

FERPA COVID-19 Case Guidance: School District Officials

FERPA Basics

The [Family Educational Rights and Privacy Act \(FERPA\)](#) is a federal law that protects the confidentiality of records maintained by public schools, including health records. This guidance was created to support **school district officials** in understanding the application of FERPA related to the sharing of information on suspected or confirmed COVID-19 cases. The purpose of this document is to assist school officials in protecting student privacy in the context of COVID-19 as they consider the disclosure of personally identifiable information (PII) from student education records to individuals and entities who may not already have access to that information. School officials should work with their state and local public health officials to determine the information needed to address this public health concern. Understanding how, what, and when information can be shared is a critical part of preparedness. A sister resource [with information on HIPAA & FERPA pertinent to school nurses and school-based health program staff](#) is also available.

NOTE: This guidance should be used to support local decision-making and the development or updating of local policies. It is not intended as legal advice.

Guidance for the Sharing of Records that Fall Under FERPA

When a school district encounters a student with a confirmed or suspected case of COVID-19, there are several audiences with whom the district will want to disclose information related to the sick student.

- Information about the student's condition may need to be shared with the **local health department** (LHD) for the purpose of complying with reporting laws. The Missouri Department of Health and Senior Services has added COVID-19 to the list of conditions both schools and health care providers must report under state regulation. *19 CSR 20-20.020*.¹ LHDs may also contact a school district for information about a student in order to trace contacts related to suspected or confirmed cases of COVID-19. For example, they could request information such as attendance records, parent/student names, and contact information.
- School districts may feel the need to share information with **parents/guardians** of other students so that they may be aware and take necessary additional precautions to protect their student(s) as well as to prevent inaccurate rumors from spreading.
- **Faculty and school staff** will need to receive information about confirmed or suspected cases to take necessary additional precautions to protect students. Information should only be shared with faculty and school staff on a need to know basis.
- **School-based health program staff** may also need to be made aware of positive or suspected cases, either if students are referred to them with symptoms or to also take necessary additional precautions to protect students and other patients.

Before school districts share personally identifiable information about a student, which is contained in a student record maintained by the district, the district must make sure that it can legally disclose the information.

Applicable Exceptions—Guidance for Sharing Records that Fall Under FERPA

Depending on the circumstances, information may be disclosed in the following circumstances:

<p>Information is not personally identifiable.</p>	<p>Information may always be shared as long as a student is not directly or indirectly identified. For example, stating that there has been an elementary student that has tested positive in a large district is typically not a problem because it is difficult to determine which student of many was the one.</p> <p>However, in a smaller district such a statement may not be appropriate in situations where very few students have been absent due to illness. When sharing information about a positive case, disclose the minimum amount of information required by each audience to take the necessary steps to protect themselves. It is often sufficient to release there was a positive case without sharing the student’s name or even classroom.</p>
<p>Parent/guardian (or sometimes student) consent.</p>	<p>If the district obtains written permission from the parent/guardian or eligible student, personally identifiable information about the student may be legally shared under FERPA. A student is “eligible” to consent if the student is 18 or is enrolled in postsecondary education.</p>
<p>A health and safety emergency.</p>	<p>FERPA’s health or safety emergency exception allows for the release of information without signed consent if:</p> <ul style="list-style-type: none"> ○ There is an “articulable and significant threat” to the health or safety of others AND ○ It is necessary to protect the health or safety of the student or other individuals. <p>Thus, if a student tests positive for COVID-19 and the health department needs to contact all of the parents of the students in the same classroom, the school district can share with the health department contact information for those families if there is a current threat to the safety of those students. Although educational agencies and institutions can often address threats to the health or safety of students or other individuals in a manner that does not identify a particular student, FERPA permits educational agencies and institutions to disclose, without prior written consent, PII from student education records to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of a student or other individuals.</p> <p>Note: If the district uses this exception the information may only be shared with persons who need to know the information to address the threat (i.e., public health officials, trained medical personnel, and parents, including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception. Within a reasonable period of time after a disclosure is made under this exception, an educational agency or institution must record in the student’s education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed. <i>34 C.F.R. § 99.32(a)²</i></p>

<p>Directory Information and Limited Directory Information</p>	<p>The district can designate some information contained in student records as not harmful or an invasion of privacy if released without signed consent. This is commonly referred to as “Directory Information.” If parents and student are notified of the definition of Directory Information and are given an opportunity to opt out and they do not opt out, then the school can disclose the information to any person without written consent. Directory Information can include some or all of the following information about a student:</p> <p style="padding-left: 40px;">Name, address, phone number, e-mail address, photograph, birthdate, grade level, enrollment status, dates of attendance, participation in activities and sports.</p> <p>If a parent or student has not notified the district that they do not want this information released, the district may legally release this information under FERPA to the health department without parent consent. For example, if the health department notifies the school district that a specific student tested positive for COVID-19 and asked if that person was a student in the school, which grade the student was in, how long the student attended and if the student participates in activities and sports, the district could share that information without first obtaining written parent consent.</p> <p>Be careful! Just because a student’s name is listed in Directory Information does not mean that the school can announce to anyone the name of the student that tested positive for COVID-19. In the above circumstance, the school is not just releasing a name—it is releasing medical information about the student. Medical information cannot be Directory Information under FERPA because many feel it is an invasion of privacy to release it.</p> <p>Some districts have “Limited Directory Information,” which means that some information can only be released to identified persons or entities – not anyone in the community. For example, many districts only provide the address and phone number of students to governmental entities, not the general public. Before releasing information under the Directory Information exception, read the notice provided to the parents and student very closely to make sure that the district is only releasing information it said it would release.</p>
<p>Employee (or Contractor or Consultant) with a Legitimate Educational Interest</p>	<p>Employees with a legitimate educational interest may access student records even without signed consent. The definition of an “employee” is defined broadly to include contractors, consultants, volunteers, or others that 1) perform a service for which the school would otherwise use an employee, 2) is under the direct control of the school, and 3) that agrees not to redisclose the information unless allowed by law.</p> <p>Note: This includes school-based health (SBH) providers who are providing services within the school if they are performing a function otherwise performed by a school employee or under the direct control of the school district with respect to records. For instance, if a school contracted with a health care provider to provide school nursing services, health information contained in a student’s records could be shared with the contracted nurse as long as there was a legitimate educational reason for sharing the information.</p>

