health record.
6. The signature of the patient.
7. The date the request is signed.
8. A statement that the patient's consent to release of mental health records is subject to revocation at any time, except to the extent that action has been taken in reliance on the patient's consent.
9. The date, event, or condition on which the patient's consent to release of mental health records will expire if not previously revoked."

Unless otherwise specified in a written request under this section, a request for release of records is valid for one hundred eighty (180) days after the date the request is made. A request for release of records under this section may be revoked by the patient at any time, except to the extent that action has been taken in reliance on the consent. Mental health records requested by the patient to be released under this section may be released by the provider receiving the request, regardless of whether the patient is still receiving services from the provider.

D: Indiana Consent to Treatment Laws

Indiana law authorizes minors (persons under age 18) to consent to their own health care in certain circumstances. Relevant statutes are listed below, current as of July 2023:

Indiana Code 16-36-1-3:

"(a) Except as provided in subsections (b) through (d), unless incapable of consenting under section 4 [IC 16-36-1-4] of this chapter, an individual may consent to the individual's own health care if the individual is:

- (1) an adult; or
- (2) a minor and:
 - (A) is emancipated;
 - (B) is:
 - (i) at least fourteen (14) years of age;
 - (ii) not dependent on a parent for support;
 - (iii) living apart from the minor's parents or from an individual in loco parentis; and
 - (iv) managing the minor's own affairs;

- (C) is or has been married;
- (D) is in the military service of the United States; or
- (E) meets the requirements of section 3.5 of this chapter;
- (F) is authorized to consent to the health care by any other statute.

(b) A person at least seventeen (17) years of age is eligible to donate blood in a voluntary and noncompensatory blood program without obtaining parental permission.

(c) A person who is sixteen (16) years of age is eligible to donate blood in a voluntary and noncompensatory blood program if the person has obtained written permission from the person's parent.

(d) An individual who has, suspects that the individual has, or has been exposed to a venereal disease is competent to give consent for medical or hospital care or treatment of the individual."

Indiana Code 16-36-1-3.5:

(a) This section does not apply to the provision of an abortion or completion of a POST form.

(b) A minor who:

(1) is at least sixteen (16) years of age; and

(2) is:

(A) pregnant;

(B) in labor; or

(C) postpartum for a sixty (60) day period after the birth;

is competent to give consent for the minor's medical care and treatment with respect to the pregnancy, delivery and postpartum care of the minor.

(c) Before a health care provider may provide care to a minor described in subsection (b), the health care provider shall, before or at the initial appointment, make a reasonable effort to contact the minor's parent or guardian for consent to provide the treatment and document in writing each attempt the health care provider made to contact the parent or guardian of the minor. If, after the health care provider has made a reasonable attempt to contact the minor's parent or guardian before or at the initial appointment for treatment, either: (1) the health care provider is unable to make contact; or (2) the parent or guardian refuses to provide consent for treatment: the health care provider shall act in the manner that is in the best interests of the minor and the fetus.

(d) If, after the initial appointment or treatment, the health care provider determines that additional care is in the best interests of the minor and fetus, the health care provider shall make one (1) additional attempt to contact the parent or guardian of the minor for consent, if applicable, before: (1) the provision of prenatal care; (2) the delivery of the baby; and (3) the provision of postpartum care.

Indiana Code 16-36-1-5:

(b) Consent to health care for a minor not authorized to consent under section 3 [IC 16-36-1-3] of this chapter may be given by any of the following:

- (1) A judicially appointed guardian of the person or a representative appointed under section 8 of this chapter.
- (2) A parent or an individual in loco parentis if:
 - (A) there is no guardian or other representative described in subdivision (1);
 - (B) the guardian or other representative is not reasonably available or declines to act; or
 - (C) the existence of the guardian or other representative is unknown to the health care provider.
- (3) An adult sibling of the minor if:
 - (A) there is no guardian or other representative described in subdivision (1);
 - (B) a parent or an individual in loco parentis is not reasonably available or declines to act; or
 - (C) the existence of the parent or individual in loco parentis is unknown to the health care provider.

