

Understanding FERPA

Patient privacy is a key component of health care in any arena these days. In high schools, middle schools and elementary schools, where most patients are minors, the line between protecting a patient's confidentiality and sharing information to protect the student's health is especially fine.

The Family Educational Rights and Privacy Act – shortened to FERPA – is a longstanding federal statute governing privacy, and it plays a role in every educational institution that accepts federal funding.

But what exactly are the parameters of FERPA?

Jon Almquist, ATC, VATL, is the athletic training program specialist for Fairfax County Public Schools, the nation's 12th-largest school system. FERPA is a linchpin in the system's recordkeeping process.

"We have a staff attorney who reviewed everything and said the legal opinion is that all the records we keep as athletic trainers can fall under the umbrella of FERPA because they are, in fact, school documents," said Almquist, chair of the NATA Secondary School Athletic Trainers' Committee. "Even though our records are medically related, they're still subject to FERPA standards. It gets complicated in allowing records to go out."

Student athletes are not allowed to participate until they submit a complete preparticipation physical exam form. The language in the form, Almquist said, serves to notify parents of the school district's information policy.

"There's a fairly standard recommendation, both from HHS regarding HIPAA and from FERPA, that says it would be smart to place an overall acknowledgement for release by the parent," he explained. "Our attorney put a standard sentence into our physical form: 'I further consent to allow said physician(s) or health care provider(s) to share appropriate information concerning my child that is relevant to participation in athletics and activities with coaches and other school personnel as deemed necessary. Additionally I give my consent and approval for the above named student's picture and name to be printed in any high school of VHSL athletic program, publication or video.'

"It's a blanket statement that allows the athletic trainers to provide sensitive information about this athlete to others who have a need to know," Almquist said.

who's in the know

FERPA allows school records to be shared in certain cases. Medical information kept by an athletic trainer employed by the school is considered part of the student's educational records, therefore subject to FERPA standards.

"There's not a problem when there's a medical professional sharing information regarding a patient with another medical professional who has a responsibility for care," Almquist said. "There should rarely be a problem sharing information with a team physician or a physical therapist or a school nurse or any medical professional who is responsible for some aspect of that child's care."

But what happens when a coach or administrator or other school employee wants to know about an athlete's condition?

"Then you have to determine if the documents have been provided within the school, and whether the person who wants the information has a responsibility to provide care," Almquist said. "Under FERPA you are allowed to share information with anyone who has a responsibility for that child, even a bus driver."

Many times, however, the situation is not clear-cut. When a clinic sends an athletic trainer to provide coverage for a high school, for example, a gray area can be created.

"If the athletic trainer is employed by the clinic, not the school, and is keeping records that are technically the clinic's records, then HIPAA might come into play," Almquist warned. "From our experience, it's very much a case by case basis. The individual employee and employer need to consult with an attorney to be sure they know what regulations to follow and how to follow them."

family educational rights and privacy act (ferpa)

Excerpted with permission from www.ed.gov

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a complex Federal law that protects the privacy interests of parents and students with regard to education records. It affects every public elementary and secondary school and virtually every postsecondary institution in the country; all educational institutions that accept

federal funding are subject to FERPA regulations. First enacted in 1974, FERPA has been amended by Congress seven times, most recently through the Improving America's Schools Act of 1994 (IASA).

FERPA defines the term "education records" broadly to include all records, files, documents and other materials, such as films, tapes or photographs, containing information directly related to a student that an education agency or institution or a person acting for the agency or institution maintains. For example, education records include information that schools maintain on students in report cards, surveys and assessments, health unit records, special education records, and correspondence between the school and other entities regarding students. Education records also include information that a school maintains about parents.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.

Parents or eligible students have the right to request that a school correct records they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to dis-

close those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them.

Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

disclosures under the health/safety emergency exception

The health or safety emergency provision is a common sense acknowledgment that there may be situations when the immediate need for information to avert or diffuse certain unusual conditions or disruptions requires the release of information.

Educators determine what constitutes an "emergency," but FERPA requires that they construe the term strictly. For example, on-campus disruptions that constitute criminal acts, particularly those involving weapons and drugs, fall within the scope of the term, as do crisis

situations off campus that affect school campuses or the public health or safety.

When a health or safety emergency exists, schools may share relevant information about students involved in the emergency with appropriate parties — that is, those whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.

recordkeeping requirements

A school district must follow certain FERPA record keeping requirements. Section 99.32 of the FERPA regulations requires that schools maintain with each student's education record a record of all individuals, agencies or organizations that requested or obtained access to the student's education record, specifying the legitimate interest that each party had in obtaining the information.

Accordingly, educators should document all disclosures of information from a student's education record unless the request is from and the disclosure is to one of the following:

- The parent or eligible student.
- A school official within the school system.
- A party with written consent from the parent or eligible student.
- A party seeking directory information.
- A party requesting or receiving the records as directed by a Federal grand jury or other law enforcement subpoena when the issuing court or agency has ordered that no one disclose the existence or the contents of the subpoena or the information furnished in response to the subpoena.

questions?

For additional information or technical assistance, call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at (800) 877-8339. Or, write to:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920