



# Confidentiality

HIPAA, FERPA TRAINING

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# What is the definition of confidential?

- ▶ spoken, written, acted on, etc., in strict privacy or secrecy; secret: a confidential remark.
- ▶ indicating confidence or intimacy; imparting private matters: a confidential tone of voice.
- ▶ having another's trust or confidence; entrusted with secrets or private affairs: confidential secretary.
- ▶ bearing the classification confidential, usually being above restricted and below secret.

# What is the definition of restricted?

- ▶ confined; limited.
- ▶ bearing the classification *restricted*, usually the lowest level of classified information.
- ▶ limited to persons authorized to use information, documents, etc., so classified. limited to or admitting only members of a particular group or class.

# What is the definition of secret?

- ▶ done, made, or conducted without the knowledge of others: secret negotiations.
- ▶ kept from the knowledge of any but the initiated or privileged: a secret password.
- ▶ faithful or cautious in keeping confidential matters confidential; close-mouthed; reticent.

# What is FERPA?

The Family Education Rights and Privacy Act is a federal law outlining who has access to education records. It applies to all schools receiving federal funds from a program administered by the U.S. Department of Education.

## Does FERPA apply to school health records?

YES, “education records” is broadly defined under FERPA to include a student’s health records, including immunization records, records maintained by a school nurse, as well as records maintained concerning services provided to students under the Individuals with Disabilities Education Act.

# What is HIPAA?

The Health Insurance Portability and Accountability Act is another federal law dictating how health records are to be handled. A school is subject to HIPAA only if it provides medical care and electronically transmits health information as part of a “covered transaction” (e.g. billing)

# HIPAA

**For most schools, HIPAA will only be an issue when communicating with a student's medical provider.** While school health records are not regulated by HIPAA, almost all medical practitioners are covered by HIPAA. "Treatment purposes" is one of the exceptions: a practitioner may relay or clarify treatment orders to individuals involved in the treatment of the patient, such as to the school nurse without obtaining authorization of the student or parent. Best practice, however, is the parent/guardian signs a release of information allowing communication between provider and the school.

# HIPAA

Protection of personally identifiable health information contained in medical or treatment reports from an outside provider is the responsibility of the requester. Ideally the school nurse summarizes the educationally relevant information from the outside record source into the student's cumulative health record and then destroys the outside record.

# Consent

Since most school records are covered by FERPA, who can access this information without parental consent?

Under the FERPA regulations, “eligible students” and parents of minor students have a right to see their records. “Eligible students” are those that are at least 18 or those who are attending a postsecondary institution. In general, parental consent is required for others to access information in students’ health records. Importantly, in Colorado, the age of majority for education purposes is 21, and the Individuals with Disabilities Education Act provides that parental consent is required for the release of special education records unless the child has reached the age of majority under state law.

## Is consent always required?

Accordingly, students 18 and older have the right under federal law to access their education records, except for special education records, for which they must wait until they are 21.

# When consent is NOT required.

There are certain circumstances where consent is not required:

- School officials, including teachers and bus drivers or monitors, that have a “legitimate educational interest”
- In an emergency “if knowledge of the information is necessary to protect the health or safety of the student or other individuals”
- Instances of abuse or neglect
- Information required by a school to which the student is transferring
- Certain legal situations including subpoenas or investigations of criminal offenses

# Rational of Disclosure

- Knowing a child's diagnosis or "label" isn't enough and, in fact, is of limited actual value. Instead, school transportation professionals need to know "the what" and "the how" of this child's disability-related transportation needs
- "Transportation providers play an integral role in the school lives of many children, including children with disabilities." Office of Special Education and Rehabilitative Services marked the "essential" need for "effective communication between school and transportation providers."

# Rational of Disclosure

When transportation is provided as a related service to a special education student -- that is, because transportation is necessary for the child to access Individualized Education Program (IEP) services -- then transporters are related service providers. Under such circumstances, the school district must provide necessary information to school transporters. Information includes setting forth the role of transportation personnel in meeting the unique needs of the child as identified in his/her IEP, and those “accommodations, modifications, and supports” identified in the child’s IEP which relate in any way to the transportation environment

## Broader permission to disclose information

While the IDEA Regulations impose a mandatory duty on school districts when transportation is a related service, FERPA gives broader permission to disclose information about a child under two situations: (1) when a parent consents to the disclosure; or (2) to “school officials” with a “legitimate educational interest” even when the district has not obtained such prior consent.

## Who is a school official?

“A school official is a person employed by the District as an administrator, supervisor, instructor or support staff member. . . ; a person serving on the School Board; a person or company with whom the District has contracted to perform a special task.”

You are a support staff member.

# What is a legitimate educational interest?

And, a school official has “a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.”

# Federal Law Disclosure

“Federal law permits the school district to disclose personally identifiable information in the student’s education records to ‘school officials with legitimate educational interests.’ School officials include persons employed by the district as an administrator, supervisor, teacher, or support staff member (including but not limited to, . . . transportation personnel. . .); . . . a person, agency, or company with whom the District has contracted, or otherwise arranged to perform a special task or service. . .

## Federal Law Disclosure continued

Such individuals have a legitimate educational interest if s/he needs to review an education record in order to fulfill his or her professional and/or official responsibility. A legitimate educational interest also exists where the staff member or other individual works directly with students and needs to review education records to increase his/her awareness of steps necessary for the safety and welfare of students and staff members.”

# Confidentiality

“agency or institution that collects, maintains or uses personally identifiable information, or from which information is obtained” the duty to protect the confidentiality of such information “at collection, storage, disclosure and destruction stages.”

School districts share personally identifiable information from an education record only on the condition that the recipient of the information will not disclose the information to any other party without the prior consent of the parent or eligible student.

# Protecting Information

Transportation departments and school bus companies must make reasonable efforts to protect the student information they receive, whether they use physical means, like keeping the information under lock; or administrative means, through the use of training and policies prohibiting all disclosure other than sharing with another school official who has a legitimate educational interest; or key technological means like providing it on computers only when password-protected.

# Training

In order to receive student information which is otherwise confidential, school transporters must receive training -- like all other personnel who receive this information in the course of their job duties.

The U.S. Department of Education stated that the IEP must include more than a “yes” or “no” to the question “Is transportation a related service?” Rather, **it must include accommodation, modifications, and supports which must be provided for the child in accordance with his/her unique needs.**

# What is an IEP?

- **Individual Education Program**

“In all instances, each student’s need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and individualized education program (IEP) meeting, and the transportation arrangements agreed upon should be included in the disabled student’s IEP.”

# IEP

Therefore, the school district which shares necessary information with transportation risks little. That is especially true in comparison with the potential risks to the safety and welfare of the student if important information is not shared. On the other hand, the staff who does not take that responsibility seriously risks losing his or her job.

# Conclusion

School transporters can legally receive information about students' health and medical conditions when these conditions may impact transportation planning and implementation. Factors to be considered in setting conditions for such disclosure include: the determination of legitimate educational interest; compliance with FERPA requirements of notice; requiring confidentiality of the transporters to whom the information is disclosed, and, training. It is clear that once transporters are trained regarding the requirement of confidentiality, school district and medical personnel are well-advised to share this information.