(c) A representative delegated authority to consent under section 6 [IC 16-36-1-6] of this chapter has the same authority and responsibility as the individual delegating the authority.

(d) An individual authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.”

(e) If there are multiple individuals at the same priority level under this section, those individuals shall make a reasonable effort to reach consensus on the health care decisions on behalf of the individual...If the individuals at the same priority level disagree as to the health care decisions on behalf of the individual...the majority of the available individuals at the same priority level controls.”

Other important consent laws and opinions that impact minors access to care in Indiana:

- 42 CFR 59.5(a)(4) (Minors consent for Title X funded family planning services on their own accord.)
- Indiana Code 34-18-12-9 (Emergency services do not require consent to care.)
- Indiana Code 16-21-8-1 (The Indiana Attorney General has concluded that a parent’s consent is not required prior to rendering emergency hospital medical treatment to a minor who is an alleged victim of a sex crime under this statute. See 1978 Op. Ind. Atty Gen. No. 19.)

E: Glossary of Key Terms

HIPAA	
Authorization	Written document that grants permission to a covered entity to disclose protected health information. An authorization must contain certain elements outlined in HIPAA to be valid. 45 C.F.R. § 164.508.
Business Associate	Individual or organization that receives, creates, maintains or transmits protected health information as part of certain types of work it does on behalf of a covered entity. 45 C.F.R. § 160.103.
Covered Entity	Health plans, health care clearinghouses, and health care providers who transmit health information in electronic form related to certain types of transactions. 45 C.F.R § 160.103.
Disclosure	Release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information. 45 C.F.R. § 160.103.
Health Care Provider	Health care provider means a provider of medical or health services and any other person or organization who furnishes, bills or is paid for health care in the normal course of business. It includes individual providers such as nurses, physicians and mental health practitioners, as well as clinics and other organizations. 45 C.F.R. § 160.103.
Psychotherapy Notes	Notes or records in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. This excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis and progress. 45 C.F.R. § 164.501
Treatment	Provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. 45 C.F.R. § 164.501.

FERPA	
Directory Information	Information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to, the student's name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended. 34 C.F.R. § 99.3.
Disclosure	To permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. 34 C.F.R. §99.3.
Educational Agency or Institution	Institutions that receive federal funds under programs administered by the U.S. Department of Education and that either provide direct instruction to students, such as schools; or are educational agencies that direct or control schools, such as school districts and state education departments. 34 C.F.R. § 99.1.
Education Record	Records, files documents, or other materials recorded in any way that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution. 34 C.F.R. § 99.3.
Parent	A natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. 34 C.F.R. § 99.3.
Personally Identifiable Information	The term includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 C.F.R. § 99.3.

FERPA	
Sole Possession Record	Records kept in the sole possession of the maker, used only as a personal memory aid, and that are not accessible or revealed to any other person except a temporary substitute for the maker of the record. 34 C.F.R. § 99.3.
Treatment Record	Records of a student 18 and older, or who is attending a postsecondary institution, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity, made or maintained only in connection with treatment of the student and disclosed only to individuals providing the treatment. 34 C.F.R. § 99.3.

INDIANA LAW	
<i>For Purposes of Health Confidentiality:</i>	
Health Records	Health records mean written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche microfilm or in a digital format. The term includes mental health records and alcohol and drug abuse records. Ind. Code § 16-18-2-168(a)
Mental Health Records	Mental health records mean recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services or developmental disability training. The term does not include alcohol and drug abuse records." Ind. Code § 16-18-2-226
<i>For Purposes of School Services:</i>	
Health Services for School Services Personnel	Health services mean programs and services that promote and protect the health, safety, and well- being of students to assure a healthy environment that nurtures academic growth. 511 I.A.C. § 4-1.5-1
Student Services Personnel	Student services personnel mean persons who provide educational and career services, student assistance services, or health services and who hold credentials in the areas of: (1) school counseling for educational and career services; (2) school counseling, school psychology, or school social work (master's level) for student assistance services; or (3) registered nursing for health services. 511 I.A.C. § 4-1.5-1

