

Federal guidance on the question of whether FERPA or HIPAA privacy rules apply in a school setting as it relates to medical disclosures from student health records to school officials with a “legitimate educational interest in a child.”

This is an excerpt from a letter written by:

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FERPA is a federal law that protects privacy interests of parents in their children's "education records," and generally prevents an educational institution from having a policy or practice of disclosing the education records of students, or personally identifiable information contained in education records, without the written consent of the parent. The term "education records" is defined as all records, files, documents and other materials which contain information directly related to a student and are maintained by the educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R § 99.3 "Education records."

Additionally, the records of a student that pertain to services provided to that student under the Individuals with Disabilities Education Act (IDEA) are “education records” under FERPA and are subject to the confidentiality provisions under IDEA (see 34 C.F.R §§ 300.560-300.576) and to all of the provisions of FERPA. When a student reaches the age of 18 or attends an institution of postsecondary education, the student is considered an "eligible student" under FERPA and all of the rights afforded by FERPA transfer from the parents to the student. 20 U.S.C. § 1232g(d); 34 C.F.R § 99.3 “Eligible student.”

A K-12 student’s health records, including immunization records, maintained by an educational agency or institution subject to FERPA, including records maintained by a school nurse, would generally be “education records” subject to FERPA because they are 1) directly related to a student; 2) maintained by an educational agency or institution, or a party acting for the agency or institution; and 3) not excluded from the definition as treatment or sole possession records, or on some other basis. 20 U.S.C. §1232g(a)(4)(a).

The HIPAA Privacy Rule at 45 C.F.R. Parts 160 and 164 provides additional guidance with respect to the treatment of student health records including immunization records. Specifically, the HIPAA Privacy Rule establishes guidelines to protect the privacy of Protected Health Information (PHI). PHI is defined as: “individually identifiable health information: (1) except as defined 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 form or medium. (2) 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;
(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and
(iii) Employment records held by a covered entity in its role as employer.” See 45 C.F.R. §160.103.

Thus, education records, including individually identifiable health information contained in such records, that are subject to FERPA, are specifically exempt from the HIPAA Privacy Rule. The reason for this exemption is that Congress, through FERPA, previously addressed how education records should be protected.

Therefore, student immunization records that are maintained by an educational agency or institution subject to FERPA that directly relate to a student or students are considered to be education records under FERPA and are not subject to the HIPAA Privacy Rule.

The Springfield School Districts takes its legal and ethical responsibility very seriously in regards to the maintenance and proper procedural sharing of educational records. If you have questions regarding your child's educational records, please contact your child's building administrator and they will guide you through the process of reviewing the file and answer any questions you may have.