Other Recommendations for FERPA & COVID-19 Cases

- Make all disclosures of information on a case-by-case basis based on the current situation.
- School districts, in planning for school re-entry, may consider developing and collecting signed consent forms delineating when, what, and to whom student information will be shared related to COVID-19.
- When sharing information about a positive case, disclose the minimum amount of information required by each audience to take the necessary steps to protect themselves. It is often sufficient to release there was a positive case without sharing the student's grade, classroom, or building.
- Document, in the student record, when information is released, to whom, and for what purpose.²
- Even when it is legal to disclose information in a student record, the district must be careful to only do so when necessary and to protect students against discrimination or bullying that may result from the disclosure.

Schools w/ School-Based Health Program Partners

If the school or district in partnership with a school-based health (SBH) program, whose records typically adhere to the [Health Insurance Portability and Accountability Act \(HIPAA\)](#), becomes aware of a student with a confirmed or suspected case of COVID-19, information about this student may need to be shared with the school community.

Generally, information stored in the student's educational record must be protected in accordance with FERPA, whereas HIPAA protects the privacy of patient health information held by healthcare providers. **The two laws cannot apply to the same record at the same time.** To determine whether records in a school environment are subject to FERPA or HIPAA, consider the source of the information.

- FERPA applies to personally identifiable student records maintained by schools or education institution that receive federal funding, such as those records maintained by a school nurse.
- HIPAA applies to records of SBH programs that are funded, administered, and operated by or on behalf of a public or private health or social services agency, such as a federally qualified health center, hospital/health system, or local health department.

Both HIPAA and FERPA allow for the disclosure of records, or information contained in those records, to a third party in a variety of circumstances. However, the easiest and best method under both HIPAA and FERPA is to obtain written consent from a parent or guardian of a student. In some circumstances the student themselves can consent to releasing the records. Under FERPA the student must be 18 or enrolled in a post-secondary institution. Under HIPAA the student must be 18 or otherwise eligible to consent under state law. **Many school districts and healthcare providers co-develop a HIPAA/FERPA compliant consent form.** The form stipulates what information will be shared with whom and is required to be signed, along with a consent to treat, before a student is eligible to receive SBH services.³

Key Considerations for Navigating HIPAA/FERPA with COVID-19 Cases

- School districts should work in collaboration with their SBH providers for any communication to students, parents, teachers, and the community to assure streamlined, joint messaging. SBH providers and their school districts may also have agreements related to communication in their memorandum of understanding (MOU), which should always be followed.

- Like FERPA, HIPAA allows for the release of information without signed consent for the purpose of public health, including to public health authorities and to persons at risk of contracting or spreading disease.
- Information should only be disclosed as necessary to prevent or control the spread of the disease and only the minimum necessary information should be shared.

References

1. Missouri Register (2020). COVID-19 Emergency Amendment and Waivers of Administrative Rules. Retrieved from <https://www.sos.mo.gov/CMSImages/AdRules/moreg/2020/v45n5Mar2/v45n5a.pdf>
2. U.S. Department of Education (2018). Family Educational Rights and Privacy Act (FERPA). Retrieved from <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
3. Gudeman, R. (2018). HIPAA or FERPA? A Primer on Sharing School Health Information in California, 2nd Edition - National Center for Youth Law. Retrieved from <https://youthlaw.org/publication/hipaa-or-ferpa-a-primer-on-sharing-school-health-information-in-california-2nd-edition/>

Additional Resources

- [Student Privacy During the COVID-19 Pandemic](#) from the School Superintendents Association and Future of Privacy Forum
- [FERPA & Coronavirus Disease 2019 \(COVID-19\) Frequently Asked Questions](#) from the U.S. Department of Education
- [FERPA and COVID-19 Virus DOE Guidelines](#) from the National Law Review

This resource was developed by the Show-Me School-Based Health Alliance's HIPAA/FERPA Workgroup.

*The **Show-Me School-Based Health Alliance of Missouri** is the statewide affiliate of the National School-Based Health Alliance. We support communities in building and sustaining quality school-based health programs.*

Our vision is that every child and youth in Missouri has an equal opportunity to success by assuring access to high-quality health care.