Endnotes

1. See 45 C.F.R. § 164.302 et seq. for the HIPAA Security Rule. (“CFR” means the Code of Federal Regulations.)
2. 45 C.F.R. § 160.103.
3. 45 C.F.R. § 164.103.
4. 45 C.F.R. § 160.103 (“Health care provider means a provider of services...a provider of medical or health services...and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.”) 34 C.F.R. § 99.36.
5. U.S. Department of Health and Human Services (HHS), *Transactions Overview*, <https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/transactions>, accessed April 6, 2026
6. HHS & U.S. Department of Education (DOE), *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records*, December 2019, [hereinafter *Joint Guidance 2019*], at 8.
7. HHS, *Covered Entity Decision Tool*, available at: <https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/hipaa/covered-entities>, accessed April 6, 2026
8. 45 C.F.R. § 160.103(defining “business associate”).
9. 45 C.F.R. § 164.104 (“Where provided, the standards, requirements, and implementation specifications adopted under this part apply to a business associate.”).
10. 45 C.F.R. §§ 164.502(a)(3)&(4), 164.504(e), 164.532(d)(e). See HHS, *Business Associates*, <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>, accessed on April 6, 2026.
11. 45 C.F.R. § 164.502(a).
12. 45 C.F.R. § 160.103(“*Protected health information* means individually identifiable health information: (1) Except as provided in paragraph (2) of this definition that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium. *Health information* means any information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. *Individually identifiable health information* is information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.”).
13. See 45 C.F.R. §§ 160.103, 164.502(a), 164.514.
14. 45 C.F.R. § 164.103(“*Protected Health Information*...Protected health information excludes individually identifiable health information in: (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. §1232g; ...”).
15. HHS & DOE, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records*, November 2008, [hereinafter *Joint Guidance 2008*], at 4.
16. See 45 C.F.R. § 164.502(d).
17. 45 C.F.R. § 164.514(a),(b).
18. 45 C.F.R. § 164.514(c).
19. 45 C.F.R. § 164.508(a)(2).

