



## Confidentiality and Privacy Issues in School Health Services Comparison of FERPA and HIPAA

	<b>FERPA</b>	<b>HIPAA</b>
<b>Type and year of initial passage</b>	An Education Act 1973 (House), 1974 (Senate) Date enacted: 8/21/1974	Health and Human Services 1996
<b>Title</b>	Family Educational Rights and Privacy Act. Sometimes called the Buckley Amendment.	Health Insurance Portability and Accountability Act of 1996. Sometimes called the Privacy Rule.
<b>Scope and Population</b>	Applies to all schools that receive funds under an applicable program of the U.S. Department of Education	Covered Entities are: health plans, health care providers, and health care clearinghouses (processes data elements into transactions)
<b>Purpose</b>	A Federal law that protects the privacy of student education records.  <i>Note: Generally, school health records are education records. If the school has a school based health center, contracts with community health care providers to provide health services in the school, or bills for treatment services provided, HIPAA rules may apply.</i>	A Federal law that assures individual health information is properly protected while allowing the flow of health information needed to deliver health care and protect the public.
<b>Consent</b>	All disclosures except those specified below require written parent/guardian or eligible student consent prior to release. When the student reaches the age of majority, rights of consent and access transfer to the student (referred to as the eligible student).	*A covered entity must obtain the individual’s written authorization for any use or disclosure of protected health information that is not for treatment, payment, or health care operations or otherwise permitted or required by the Privacy Rule.
<b>Permissive Aspects</b>	*FERPA allows schools to disclose records without consent to the following parties or under the following conditions: <ul style="list-style-type: none"> <li>• School officials with legitimate educational interest;</li> <li>• Other schools to which the student is transferring;</li> <li>• Specified officials for audit or evaluation purposes;</li> <li>• Organizations conducting certain studies on behalf of the school;</li> <li>• Accrediting organizations;</li> <li>• To comply with subpoena or judicial order;</li> <li>• Appropriate officials in case of health and safety emergencies; and</li> <li>• Juvenile justice system pursuant to state law.</li> </ul>	*A covered entity is permitted but not required to use and disclose health information without consent for the following purposes or situations: <ul style="list-style-type: none"> <li>• To the individual;</li> <li>• For Treatment, Payment, and Health Care Operations;</li> <li>• Opportunity to Agree or Object;</li> <li>• Incident to an otherwise permitted use or disclosure;</li> <li>• Public interest and benefit activities; and</li> <li>• Limited data set for research, public health, or health care operations.</li> </ul> *Permissible disclosures include those made to other “health care providers” (as defined in the law), whether or not they are HIPAA-covered entities.

	<p>*Parents/guardians or eligible students have the right to inspect and review the student's education records maintained by the school.</p> <p>*Release of Student Directory Information is permitted (name, telephone number, email address, major field of study, dates of attendance, degrees and awards, enrollment status, educational institutions attended, and – for athletes, date of birth, weight, and height.)</p> <p>*Schools are allowed to release aggregate information that does not include personal identifying information.</p> <p>*Parents or eligible students may request amendments of records.</p>	<p>*Permits disclosures to public health authorities, including: local and state public health departments and federal public health agencies.</p> <p>*There are no restrictions on de-identified health information.</p>
<b>Restrictive Aspects</b>	<p>*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 need not be disclosed to the parent/guardian or eligible student.</p> <p>*The definition of health and safety emergencies may be strictly defined, and may not apply in public health situations. For more information, see the website below for recent policy statements from the Secretary of Education.</p>	<p>*A covered entity must make reasonable efforts to use, disclose and request only the minimum amount of protected health information needed to accomplish the intended purpose.</p> <p>*The minimum necessary requirement is not imposed when disclosure is made for Treatment, Payment, or Operations.</p> <p>*Therefore, a pediatrician can discuss with a school nurse, using the minimum necessary standard, a child's medical order and school treatment plan without written authorization from the parent.</p>
<b>Find Out More</b>	<a href="http://www.ed.gov/policy/gen/guid/fpco/index.html">www.ed.gov/policy/gen/guid/fpco/index.html</a>	<a href="http://www.hhs.gov/ocr/hipaa/">http://www.hhs.gov/ocr/hipaa/</a>

*Disclaimer: The information provided here is not intended to be an all-inclusive overview of two federal laws. The focus here is limited to school health services. Both FERPA and HIPAA encompass many more aspects of educational and health care services delivery. This information is not intended to be interpreted as DHHS policy, nor take the place of legal counsel in any specific situation.*