

**Case Studies in School/Provider Communications:
Learn to Communicate Effectively**



Jacqui Maddi, MSN, RN
Rob Dudley MD, MEd, FAAP

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We wish we had some...

Objectives

- After this talk we hope you
 - Will understand how good communication practices can enhance information sharing and avoid conflict
 - Learn about the role of HIPAA and FERPA in educational/medical communication
 - Understand how confidentiality rules for teens can impact communication

Strategies for Positive Communication

- Listen
- Understand your own emotional perspective
- Remember to keep the child's needs first
- Consider cultural perspectives
 - Do you need a translator?

More Strategies

- Partner with parents
 - Use "I" statements: *I know we are both concerned about making sure Erika gets her medications at the right time.*
 - Ask for the parent's perspective: *What do you think would be a good outcome?*
 - Look for a place to compromise
- Check back frequently

Communication Pitfalls

- Triangular communication is difficult: families, educators, and medical professionals often have different expectations and agendas
- Even the rules are different: FERPA and HIPAA
- And what about Teens...

What is FERPA?

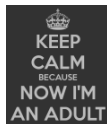
- FERPA is the Federal law that protects the privacy of students' education records.
- FERPA applies to educational agencies and institutions that receive funds under any program administered by the Secretary of Education. § 99.1.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.

Rights of Parents Under FERPA

- Right to inspect and review education records
- Right to seek to amend education records
- Right to consent to the disclosure of information from education records

Rights of Eligible Students under FERPA

- The rights under FERPA transfer to the student when she or he turns 18 years of age OR enters a postsecondary institution at any age ("eligible student")



Education Records

- Educational Records are records that are –
 - (1) Directly related to a student
 - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution

§99.3 Education records



Education Records also include

- Records on a student receiving services under Part B of the Individuals with Disabilities Education Act (IDEA) are considered to be "education records" and are subject to FERPA
- **Medical or health related records are "education records" and are subject to FERPA**

Exceptions to Education Records

- Records created and maintained by a law enforcement unit for a law enforcement purpose.
- Medical and psychological treatment records of "eligible students" if they are made, maintained, and used only in connection with treatment of the student and disclosed only to professionals providing the treatment.

Exceptions

Right to Inspect and Review

- § 99.10 *What rights exist for a parent or eligible student to inspect and review education records?*
- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access (example: a student or former student who does not live within commuting distance to the school). May charge for copying.
- School may not destroy records if a request for access is pending.

EXCEPTIONS TO THE CONSENT REQUIREMENT

- §99.31 *When is prior consent not required to disclose information?*
- The exceptions for K-12 schools and school districts are:
 - To school officials with legitimate educational interest (as are defined in the school's annual notification)
 - To schools in which a student seeks or intends to enroll
 - To Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of educational programs

Disclosure Example:

- Sam has moved and is now living in Coolsville. His legal guardian has begun to enroll him in Coolsville Middle School. Previously he attended Wonderful Middle School.
- Once there is a verified intention to enroll, Coolsville schools can contact Wonderful Middle School and ask them to share information about Sam. This is to help determine placement, accommodations, medical needs, etc.



Who else can get information?

- Organizations conducting studies for or on behalf of the school.
- Parents or legal guardians of the dependent student
- To comply with a judicial order or a subpoena
- In connection with a health or safety emergency
- Directory information
- State or local official in connection with serving the student under the juvenile justice system.

SHARING INFORMATION IN SCHOOL

Abdul is a student who is not feeling well. Abdul's teacher sent him to see the school nurse. The school nurse assessed him and added some notes to his school health records. Now, one of Abdul's teachers is asking questions about Abdul's health condition, trying to determine if he is going to be out of class for multiple days. The nurse needs to determine whether or not she may share the information from Abdul's medical record with his teacher.



Can the nurse share information with Abdul's teacher?

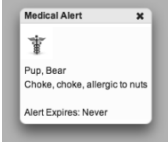
- YES

At the elementary or secondary level, any records that a school nurse or health center maintains that are directly related to a student are considered to be "education records" and are subject to FERPA – not the HIPAA Privacy Rule. A school nurse may share information on students with other school officials if these school officials have a "legitimate educational interest" in the records in accordance with school policy.



What information do nurse's share?

- Medical conditions that do or may impact the student during the course of the school day. This includes:
 - Asthma
 - Food Allergies
 - Diabetes
 - Seizures
 - ADHD, PTSD
 - Other Mental Health Conditions
 - Vision, Hearing, or Orthopedic conditions



What Information do Nurses Provide?

- General information about the condition
- Information about medically necessary accommodations
 - Unlimited access to bathroom
 - Elevator key
 - Additionally passing time between classes
- Training for teachers and other school staff
 - Recognizing the signs of low/high blood sugar
 - Seizure precautions
 - How to use an epi-pen



Who can the nurse disclose information to?

