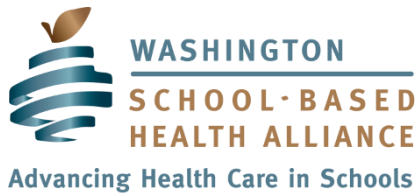


# Consent & Confidentiality in School-Based Health Care

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*Contact: Sandy Lennon, WA SBHA,  
slennon@wasbha.org*





# Our Speakers

## Sara Rigel, MPH

*Health Services Administrator*

*Public Health—Seattle & King County School-Based Partnerships Program*

*Board President*

*Washington School-Based Health Alliance*

## Nick Canavas, MPH

*School-Based Health Program Manager*

*Neighborcare Health*


# Consent and Confidentiality

- Governed by state laws, regulations and legal rulings
  - Interpretation and guidance will vary by organization
  - General consent for care
  - Additional informed or explicit consent
    - Immunizations
    - Dental procedures
    - Mental health disclosures
- 

# Minor Consent in WA State

- Minors may obtain some services independently without parental or guardian permission.
- **STI treatment** at age 14 (RCW 70.24.110).
- **Birth control services** at any age (RCW 9.02.100(2) Obtain or refuse services
- **Abortion and related services** at any age without the consent of a parent, guardian or the man responsible for the pregnancy. (RCW 9.02.100(2); State v. Koome, 84 Wn.2d 901)
- **Prenatal care at any age.** (State v. Koome, 84 Wn.2d 901)
- **Mental Health services** at age 13 (RCW 71.34.530)
- **Substance abuse treatment** at age 13 (RCW 70.96A.096, 230)

# Confidentiality

- Minors have a right to access confidential services for specific care
  - Parents or guardians are often aware of the confidential services their minors access
  - Minors may be selective in what they share with their parent/guardians
  - Confidential care is billable
  - Not all health care plans protect the minor's privacy by suppressing the Explanation of Benefits
  - External lab, diagnostics, or referrals confidentiality is based on the organization's policy and practices
- 

# Parent or guardian involvement & notification

Keep connections open

Best practice

- Phone calls or letters home

- Preferred language

- Communicate care plan & informed consent

Emergency situations

Harm to self or others

Mandatory reporting



Application of the  
Family Educational Rights and Privacy Act (FERPA)  
and the  
Health Insurance Portability and Accountability  
Act of 1996 (HIPAA)  
in School-Based Health Center (SBHC)  
Collaborations

# Washington Integrated Student Supports Protocol (WISSP)

## **Background**

*In 2016, the Washington State Legislature created the Washington Integrated Student Supports Protocol (WISSP) when it passed 4SHB 1541. The WISSP was one of an extensive set of interdependent strategies for **closing educational opportunity gaps** recommended by the State’s Educational Opportunity Gap Oversight and Accountability Committee (EOGOAC). The components of the WISSP framework include **needs assessments, community partnerships, coordination of supports, integration within the school, and a data-driven approach.***



# Washington Integrated Student Supports Protocol (WISSP)

## Community Partnerships (WISSP page 8):

*Community partners must be engaged to provide nonacademic supports to reduce barriers to students' academic success, including supports to students' families.*

*RCW 28A.300.139*

The protocol for Community Partnerships includes:

- *Create **clear partnership policies, communication protocols, and a memorandum of understanding (MOU)** for each partnership that outlines its goals, scope, funding needs, types of services to be offered, and the indicators that will be used to measure progress.*
- *Develop a **streamlined referral process** to be used by both school and community organizations to ensure students have **rapid access to supports** at the earliest sign of need, along with **protocols for sharing data about the outcome of referrals and student progress.***

# FERPA

The **Family Educational Rights and Privacy Act (FERPA)** is a federal law enacted in 1974 that protects the privacy of **student education records**.