20. 45 C.F.R. § 164.501.
21. 45 C.F.R. § 164.508(a).
22. 45 C.F.R. § 164.508(b), (c).
23. 45 C.F.R. § 164.508(c).
24. 45 C.F.R. § 164.502(g)(i), 165.508(c).
25. 45 C.F.R. § 164.502(g)(i).
26. 45 C.F.R. §§ 164.502(a)(1)(ii), 164.506.
27. 45 C.F.R. § 164.512(j).
28. 45 C.F.R. § 164.512(i).
29. 45 C.F.R. §§ 164.502(a)(1)(ii), 164.506.
30. 45 C.F.R. §§ 164.502(a)(1)(ii), 164.506.
31. 45 C.F.R. § 164.512(b)(1)(i), 160.203(c).
32. 45 C.F.R. § 164.512(b)(1)(ii), 160.203(c).
33. 45 C.F.R. §§ 164.502(a)(1)(i)&(2)(i), 164.524.
34. See 45 C.F.R. §§ 164.502(a)(1), 164.512.
35. See e.g. Ind. Code §§ 16-39-1, 16-39-2, 16-39-3, 16-39-4, and 16-39-5.
36. 45 C.F.R. § 160.203(b).
37. Ind. Code §§ 16-39-1-4, 16-39-2-5.
38. Ind. Code § 16-39-5-1 (“This article does not prohibit a provider from obtaining a patient’s health records from another provider without the patient’s consent if the health records are needed to provide health care services to the patient.”).
39. Ind. Code § 16-18-2-168(a) (“Health records’... means written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche microfilm or in a digital format. The term includes mental health records and alcohol and drug abuse records.”).
40. Ind. Code § 16-18-2-226 (“Mental health records’... means recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services or developmental disability training. The term does not include alcohol and drug abuse records.”).
41. Ind. Code § 16-39-1-9 (distinguishing substance use records that may fall under federal substance use confidentiality protection).
42. See Ind. Code § 16-39-1-1(c)(patient right to request health record); § 16-39-1-3(emancipated minor requests, or parent, guardian or custodian of patient); § 16-39-1-7(access to health records by custodial and noncustodial parents); see Ind. Code § 16-39-2-4 (patient right access mental health records); § 16-39-2-9(If patient is a minor, the minor’s parent, guardian, or other court appointed representative exercises the rights of patient on the minor’s behalf vis a vis mental health records).
43. Ind. Code §§ 16-39-1-7, 16-39-2-9(b).
44. See e.g. 42 C.F.R. § 59.10(b); 42 C.F.R. Part 2.
45. Ind. Code §§ 16-39-1-5(right to limit patient access), 16-39-1-3(when patient is a minor, parent, guardian or court appointed legal representative exercise rights of patient); see 45 C.F.R. § 164.502(g)(5).
46. Ind. Code §§ 16-39-2-4, 16-39-2-9; see 45 C.F.R. § 164.502(g)(5).
47. 45 C.F.R. §§ 164.502(a)(1)(ii), 164.506.
48. 45 C.F.R. §§ 160.203(b).
49. Ind. Code § 16-18-2-168(a) (“Health records’... means written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche microfilm or in a digital format. The term includes mental health records and alcohol and drug abuse records.”).
50. Ind. Code § 16-39-5-1; 45 C.F.R. § 164.506.

51. Ind. Code § 16-39-2-6(a)(1)(A)(iii); 45 C.F.R. § 164.506.
52. 45 C.F.R. § 164.512(j).
53. 45 C.F.R §§ 164.508(a)(2)(ii).
54. See e.g. Ind Code § 16-39-2-6(a)(12) & (b)(addressing disclosure of mental health records without release in emergency situations).
55. Ind. Code § 16-39-2-3.
56. Ind. Code §§ 16-39-2-1 et al, 16-39-3-1 et al, 16-39-4-1 et al.
57. See e.g. 45 C.F.R. §§ 164.508(c)(release requirements), 164.520 (notice of privacy practices), 164.530 (administrative requirements); Ind Code §§ 16-39-1-4, 16-39-7-1.
58. 45 C.F.R. § 160.103 (“electronic protected health information” means “individually identifiable health information... that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media”).
59. HHS, *The Security Rule*, [https://www.hhs.gov/hipaa/for-professionals/security/index.html#:~:text=The%20HIPAA%20Security%20Rule%20establishes,maintained%20by%20a%20covered%20entity,accessed March 8, 2023](https://www.hhs.gov/hipaa/for-professionals/security/index.html#:~:text=The%20HIPAA%20Security%20Rule%20establishes,maintained%20by%20a%20covered%20entity,accessed%20March%208%2C%202023).
60. 45 C.F.R. Parts 170 and 171.
61. 45 C.F.R. Parts 170 and 171.
62. 34 C.F.R. § 99.1(a) (“Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if— (1) The educational institution provides educational services or instruction, or both, to students; or (2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.”).
63. 34 C.F.R. § 99.1(a) (“Except as otherwise noted in § 99.10, this part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary, if— (1) The educational institution provides educational services or instruction, or both, to students; or (2) The educational agency is authorized to direct and control public elementary or secondary, or postsecondary educational institutions.”).
64. See e.g. 34 C.F.R. § 99.31(a)(1)(i)(B) (“A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party— (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.”).
65. DOE, *Who is a “school official” under FERPA?*, <https://studentprivacy.ed.gov/faq/who-school-official-under-ferpa>, accessed on April 9, 2026.
66. See 34 C.F.R. § 99.31(a)(1)(i).
67. 34 C.F.R. § 99.31(a)(1)(i)(B); see also DOE, *Who is a “school official” under FERPA?*, <https://studentprivacy.ed.gov/faq/who-school-official-under-ferpa>, accessed on April 9, 2026.
68. 34 C.F.R. § 99.7(a)(1)(iii).
69. 20 U.S.C. § 1232g (a)(4)(A) (“... the term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files documents, and other materials which—(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”); 34 C.F.R. § 99.3 (“‘Record’ means any information recorded in any way, including but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.”).
70. 34 C.F.R. § 99.3.

