



HIPAA/FERPA COVID-19

Case Guidance: School Nurses & School-Based Health Program Staff

About This Guidance

The [Health Insurance Portability and Accountability Act \(HIPAA\)](#) and the [Family Educational Rights and Privacy Act \(FERPA\)](#) are federal laws that protect privacy and confidentiality that apply in school-based health (SBH) settings. This guidance was created to support **school nurses** and **school-based health program providers** in understanding the application of these policies related to the sharing of information on suspected or confirmed COVID-19 cases.

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.

HIPAA vs. FERPA: The Basics

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.¹

Given the unique circumstance of COVID-19, school nurses and school-based health program providers should include discussions around HIPAA/FERPA and the sharing of information related to COVID-19 cases as part of their planning for the 2020/2021 school year. Understanding how, what, and when information can be shared is a critical part of preparedness.

Guidance for Records that Fall Under FERPA

As the school nurse, if you encounter a student with a confirmed or suspected case of COVID-19, there are several audiences who may need to know information about the sick student or who may ask questions if they hear of the case. Work with your school and district leadership to establish policies related to each group, including the following:

Local Health Departments	<p>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. <i>19 CSR 20-20.020.</i>²</p> <p>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. Establish a protocol for responding to LHD inquiries to your school, working closely with school leadership and your community's LHD.</p>
Parents/Guardians	<p>School districts may feel the need to share information with parents/guardians so that they may be aware and take necessary additional precautions to protect their student(s) and to prevent inaccurate rumors from spreading. All instances of sharing information with parents/guardians should be made in close partnership with school leadership.</p>
School-Based Health Program Staff	<p>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. Existing MOUs between SBH programs and your school district may already delineate how health information is shared between partners. Information should only be shared with SBH program staff on a need to know basis and should always follow the stipulations of the MOU. In preparation for the 2020/2021 school year, include discussions about sharing information related to confirmed or suspected case of COVID-19 with your SBH program partners.</p>
Faculty and School Staff	<p>Faculty and school staff will need to receive information about confirmed or suspected cases to take necessary additional precautions to protect students. School administration can also expect staff to raise questions to each other. Information should only be shared with faculty and school staff on a need to know basis. Plan with school leadership how you will communicate information to confirmed or suspected cases and how you will respond to questions to ensure student confidentiality is protected.</p>

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

Reference [FERPA COVID-19 Case Guidance for School District Officials here](#) to understand applicable FERPA exceptions for legally disclosing COVID-19 cases.

Key Recommendations

- Make all disclosures of information on a case-by-case basis based on the current situation.
- Information may always be shared as long as a student is not directly or indirectly identified. 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, always considering the release of information on a case-by-case basis to consider to whom information is being shared and for what purpose.
- 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. Discuss this option with school leadership
- 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.³
- 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.

Records that Fall Under HIPAA

If the SBH program, whose records typically must adhere to 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.

Sharing Information with School Districts

The primary audience for SBH programs to share information related to confirmed or suspected cases of COVID-19 is the school district, including school nurses, district leadership, and staff/teachers. Under HIPAA, it is generally easier to share student-related health information with the school district than the other way around—entities covered under HIPAA may disclose information as necessary to treat the patient and in order to prevent or control the spread of disease.⁴ SBH program providers should adhere to existing agreements with their district partner in terms of information they may share with their school district partners.

Key Recommendations

- For SBH providers, all communication to students, parents, and teachers should be approved by their school district partners before disseminating. This will 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. 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/>
2. 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>
3. Reddy, A., & Vance, A. (2020). Student Privacy During the COVID-19 Pandemic. Retrieved from [https://aasa.org/uploadedFiles/AASA_Blog\(1\)/COVID-19%20Student%20Privacy%20FAQs%2003-20-2020.pdf](https://aasa.org/uploadedFiles/AASA_Blog(1)/COVID-19%20Student%20Privacy%20FAQs%2003-20-2020.pdf)
4. Services, U. S. D. o. H. a. H. (2020). COVID-19 & HIPAA Bulletin Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency. Retrieved from <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>
5. 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>

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.