The Act serves two primary purposes:

1. Gives parents or eligible students more control of their educational records
2. Prohibits educational institutions from disclosing "personally identifiable information in education records" without written consent



## Who must comply?



- **Any public or private school:**
  - Elementary
  - Secondary
  - Post-secondary
- **Any state or local education agency**  
Any of the above must receive funds under an applicable program of the US Department of Education

## Protected information



### Student Education Record:

Records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution

## Permitted disclosures



- School officials
- Schools to which a student is transferred
- Specified officials for audit or evaluation
- Appropriate parties in connection with financial aid to a student
- Organizations conducting certain research on behalf of the school
- Accrediting organizations
- Appropriate officials in cases of health and safety emergencies
- State and local authorities, within their jurisdiction, pursuant to specific laws, regulations, or court orders
- To comply with a judicial order or court subpoena

# HIPAA

The **Health Insurance Portability and Accountability Act (HIPAA)** is a national standard that protects sensitive **patient health information** from being disclosed without the patient's consent or knowledge. Via the Privacy Rule, the main goal is to

- Ensure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well-being.



- Every healthcare provider who electronically transmits health information in connection with certain transactions
- Health plans
- Healthcare clearinghouses
- Business associates that act on behalf of a covered entity, including claims processing, data analysis, utilization review, and billing



### Protected Health Information<sup>2</sup>:

Individually identifiable health information that is transmitted or maintained in any form or medium (electronic, oral, or paper) by a covered entity or its business associates, excluding certain educational and employment records



- To the individual
- Treatment, payment, and healthcare operations
- Uses and disclosures with opportunity or object by asking the individual for opportunity to agree or object
- Incident to an otherwise permitted disclosure
- Public interest and benefit activities, health activities, victims of abuse, decedents, research, law enforcement, serious threat to health and safety
- Limited dataset for the purposes of public health, or healthcare operations

1. **Permitted disclosures** mean the information can be, but is not required to be, shared without individual authorization.

2. **Protected health information** or **individually identifiable health information** includes demographic information collected from an individual and 1) is created or received by a healthcare provider, health plan, employer, or health insurer; and 2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of healthcare to an individual; or the past, present, or future payment for the provision of healthcare to an individual.  
(i) That identifies the individual, or  
(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

## HIPAA & FERPA in SBHC collaborations

Why do we share data in a SBHC collaboration?

To **improve health and academic outcomes** of students by facilitating:

- Student referral
- Coordination of care
- Program monitoring and evaluation
- Program improvements to advance equity
- Data to justify SBHC support, funding and replication to reach more students

# HIPAA & FERPA application in SBHC collaborations

Institutional level	Individual student level
Memoranda of Understanding (MOU)	FERPA consent
Data-sharing agreements	HIPAA Release of Information (ROI)
Operationalizing in practice	

# HIPAA & FERPA application in SBHC collaborations

**Memorandum of Understanding (MOU)** between school district and health care sponsor to set expectations, and define school and SBHC roles and responsibilities, around **student confidentiality.**

The MOU clarifies:

- Protected health information under HIPAA, including:
  - Minor consent law in Washington
- Protected education information under FERPA
  - Parental access to FERPA records until student age 18
- HIPAA and FERPA releases of information required to share information between parties
- Maintenance of confidentiality of shared information

# HIPAA & FERPA application in SBHC collaborations

Some school districts put into place additional data-sharing agreements with the goals of, for example:

- Preserving the anonymity of student identities, including assurance that identifiable student data is not released to third parties
- Enhancing the ability of the school district and SBHC to improve academic achievement for students by allowing access to individual student records consistent with the requirements of FERPA
  - *Option to designate SBHC providers as agent / institutional partner of the district*
- Accurately measuring the district and SBHC's progress toward improving student outcomes and indicators, and meeting set targets and other goals

# HIPAA & FERPA application in SBHC collaborations

Operationalizing in practice between SBHC and school. In compliance with HIPAA and FERPA, SBHC and school decide protocols and practice for e.g.:

- Student referrals and handoffs to SBHC by school staff
- School passes for students to leave class for SBHC appointments
- Recording attendance in school system vis-à-vis SBHC appointments to maintain student privacy
- Care coordination and parameters for:
  - SBHC staff communication with school staff re individual student care and progress
  - SBHC staff participation in student support meetings with school staff

# HIPAA & FERPA application in SBHC collaborations

**FERPA consent** to share student's education data with SBHC is typically included in SBHC registration packet. Parent or eligible student (18 or older) provides consent.