71. 34 C.F.R. § 99.3 (“Education Records’... (b) The term does not include: (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record. (2) Records of the law enforcement unit....(4)Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are: (i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (ii)Made, maintained, or used only in connection with treatment of the student; and (iii)Disclosed only to individuals providing the treatment. For the purpose of this definition “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution”).
72. DOE, *Does FERPA permit school officials to release information that they personally observed or of which they have personal knowledge?*, <https://studentprivacy.ed.gov/faq/does-ferpa-permit-school-officials-release-information-they-personally-observed-or-which-they>, accessed on April 9, 2026.
73. DOE, *Are there any limitations to sharing information based on personal knowledge or observations?*, <https://studentprivacy.ed.gov/faq/are-there-any-limitations-sharing-information-based-personal-knowledge-or-observations>, accessed on April 9, 2026.
74. 34 C.F.R § 99.3(b)(1).
75. 34 C.F.R. § 99.3.
76. 34 C.F.R. § 99.3(b)(2).
77. 34 C.F.R. § 99.8.
78. 34 C.F.R. § 99.8.
79. Joint Guidance 2019, at 4.
80. See DOE, *Letter to Representative Suzanne Bonamici Providing Clarification on the Applicability of the Family Educational Rights and Privacy Act (FERPA) to College and University Students’ Medical Records, June 8, 2015*, <https://studentprivacy.ed.gov/resources/letter-representative-suzanne-bonamici-providing-clarification-applicability-family>, accessed April 9, 2026.
81. Joint Guidance 2019, at 4.
82. See 34 C.F.R. §§ 300.610 et al; §§ 303.400 et al. The DOE provides a side-by-side comparison of the legal provisions and definitions in IDEA and FERPA. <https://studentprivacy.ed.gov/resources/ferpaidea-crosswalk>, accessed April 9, 2026.
83. 34 C.F.R. § 99.31(b)(1).
84. DOE, *De-identified data*, <https://studentprivacy.ed.gov/content/de-identified-data>, accessed April 9, 2026.
85. 34 C.F.R. § 99.30(a).
86. 34 C.F.R. § 99.3.
87. 34 C.F.R. §§ 99.3, 99.30(a).
88. 20 U.S.C. §1232g(a)(5)(A); 34 C.F.R. § 99.3 (“Directory information means information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.
 (a) Directory information includes, but is not limited to, the student’s name; address; telephone listing; electronic mail address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors, and awards received; and the most recent educational agency or institution attended.
 (b) Directory information does not include a student’s—
 (1) Social security number; or
 (2) Student identification (ID) number, except as provided in paragraph (c) of this definition.
 (c) In accordance with paragraphs (a) and (b) of this definition, directory information includes—
 (1) A student ID number, user ID, or other unique personal identifier used by a student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user’s