- A school official who has **a legitimate educational interest** may access education records without consent.
- This includes
 - Teachers, administrators, board members, support staff
 - Attorneys, counselors, nurses, health staff
 - Human-resources and IT staff
 - Contractors, consultants, volunteers

LEGITIMATE EDUCATIONAL INTEREST

- A legitimate educational interest means a **need to know** specific information in a student's record. This could be for:
 - Educational purposes
 - Medical purposes
 - Safety purposes
 - Discipline purposes

EXAMPLE:



- Legitimate educational interest required the demonstrated "need to know" by officials in the school who act in the student's education interest.
- Lucy Snow is an Intro to Computer teacher. She would NOT have a legitimate educational interest in accessing a student's records, unless that student was enrolled in her computer class

THERE IS AN EXCEPTION FOR EMERGENCIES

EMERGENCY USE ONLY

- A school may make non-consensual disclosure of protected information if it is necessary to protect the health or safety of the student or of others
 - Exception applies **ONLY** to imminent or existent emergencies
 - Does not apply to possible or eventual emergencies
- Disclosures are limited to appropriate persons in these circumstances
 - Law-enforcement officers, public-health officials, medical personnel, parents
 - School must document details of the disclosure
- **In a disaster, schools may disclose "directory information" to assist in locating parents.**

OTHER EXCEPTIONS

Schools are not required to have consent to disclose personally identifiable information to:

- Another school to which the student is transferring
- Accrediting organizations
- To comply with lawfully issued subpoena or judicial orders
- State and local juvenile-justice-system authorities
- Certain U.S. Government representatives and certain State/local authorities in connection with audits or evaluations.

What About HIPAA?

- HIPAA rules apply when the school needs to speak with or share information with a provider OUTSIDE of the school environment.



HIPAA Release Forms

- If medications are given or treatments are done in school, the medication administration form INCLUDES a HIPAA release to talk to the prescriber about the medication and the condition
- School cannot safely give medications or provide treatments unless they are able to speak with the prescriber about the written orders and the condition.

HIPAA Release Forms

- The Blue Physical Form (Health Assessment Form) allows the school to speak with the licensed provider (who did the Health Assessment) about anything that is written on the form.

Obtaining Records or Detailed Information

- Parent or Legal Guardian must sign a HIPAA release form
- School indicates on the form the reason why the information is needed
 - This might include planning the student's educational program
 - Determining necessary accommodations
- Release form is only good for 1 year

The Information that is Shared

Cannot be transferred to another school UNLESS the parent/legal guardian or eligible student authorizes the transfer of information to the new school.

What information does the school need?

- Results of tests or evaluations such as:
 - Vision or Hearing tests
 - Developmental tests or evaluations
 - Mental Health evaluations
- Treatment information
 - For medical conditions
 - For mental health conditions

What if I don't want to share the information?

- The school may not have all the information necessary to plan the best possible educational program for your child.
- The school staff may not have vital information necessary to keep your child safe and healthy.
- Your child could be mistakenly prohibited from participating in school classes and activities due to erroneous information.

EXAMPLE: Tyler and his old injury

- Tyler has a history of seizures. When he enrolled in school his physician provided the school with a list of necessary limitations for physical education classes and sports participation.
- The letter included this phrase
 - NO PE CLASSES
 - NO SPORTS



But time has passed and his condition is stable

- The school is obligated to continue to follow those restrictions.
- The school would need updated information on his condition AND permission from the physician to change those restrictions
 - What type of PE classes? – everything or just some
 - What type of Sports? – contact, individual, etc.

Another Example:

- Emma is being treated by a therapist outside of school. When things are stressful and she is overwhelmed, Emma drops to the floor and “becomes non-responsive”.
- What might happen if she has an episode and the school doesn’t have information about this response and how to help Emma?

Can I limit the information shared?

- Yes – on the HIPAA release form you can list what information can be shared.
- Schools are interested in getting information that will help them develop an appropriate educational program and provide for the student’s health and safety needs while in school.

Some Providers Require

- Their own HIPAA forms (they won't accept school forms)
- That HIPAA forms be completed in their office so they can verify the permission to share information

Principles of Teen Confidentiality - Definitions -

Who is a minor?

Anyone under the age of 18, except as otherwise indicated



...definitions continued

Who is a mature minor?

Connecticut courts have not recognized the mature minor doctrine in any reported case

A minor who exhibits the "maturity" of an adult and is therefore permitted to make decisions, traditionally reserved for those who have attained the age of majority, regarding her own medical care.



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...definitions continued

- Emancipation:
 - The legal process available by which a 16 or 17 year old minor achieves adult status.

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Children in DCF Care

- No difference in a minor's right to confidential treatment AND right to consent for child committed to DCF vs. non-DCF involved child. NONE!



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Teens and Confidentiality- 5 Points

1. Minors Under 18 CANNOT generally make routine healthcare decisions for the themselves!
2. Minors may make critical healthcare decisions and consent to treatment in FOUR protected areas: Reproductive Health, Mental Health Treatment, Substance Abuse Treatment & HIV/AIDS
3. Parents DO NOT have the right to view confidential healthcare treatment records in the healthcare *or* school health setting absent their child's consent.

Teens and Confidentiality (cont.)

4. In most circumstances – providers may not bill a third party payor (parents' insurance e.g.) without parents' consent and the minor is liable for such care and treatment.
5. School-based health treatment (thru SBHC or school nurse) is not subject to any less confidential treatment/privacy than office encounters at a PCP/health center.
(Thanks to Jay Sicklick for Teen Info!)

QUESTIONS?

REFERENCES

<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

<http://familypolicy.ed.gov/ferpa-school-officials?src=ferpa>

<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>

<https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