- *I consent to the release of my child's education records from [XX] School District to the [SBHC]. I understand that education records include, but are not limited to...*
- *I understand that the purpose of sharing these records with the above-mentioned entities is to keep my child's school-based health center medical and/or mental health provider informed of his/her academic program and progress. In collaboration with [SBHC sponsor], [XX] SBHC staff will work with my child and/or his/her school in an effort to improve my child's success at school.*
- *I acknowledge that I may revoke this consent...*



# HIPAA & FERPA application in SBHC collaborations

## Release of Information (ROI) per HIPAA to share student health information with school staff and others:

- Under HIPAA, the **school nurse** is part of a student's health care team for the purposes of care coordination. **No ROI is necessary for SBHC to share student health information with school nurse**, though confidential health information should not be entered into school records to maintain student privacy. The school nurse can provide e.g. student vaccination records to the SBHC for those students already registered with the SBHC and with a FERPA consent on file.
- **To share health information with others:** the person able to consent for care is the person who signs the ROI (parent/guardian, or the student if the student is 18 or older or if ROI is relating to confidential care)
- ROI can be general, or limited in timeframe and scope of information to be shared

# Consent in Practice

## Example #1: Parental Consent for Services

- The grandparent of a 10-year-old student has requested an appointment for a flu vaccine. The grandmother is caring for the student and has not heard from either parent in over a year..
- Questions for the SBHC provider
  - What services are needed?
  - What consents are necessary for those services?
  - How will we capture the necessary consent?
  - How do we discuss/explain the consent to the parent/patient
  - How do we safeguard/double-check that consent at the time of service

# Consent in Practice

## Example #1: Continued

What services are needed?	Medical: vaccination
What consents are necessary for those services?	SBHC Registration Vaccine Consent (w/ VIS review) Kinship Care Authorization
How will we capture the necessary consent?	Written Electronically
How do we discuss/explain the consent to the parent/patient	“Since you are a family member who is caring for this student in their parent’s absence, we’ll need you to sign an extra form stating that you are the caretaker.”
How do we safeguard/double-check that consent at the time of service	-Collect and file all three consents in the chart. -Confirm correct consent in place at time of scheduling -On the date of the visit: <ul style="list-style-type: none"> <li>• Re-confirm all necessary consents at check-in</li> <li>• Prepare necessary paperwork for provider: Coversheet, and printed consent</li> <li>• Provider completes second check of consent</li> </ul>

# Consent in Practice

## Example #1: Continued

### Necessary Consents: Kinship Care Authorization

Use of this declaration is authorized by RCW 7.70.065.

I DECLARE THAT:

1. I consent to health care for the child:  
\_\_\_\_\_. (print name  
of the child)
2. The child's date of birth is:  
\_\_\_\_\_.
3. My name is:  
\_\_\_\_\_.  
(print your name)
4. My home address is:
5. I am 18 years of age or older and I am a relative  
responsible for the health care of the minor
6. My date of birth is: \_\_\_\_\_.
7. I am the  
\_\_\_\_\_ of the minor. (print your relationship to the  
child, e.g. grandparent, aunt/uncle, etc.)

I declare under penalty of perjury  
under the laws of the State of  
Washington that the above is true  
and correct.

Date: \_\_\_\_\_

City and State: \_\_\_\_\_

Signature of Caregiver:  
\_\_\_\_\_

\*This Declaration is ONLY valid for six  
months from the date listed here.