- identity, such as a personal identification number (PIN), password or other factor known or possessed only by the authorized user; and
- (2) A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.”).
89. 34 C.F.R. § 99.37. The U.S. Department of Education provides a Model Notice for Directory Information, available at <https://studentprivacy.ed.gov/resources/model-notice-directory-information>, accessed March 8, 2023.
90. See 34 C.F.R. § 99.31(a)(1)(i).
91. 20 U.S.C. § 1232g (b)(1); 34 C.F.R. § 99.31(a)(1)(i)(A).
92. See 34 C.F.R. §§ 99.31.
93. See e.g. Ind. Code §§ 16-39-2-3, 20-33-7-1 et seq.
94. DOE, *Dear Colleague Letter to School Officials at Institutions of Higher Learning, August 2016*, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf, accessed on April 9, 2026.
95. 34 C.F.R. § 99.61.
96. 34 C.F.R. § 99.31(a)(8).
97. 34 C.F.R. § 99.3 (“Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.”).
98. Ind. Code § 20-18-2-13.
99. Ind. Code § 20-33-7-2. (For this purpose, Indiana law defines “education record” to mean “information that is recorded by a nonpublic or public school; and concerns a student who is or was enrolled in the school.” Ind Code. 20-33-7-1.)
100. 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31.
101. DOE, *Dear Colleague Letter to School Officials at Institutions of Higher Learning, August 2016*, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf, accessed on March 6, 2023.
102. See 34 C.F.R. § 99.31(a)(1)(ii).
103. DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004*, at 8, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed April 9, 2026.
104. 34 C.F.R. § 99.36(c).
105. Ind. Code § 20-33-7-4.
106. See 34 C.F.R. §§ 99.32(recordkeeping requirements), 99.7 (annual notification), 99.30 (written consent).
107. 20 U.S.C. § 1232g (a)(4)(A) (“... the term “education records” means, except as may be provided otherwise in subparagraph (B), those records, files documents, and other materials which—(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.”); 34 C.F.R. § 99.3 (“‘Record’ means any information recorded in any way, including but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.”).
108. 34 C.F.R. § 99.3.
109. DOE, *Unauthorized Disclosure*, <https://studentprivacy.ed.gov/content/unauthorized-disclosure>, accessed April 9, 2026.
110. DOE, *Letter to Tazewell County (VA) School Board re: Unauthorized Access to Education Record Systems, October 2005*, <https://studentprivacy.ed.gov/resources/letter-tazewell-county-va-school-board-re-unauthorized-access-education-record-systems>, accessed April 9, 2026.

111. DOE, *Dear Colleague Letter to School Officials at Institutions of Higher Learning, August 2016*, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf, accessed on March 6, 2023.
112. Joint Guidance 2019, at 8.
113. 34 C.F.R. § 99.31(a)(1)(i)(B); see also DOE, *Who is a “school official” under FERPA?*, <https://studentprivacy.ed.gov/faq/who-school-official-under-ferpa>, accessed on April 9, 2026.
114. See DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004*, at 3, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed April 9, 2026.
115. DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004*, at 3, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed April 9, 2026.
116. 45 C.F.R. § 160.103.
117. 45 C.F.R. § 160.103 (“Health care provider means a provider of services... a provider of medical or health services... and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.”)
118. U.S. Department of Health and Human Services (HHS), *Transactions Overview*, <https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/transactions>, accessed April 9, 2026.
119. Joint Guidance 2019, at 8.
120. HHS, *Covered Entity Decision Tool*, <https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/hipaa/covered-entities>, accessed April 9, 2026.
121. See e.g. Ind. Code §§ 16-39-1-1 et al, 16-39-2-1 et al.
122. DOE, *Dear Colleague Letter to School Officials at Institutions of Higher Learning, August 2016*, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf, accessed on April 9, 2026.
123. 34 C.F.R. § 99.61.
124. See e.g. Ind. Code §§ 16-39-1-1 et al, 16-39-2-1 et al.
125. 45 C.F.R. §§ 160.203, 164.202.
126. Joint Guidance 2008, at 5.
127. DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004*, at 3, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed April 9, 2026.
128. Joint Guidance 2019, at 9.
129. Joint Guidance 2008, at 4.
130. For purposes of this section, “school services personnel” means “school services personnel” as defined in 511 I.A.C. 4-1.5-1 who are providing “health services” on behalf of a school corporation pursuant to 511 I.A.C. 4-1.5-6. For this purpose,
- “Health services” means programs and services that promote and protect the health, safety, and well-being of students to assure a healthy environment that nurtures academic growth.” 511 I.A.C. 4-1.5-1. (See also definition of health services in 511 I.A.C. § 4-1.5-6.
 - “Student services personnel” means persons who provide...health services and who hold credentials in the areas of: (1) school counseling for educational and career services; (2) school counseling, school psychology, or school social work (master’s level) for student assistance services; or (3) registered nursing for health services.”. 511 I.A.C. 4-1.5-1.
131. See Joint Guidance 2019, at 7-9.
132. 511 I.A.C. § 4-1.5-3.
133. 34 C.F.R. § 99.3(b).

