



How FERPA and HIPAA Work Together (and why you can very likely ignore HIPAA)

In late December, the U.S. Department of Education and the U.S. Department of Health and Human Services jointly issued updated guidance about the interplay of FERPA and HIPAA and their impact on student health records maintained by schools. You can find the Joint Guidance [here](#). The Joint Guidance includes frequently asked questions, which confirm that very few public K-12 schools must comply with HIPAA. We have summarized some of the guidance below, but you should review the actual document; it is user-friendly and addresses a number of specific scenarios.

Is my school subject to HIPAA? Most likely no. HIPAA only applies to “covered entities,” which are health plans, health care clearinghouses and health care providers, and only if those entities transmit health information in electronic form. The Joint Guidance indicates that most public schools are not covered entities. But even if your school *is* a “covered entity,” HIPAA specifically excludes any student records that are protected by FERPA. 45 CFR § 160.103 (excluding records that are protected by FERPA from the definition of “protected health information”). All K-12 schools fall into one of these categories:

- **Schools that are not covered by HIPAA:** Unless your school provides health care services to students in the normal course of business and also transmits personal health information electronically, your school is not covered by HIPAA. “Thus, even though a school employs school nurses, physicians, psychologists, or other health care providers,” the school is not covered by HIPAA unless those health care providers bill a health plan electronically for their services.
- **Schools that are covered by HIPAA but fall within the FERPA exception:** Your school may be a “covered entity” under HIPAA if it employs or contracts with a health care professional who bills Medicaid electronically for services that are provided to students in connection with their IEPs. But if the information related to those services is maintained in the students’ education records and those records are covered by FERPA, HIPAA does not apply to that information. Instead, the school must comply with FERPA and the IDEA’s privacy rules.
- **Schools that are covered by HIPAA and are not subject to FERPA:** If your school provides health services and electronically bills for those

Education Law

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services but is not subject to FERPA – perhaps because you are a private school and receive no funds from the U.S. Department of Education – you are a HIPAA covered entity and must comply with HIPAA.

What about private placements under IDEA? If your school has placed a student in a private school in connection with the student's IEP, the student's records are still your school's education records and thus are covered by FERPA, not HIPAA.

Does FERPA allow schools to disclose information about students who present a serious danger to themselves or others without advance consent? The Joint Guidance *repeatedly* reminds schools that they may disclose student information to “appropriate parties in connection with a health or safety emergency” without consent if the information is “necessary to protect the health or safety of the student or others.” For example, if a student tells a teacher, “I know where my parents keep their guns, and someone is going to pay,” the teacher may “contact parents, police or others” to warn them that the student is on the way home and has threatened to use weapons. If information is disclosed for health and safety reasons, FERPA requires that the school staff be able to articulate why they believed that the student posed a significant threat of harm based on all of the information they had available at the time. The U.S. Department of Education will not second-guess schools' disclosure decisions if there is a “rational basis” for the decision at the time of the disclosure.

Whether your school is subject to HIPAA or not, the joint guidance addresses several very specific scenarios and the information disclosure that is allowed under both FERPA and HIPAA.

Please let us know if you have any questions about whether your school is subject to HIPAA and/or FERPA's disclosure requirements and exceptions.

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