

# FERPA/HIPAA Guidance

MDE Office of Special Education

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# Family Educational Rights and Privacy Act (FERPA)

- Protects the Privacy of student educational records
  - ✓ *Records directly related to a student and maintained by an educational agency*
  - ✓ *Student health records*
  - ✓ *Nurse documentation*
  - ✓ *Special Education records*
- Applies to all schools that receive funds under an applicable program of the U.S. Department of Education



# Family Educational Rights and Privacy Act (FERPA)

- Gives parents (and eligible students) the right to access and seek to amend their children's education records
- Protects personally identifiable information (PII) in education records from unauthorized disclosure
- Requires **written consent** before sharing PII – **unless an exception applies**
- Schools must **annually** notify parents and eligible students of their rights under FERPA

# Personally Identifiable Information (PII)

## Direct Identifiers

- Name
- SSN
- Student ID Number
- 1:1 relationship to student

## Indirect Identifiers

- Birthdate
- Demographic information
- 1:Many relationship to student

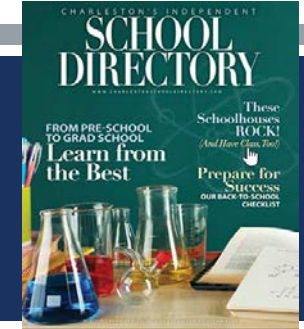
## Other Information

“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.” (34 CFR § 99.3)

# Exceptions to FERPA Written Consent Requirement

- Directory Information Exception
- School Official Exception
- Health or Safety Emergencies Exception
- Studies Exception
- Audit and Evaluation Exception

# Directory Information Exception



## May Include

- Name
- Address
- Phone Number
- Email Address
- Photograph
- Date and Place of Birth
- Most recent school attended, grade level and major field of study
- Participation in officially recognized sports and activities; height and weight of athletes
- Degrees, honors, and awards received

## Can Never

- Include Social Security Number
- Disclose non-directory information with directory information

## Important

- ***Annual notice must be given to parents***
- ***Students may choose to “opt-out” of the disclosure of directory information***
- ***Schools may adopt a limited directory information policy that allows for the disclosure of directory information to specific parties, and/or for specific purposes***

# School Official Exception

**Without Consent. PII may only be disclosed from education records to other school officials within institution or to third parties acting as school officials, if those officials:**

- Perform an institutional service or function for which the agency or institution would otherwise use employees;
- Are under the direct control of the agency or institution with respect to the use and maintenance of education records;
- Only use PII from education records for the purposes for which the disclosure was made; or,
- Meet the criteria specified in the school's annual notification of FERPA rights

# Health or Safety Emergencies Exception

- Disclosure is necessary to protect the health or safety of the student or others.
- There is an articulable and significant threat to the health or safety of a student or other individuals.
- Appropriate parties typically means local, State, or federal law enforcement, trained medical personnel, public health officials, and parents.
- Must be related to an actual, impending, or imminent emergency.
- School makes determination on case-by-case basis.





# Research and Evaluation

## Audit/Evaluation Exception

Allows PII from education records to be shared without consent, for certain audits or evaluations, with

- “Authorized representatives” of certain FERPA-permitted entities
  - Comptroller General of U.S.
  - U.S. Attorney General
  - U.S. Secretary of Education
  - State or Local Educational Authorities;
- Must be to audit or evaluate a federal- or state-supported education program, and

*if there is a written agreement that meets certain requirements.*

*34 CFR § 99.31(a)(3)*

## Studies Exception

PII from education records may be disclosed in connection with certain studies conducted “for or on behalf of” schools, school districts, or postsecondary institutions if

- Studies must be for the purpose of
  - Developing, validating, or administering predictive tests
  - Administering student aid programs; or
  - Improving instruction
- There is a written agreement with the individual/organization performing the study that meets certain requirements.

## Important

***FERPA does not have a “research” exception to the parental consent requirement.***

***Instead, research and evaluation using PII from education records is typically performed using the above.***

# Will you be publishing data?

## Integrated Data Systems

- PTAC Guidance on [Integrated Data Systems and Student Privacy](#) (January 2017)

## Remember

*The FERPA's definition of PII includes anything linked or linkable to the student....*

***AGGREGATE data may still contain PII.***

## PTAC Resources

- <https://studentprivacy.ed.gov/>
- Help Desk ([privacyTA@ed.gov](mailto:privacyTA@ed.gov))
- Guidance and Best Practice Documents
  - Data Sharing under FERPA
  - Data Security
  - Data Governance...and much, much more.
- Videos
  - FERPA for Parents and Students
  - Designing a Privacy Program...and many others.

# Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- Improve portability & continuity of health insurance coverage
- Reduce costs & simplify administrative burden
- Standardize electronic transmission of administrative & financial transactions
- Protect security & privacy

# Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- Protected Health Information (PHI)
- A covered entity must not use or disclose PHI, except as specifically permitted or required by the HIPAA Privacy Rule.
- A business associate must not use or disclose PHI, except as specifically permitted or required by the HIPAA Privacy Rule and by its Business Associate Contract.
- All other disclosures require an authorization from the individual who is the subject of the PHI disclosed.

# Protected Health Information Includes

## Individually Identifiable Health Information

- Including demographic information (e.g., name, address, birth date, Social Security number) collected from an individual, and:
- Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- 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
  - That identifies the individual; or
  - With respect to which there is a reasonable basis to believe the information can be used to identify the individual

## Health Information

Any information, whether oral or recorded in any form or medium, that–

- 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
- Relates to the past, present, or future physical or mental health or condition of any 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

## Excludes

- Individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g; and records described at 20 U.S.C. 1232g(a)(4)(B)(iv);
- In employment records held by covered entities in their role as employer;
- About a person who has been deceased for more than 50 years.

# HIPAA Privacy Rule Basics

## HIPAA Privacy Rule Basics

	HIPAA Privacy Rule
Applies to records held by	Covered Entities (CEs) <ul style="list-style-type: none"> <li>mainly health care providers and insurers/plans</li> </ul> Business Associates (BAs) <ul style="list-style-type: none"> <li>who work on behalf of CEs and use or maintain PHI</li> </ul>
Information covered	Protected Health Information (PHI) <ul style="list-style-type: none"> <li>individually identifiable health information held or transmitted by CE or BA</li> <li>Includes a limited data set (LDS)               <ul style="list-style-type: none"> <li>Partially de-identified by excluding 18 identifiers, such as name, address, SSN.</li> </ul> </li> </ul>
Not covered	Health information in records that are governed by FERPA; De-identified information.
Consent for disclosures	In general, CEs may not disclose PHI without written authorization by the person who is the subject of the information. <ul style="list-style-type: none"> <li>For minors, state law re: parental consent applies.</li> </ul>
Permissive disclosures	Treatment, Payment, Healthcare Operations (TPO); Required by state law (inc. health and safety); For research, public health practice, and quality improvement, but only LDS (partially de-identified). Minimum necessary standard applies in most cases (except treatment).
Required disclosures	To individual or their designated recipient.

# Permitted Uses and Disclosures of PHI

## Required Disclosures

- To the individuals (or their personal representatives)
- To HHS when it is undertaking compliance investigation or review or enforcement action.

## Permitted Uses and Disclosures

- To the individual
- Treatment, Payment, Health Care Operations (TPO)
- Uses and disclosures with opportunity to agree or object
  - *Facility Directories*
  - *Notification and other purposes*
- Incidental Use and Disclosure
- Public Interest and Benefit Activities
  - *Required by law, Public Health Activities, Victims of abuse, neglect or domestic violence, Health oversight Activities. Judicial and Administrative proceedings, law enforcement purposes, decedents, Cadaveric organ, eye or tissue donation, research, serious threat to health or safety, essential government functions, workers' compensation.*
- Limited Data Set

# Required Authorization Uses and Disclosures

## ■ Psychotherapy Notes

- *A covered entity may use or disclose, without an individual's authorization, the psychotherapy notes, for its own training, and to defend itself in legal proceedings brought by the individual, for HHS to investigate or determine the covered entity's compliance with the Privacy Rules, to avert a serious and imminent threat to public health or safety, to a health oversight agency for lawful oversight of the originator of the psychotherapy notes, for the lawful activities of a coroner or medical examiner or as required by law.*

## ■ Marketing

## ■ Uses or disclosures not otherwise permitted

- Disclosure to life insurance, drug test results to employer, and disclosure of child's physical results to school



# FERPA and HIPAA Supports

## U.S. Department of Education Privacy Technical Assistance Center



(855) 249-3072  
(202) 260-3887



[privacyTA@ed.gov](mailto:privacyTA@ed.gov)



[student.privacy.ed.gov](http://student.privacy.ed.gov)



(855) 249-3073

## U.S. Department of Health and Human Services

- <http://www.hhs.gov/hipaa>
- <https://www.hhs.gov/hipaa/for-professionals/faq/ferpa-and-hipaa>

# Contacts

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Michigan Department of Health and Human Services  
1-800-292-2550

*Questions*

[providersupport@Michigan.gov](mailto:providersupport@Michigan.gov)

[www.michigan.gov/mdhhs](http://www.michigan.gov/mdhhs)

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