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FREQUENTLY ASKED QUESTIONS REGARDING THE SHARING OF INFORMATION BY SCHOOL NURSES AND SCHOOL BASED HEALTH CENTERS[1]

1. Can school nurses and school based health center (SBHC) staff work in the same space if hired by different entities?

Answer: Given the constraints both FERPA[2] and HIPAA[3] place on information sharing between school nurses and SBHC staff, having SBHC staff and school nurses work in the same space is not advisable because it would likely be impossible to retain the confidentiality required by these laws.

2. Are there standard authorizations for the release of information that meet HIPAA or FERPA requirements?

Answer: Yes.

DHS has a standard HIPAA compliant authorization that can be found at the following web address:

- http://dhsforms.hr.state.or.us/Forms/Served/DE2099.pdf.

The Department of Education has a standard FERPA compliant authorization that can be found at the following web address:

- http://www.ode.state.or.us/pubs/forms/schoolage/1196-P.pdf

3. If a school nurse wants to have a parent sign a release so that information can be shared with a SBHC, how should the release be drafted?

Answer: *See* answer to question #2. The written consent to release information should state what records can be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

4. Are there exceptions to FERPA that allow the sharing of information without written consent?

Answer: Yes, there are exceptions. For example, personally identifiable information from an educational record of a student may be disclosed without written consent:

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[1] For additional guidance on the Application of FERPA and HIPAA to student health records go to: http://www.ed.gov/policy/gen/guid/fpco/doc/ferpa-hippa-guidance.pdf.
[2] FERPA stands for the Family Educational Rights and Privacy Act.
[3] HIPPA stands for the Health Insurance Portability and Accountability Act.

- To school officials, including teachers, with legitimate educational interests;
- To officials of another school where the student seeks to enroll;
- To comply with a court order or lawfully issued subpoena (a reasonable effort must be made to contact the parent or student of the order or subpoena in advance of any release so the parent or student can seek to challenge the order or subpoena unless it is a federal grand jury subpoena or a subpoena issued for law enforcement purposes and the court or issuing agency has ordered that the existence of the subpoena not be disclosed);
- In a health or safety emergency.

For a complete list of the exceptions the federal regulations should be reviewed and can be found at 34 CFR § 99.31. Legal counsel should be sought before releasing records in response to a court order or subpoena. The health or safety emergency exception is construed narrowly. *See* Letter of Advice to Matthews and Currin, at 11-12 (December 3, 2008).

5. If a school nurse is asked to attend a multi-disciplinary meeting about a student where community persons (e.g. a mental health therapist), SBHC staff, school staff are present, what can that school nurse share about a child's health?

Answer: The school nurse can only share information with non-school staff if the parent or guardian has authorized the sharing of this information, or one of the exceptions applies. *See* answer to question #4. Information can be shared with school staff if they have a legitimate educational interest in the information.

a. Is the answer any different for a school nurse if the above meeting occurs with all but the SBHC persons?

Answer: No, unless all those present were school officials with a legitimate educational interest in the records, and in that case, no written consent would be required.

6. If the local Lion's Club, for example, does a health screening that the school arranges who controls the records?

Answer: If the Lion's Club provides a record of the screening to the school, it becomes an educational record and is covered by FERPA. If the Lion's Club retains a copy of the record, the Lion's Club may or may not be subject to FERPA, depending on what sort of relationship exists between a school or school district and the Lion's Club.

a. Can a school nurse share information about a student's health with a volunteer from the Lion's Club?

Answer: Unless the school has an agreement with the Lion's Club that complies with FERPA and would thus permit information sharing between the school nurse and the volunteer, without written consent the school nurse cannot share information from an educational record with the volunteer.

7. Should a school district have a contract with a SBHC specifying what can or cannot be shared about student health information?

Answer: A contract is not needed nor would a contract be appropriate for this purpose. However, it is a good idea for SBHC and school staff, including school nurses, to have a common understanding about how and when information between them can be shared. The procedures and personnel authorized to respond to information sharing requests, consent, and exemptions to consent may properly be the subject of a memorandum of understanding.

8. Should a school district be encouraged to designate a SBHC as a school official, allowing information sharing between the school nurse and SBHC staff?

Answer: These FAQs are meant to answer legal questions, not to weigh in on policy decisions about whether a school district should be encouraged or discouraged from taking a particular action. Whether a school district could enter into an agreement with a SBHC that would allow information sharing between the two, without written consent, is a matter that must be discussed with legal counsel and it may or may not be legally permissible under FERPA.

a. If such a designation is made, or I have a release of information, who can I talk to? Must it be an RN/NP? Can it be the clerk?

Answer: *See* answer to questions #4 and #5. The release will specify who information can be disclosed to. One of the exceptions must apply if written consent is not needed for disclosure. As is stated in answers to questions four and five, disclosures may be made to a school official with a legitimate educational interest in the record.

9. How can it clearly be explained to school districts the differentiation between a SBHC and school nurses and the subsequent limits on information sharing to avoid the misperception that the limit of communication is a turf issue?

Answer: A school district can review the letter of advice to Matthews and Currin by the Oregon Department of Justice (DOJ)(December 3, 2008). However, DOJ cannot give legal advice to school districts and the school district should be encouraged to contact its own attorney. The limits on information sharing are set by law.

10. In the interest of trying to provide services to students is there a

way to facilitate information sharing, about immunization records for example, without a release of information for each student?

Answer: No. A release of information must be obtained unless an exception applies.

a. Is there a way that parents could learn in a school handbook about a general practice of sharing immunization information to overcome an individual release for each student?

Answer: No. A general notice about information sharing does not obviate the need for a release.

11. What are the consequences of violating FERPA?

Answer: A school could lose federal funding.

a. Is there a potential consequence to my nursing license?

Answer: This is a licensing question that must be answered by the Oregon Board of Nursing.

12. What can a school nurse release from a student's educational record or nurse records if a school nurse receives a subpoena?

Answer: You should talk to your supervisor if you receive a subpoena or court order for the release of records and legal counsel should be sought. Records can be disclosed in response to a validly issued subpoena, but only after a reasonable effort has been made to notify the parent or student before information is released, unless it is a federal grand jury subpoena or a law enforcement subpoena where the court or issuing agency has ordered that the existence or the contents of the subpoena not be disclosed. Unless the subpoena is quashed, the subpoena itself will govern what is released because it will specify the records and information being sought.

13 What should a school nurse do if a principal wants to see the school nurse's records?

Answer: If the principal has a legitimate educational interest in the records, disclosure is permitted without written consent, otherwise not.

14. What if risk management in the district wants to talk to a school nurse about a student incident?

Answer: If risk management has a legitimate educational interest in the information and is a "school official" as that is defined under FERPA, a school nurse may discuss the incident with risk management.

15. Is there anything else beyond FERPA that influences information sharing with SBHC staff?

Answer: There might be, but FERPA is restrictive enough that a school nurse can likely rely on it for guidance about when information can be released. The one exception may be drug and alcohol records that are protected by federal law. 42 USC §290dd-2; 42 CFR Part 2. If you have a question about whether drug or alcohol records can be disclosed, talk to your supervisor and seek legal advice.