

ANCHORAGE SCHOOL DISTRICT  
ANCHORAGE, ALASKA

MEMORANDUM

November 30, 2009

TO: SPECIAL EDUCATION AND RELATED SERVICES  
ADMINISTRATORS, STAFF AND TEACHERS

FROM: JERRY SJOLANDER, EXECUTIVE DIRECTOR  
SPECIAL EDUCATION



SUBJECT: SUMMARY OF GUIDANCE ON THE APPLICATION OF THE  
*FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)* AND  
*THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF*  
*1996 (HIPAA)* TO STUDENT HEALTH RECORDS

Introduction

The purpose of the governmental guidance was to explain the relationship between the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*. The guidance addresses questions on the part of school administrators, health care professionals, and others as to how these two laws apply to student records.

*FERPA* is a federal law that protects the privacy of student "education records." A school district subject to *FERPA* may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student's written consent. The term "education records" is broadly defined to mean those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

The *HIPAA* Privacy Rule protects individual health records and other identifiable health information by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a "health care provider" as defined by *HIPAA*. If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under *HIPAA*. As a covered entity, the school must comply with the *HIPAA* Administrative

Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions. However, many schools, even those that are *HIPAA* covered entities, are not required to comply with the *HIPAA* Privacy Rule because the only health records maintained by the school are “education records” or “treatment records” of eligible students under *FERPA*, both of which are excluded from coverage under the *HIPAA* Privacy Rule.

**Q. Does the *HIPAA* Privacy Rule apply to an elementary or secondary school?**

A. Generally, no. In almost all cases, a school is not a *HIPAA* covered entity.

**Q. How does *FERPA* apply to health records on students maintained by elementary or secondary schools?**

A. At the elementary or secondary school level, student immunization and other health records that are maintained by a public school district or individual school, including a school-operated health clinic, are “education records” subject to *FERPA*. If the nurse is hired as a school official (or contractor), the records maintained by the nurse or clinic are “education records” subject to *FERPA*.

Parents have a right under *FERPA* to inspect and review these health and medical records because they are “education records” under *FERPA*. *FERPA* also allows schools to disclose a student’s health and medical information and other “education records” to teachers and other school officials, without written consent of the parent or eligible student, if these school officials have a “legitimate educational interest” in accordance with school policy. Another provision of *FERPA* permits the disclosure of education records, without consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

**Q. Under what circumstances does *FERPA* permit an eligible student’s treatment records to be disclosed to a third-party health care provider for treatment?**

A. An eligible student’s treatment records may be shared with health care professionals who are providing treatment to the student, including health care professionals who are not part of or not acting on behalf of the educational institution (i.e., third-party health care provider), as long as the information is being disclosed only for the purpose of providing treatment to the student. In addition, an eligible student’s treatment records may be disclosed to a third-party health care provider when the student has requested that his or her records be “reviewed by a physician or other appropriate professional of the student’s choice.” In either of these situations, if the treatment records are disclosed to a third-party health care provider that is a *HIPAA* covered entity, the records would become subject to the *HIPAA* Privacy rule while in the hands of the third-party provider. The records at the educational institution continue to be treatment records under *FERPA*, so long as the records are only disclosed by the institution for treatment purposes to a health care provider or to the student’s physician or other appropriate professional requested by the student.