134. Joint Guidance 2019, at 8 (“a public high school might employ a health care provider that bills Medicaid electronically for services provided to a student under the IDEA. The school is a HIPAA covered entity because it engages in one of the covered transactions electronically...”).
135. Joint Guidance 2008, at 4.
136. 45 C.F.R. § 164.501.
137. Joint Guidance 2019, at 16.
138. Joint Guidance 2019, at 16.
139. See e.g. Ind Code § 16-39-2-6(a)(12) & (b) (addressing disclosure of mental health records without release in emergency situations).
140. Joint Guidance 2008, at 2.
141. 34 C.F.R. § 99.36; DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements*, Nov. 29, 2004, at 8, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed March 9, 2023.
142. 34 C.F.R. § 99.36(c).
143. Ind. Code § 20-33-7-4.
144. 511 I.A.C. § 4-1.5-3.
145. 34 C.F.R. § 99.31(a)(1)(i)(B); see also DOE, *Who is a “school official” under FERPA?*, <https://studentprivacy.ed.gov/faq/who-%E2%80%9Cschool-official%E2%80%9D-under-ferpa>, accessed on March 9, 2023.
146. See DOE, *Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements*, Nov. 29, 2004, at 3, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, accessed April 9, 2026.
147. Joint Guidance 2019, at
148. DOE, *Letter to University of New Mexico, Nov. 29, 2004*, <https://studentprivacy.ed.gov/resources/letter-university-new-mexico-re-applicability-ferpa-health-and-other-state-reporting>, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/baiseunmslc.pdf, accessed April 9, 2026.
149. Joint Guidance 2008, at 5.
150. Joint Guidance 2019, at 9.
151. Ind. Code § 20-33-7-4.
152. 511 I.A.C. § 4-1.5-3.
153. 45 C.F.R. § 164.512(j)(1), (4).
154. 45 C.F.R. §§ 164.508(a)(2)(ii), 164.501 (“Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.”).
155. See e.g. Ind Code § 16-39-2-6(a)(12) & (b) (addressing disclosure of mental health records without release in emergency situations).
156. 45 C.F.R. § 164.501.
157. Joint Guidance 2019, at 16.
158. Ind. Code § 16-18-2-168(a) (“Health records’... means written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche microfilm or in a digital format. The term includes mental health records and alcohol and drug abuse records.”).
159. Ind. Code § 16-39-5-1; 45 C.F.R. § 164.506.

160. See e.g. Ind Code § 16-39-2-6(a)(12) & (b) (addressing disclosure of mental health records without release in emergency situations).
161. Joint Guidance 2008, at 2.
162. Ind. Code § 20-33-7-4.
163. 511 I.A.C. § 4-1.5-3.
164. 34 C.F.R. § 99.31(a)(8).
165. 34 C.F.R. § 99.3 (“Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.”).
166. DOE, *Dear Colleague Letter to School Officials at Institutions of Higher Learning, August 2016*, https://studentprivacy.ed.gov/sites/default/files/resource_document/file/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf, accessed on April 9, 2026.
167. DOE, *Integrated Data Systems and Student Privacy, PTAC-IB-4 January 2017*, <https://studentprivacy.ed.gov/resources/integrated-data-systems-and-student-privacy>, accessed April 9, 2026.



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