# Consent in Practice

## Example #1: Continued

Safeguards and double checks: Appt. Cover Sheet

<b>PART ONE: ALL VISITS</b>	
Date of Visit:	
Student Name:	
Student Date of Birth:	
Reason For Visit:	
Is this <i>visit</i> confidential?	
<b>PART TWO: IZ VISITS ONLY</b>	
Consents on File	<input type="checkbox"/> Immunization <input type="checkbox"/> NO CONSENT ON FILE
Consent Completed by	<input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian (documentation on file)
Type of Consent	<input type="checkbox"/> Hand written <input type="checkbox"/> Verbal <input type="checkbox"/> Docusign
For immunization visits	<input type="checkbox"/> Consent form attached? <input type="checkbox"/> Completed Vaccine Screening Questionnaire attached?
Notes:	

# Consent in Practice

## Example #2: Minor Consent and School Partnership

- A 15-year-old student would like to receive MH Counseling at the SBHC. They had been working with a school counselor but after a recent crisis felt they needed additional support. The school counselor would like to remain a part of their care support team. When asked, the student said they did not want their parent to know they were receiving services.
- Questions for the SBHC provider
  - What services are needed?
  - What consents are necessary for those services?
  - How will we capture the necessary consent?
  - How do we discuss/explain the consent to the parent/patient
  - How do we safeguard/double-check that consent at the time of service

# Consent in Practice

## Example #2: Continued

What services are needed?	Mental health: Counseling
What consents are necessary for those services?	SBHC Minor Consent Registration Mental Health Counseling Consent (Minor) Release of Information: School Counselor
How will we capture the necessary consent?	Written Electronically
How do we discuss/explain the consent to the parent/patient	“We can work closely with your school counselor to support your mental health. To do this, we need a release from you. This release is not mandatory and you can remove it later if you change your mind.”
How do we safeguard/double-check that consent at the time of service	<ul style="list-style-type: none"> <li>-Collect and file all three consents in the chart.</li> <li>-Confirm correct consent in place at time of scheduling</li> <li>-On the date of the visit:               <ul style="list-style-type: none"> <li>• Reconfirm consents at check-in</li> <li>• Double check completed by provider</li> </ul> </li> </ul>

# Consent in Practice

## Example #2 Continued: Suggestions for Release of Information

- Be specific
  - Indicate key staff members rather than a blanket ROI for the school
  - Call out specific details (MH counseling services) which can be shared with staff
- Set a clear timeline
  - End of school-year or semester
- Set limitations on how info is shared
  - Only in-person
- Be sure the right person is signing the ROI
  - Minors can only release minor-consented services



## Example #3: Mixed Consent Flows

- A 16-year-old student has a confidential appointment for birth control. During their visit the student also shares that they had a recent sports-related injury to their foot and would like to have it checked out.
- Questions for the SBHC provider
  - What services are needed?
  - What consents are necessary for those services?
  - How will we capture the necessary consent?
  - How do we discuss/explain the consent to the parent/patient
  - How do we safeguard/double-check that consent at the time of service

# Consent in Practice

## Example #3: Continued

What services are needed?	Medical: Confidential Reproductive Health Medical: Foot injury
What consents are necessary for those services?	Birth control - SBHC Minor Consent Registration Foot Injury – SBHC Parental Consent Registration
How will we capture the necessary consent?	Written Electronically
How do we discuss/explain the consent to the parent/patient	“There are only certain services I can provide you without your parent’s consent. When we reach out to your parents, we will only discuss your foot injury. We will not share anything about your birth control without your permission.”
How do we safeguard/double-check that consent at the time of service	-Separate the visit into two encounters, even if occurring on the same day. -Follow all normal check-in and consent verifications for both visits separately.

# Consent in Practice

## Example #3 Continued: Considerations for Mixed Consent

- Be sure you have an intake flow which always verifies correct consent
  - EHR double checks
  - Coversheets
- When minor and parental-consented services are both provided, separate into two appointments and follow full intake/safeguard flows for both visits
- Use additional flags to indicate when a student ONLY has a minor consent on file as well as any instance a student received confidential services
- Make sure student understands that we will protect their confidential information, not share those services with parent without permission.

# RESOURCES

[HIPAA vs FERPA infographic 2018 \(cdc.gov\)](#)

[Joint 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](#)

[Providing Health Care to Minors under Washington Law](#)

[Mandatory Reporting of Child Abuse and Neglect](#)

[Washington Coalition of Sexual Assault Programs](#)