WASHINGTON SCHOOL-BASED HEALTH ALLIANCE
Advancing Health Care in Schools

HIPAA/ FERPA Toolkit

HIPAA/FERPA OVERVIEW

The Family Educational Rights and Privacy Act (FERPA) is a federal law passed in 1974 to protect the privacy of student education records. It gives parents and/or eligible students control over their educational records and prohibits educational institutions from disclosing personal identifiable information in education records without consent.

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law passed in 1996 designed to improve the efficiency and effectiveness of the health care system with standards for electronic health care transactions and data security. The law also adopted federal privacy and protections for individually identifiable health information. The HIPAA Privacy Rule set national standards for the protection of individually identifiable health information that is handled by health plans, health care providers, and health care clearinghouses (which process information exchanged between health plans and health care providers). HIPAA is generally known as the national guiding standards for protecting sensitive patient health information from being disclosed without the patient's consent. These standards were designed to protect individual's personal health information while it flows through the health care system.

SBHCs HIPAA	Schools FERPA

• Covers student **protected health information (PHI)** held/transmitted by a healthcare provider (i.e. information from the SBHC's medical record)
  ○ Includes: demographics, name, address, birthdate, SSN, any personally identifiable data
  ○ Includes: information about past, present, or future physical and mental health conditions, healthcare provided to student, or payment for healthcare
	• Covers **personally identifiable information (PII)** in a student's education record
	  ○ Includes: name, address, birthdate, SSN, immunization history on record with the school nurse, any personally identifiable data
	  ○ Schools can disclose "directory info" without consent unless parent/guardian or eligible student requests otherwise

• The person able to consent for care is the person who signs a Release of Information (ROI): parent/guardian, or student if 18 or older or related to confidential care	• A parent/guardian or eligible student (aged 18 or older, emancipated) can authorize disclosure (e.g. FERPA release form)
• Disclosure without consent is only allowed to persons who could prevent or lessen a serious and imminent threat to safety	• When an "articulable and significant threat" exists, schools/agencies can make case-by-case disclosures without consent to any person whose knowledge of the information will assist in protecting a person from the threat

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How are HIPAA and FERPA applied in a SBHC collaboration?

The application of FERPA and HIPAA in a SBHC collaboration often raises a number of questions, as parties new to the SBHC model may not understand the applicable privacy laws in both education and health care settings, where they intersect, and how they are applied in a school-SBHC collaboration in practice

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

Institutional Level

The parameters for sharing information between schools and SBHCs in compliance with HIPAA and FERPA are laid out at the institutional level in, for example, memoranda of understanding (MOU) and sometimes in additional data-sharing agreements.

Memorandum of Understanding (MOU). Specific to data-sharing and compliance with HIPAA-FERPA, the MOU can clarify:

- Protected health information under HIPAA, including minor consent law in Washington
- Protected education information under FERPA, including parental access to FERPA protected education records until the student is 18 or no longer claimed as a dependent for tax purposes (up to age 24).
- HIPAA and FERPA releases of information required to share information between parties
- Maintenance of confidentiality of shared information

Data-sharing agreements may have 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 aggregate information from the school and/or SBHC
- Accurately measuring the district and SBHC's progress toward improving student outcomes and indicators, and meeting set targets and other goals
- Establish technical protocols (e.g., encryption) and safety standards to protect against data breaches and unauthorized access

Individual Level

At the individual student level, a FERPA consent to share a student's education data with the SBHC is typically included in the SBHC registration packet. The parent/guardian or eligible student (18 or older) may provide this consent.

A release of Information (ROI) in compliance with HIPAA is used to share student health information with school staff and others. An ROI can be general or limited in timeframe and scope of information to be shared.

Hall Passes/ Getting to an SBHC appointment: To call a student from class using a hall pass or similar system for a confidential service, you must have an independent ROI signed by the student releasing their health information about the confidential care.

This applies to purposes of attendance-taking, releasing from class, etc. This is for confidential services only. A hall pass may be utilized for non-confidential services as well, as long as the student's parent/guardian has signed an ROI.

Operationalizing in practice

Once agreements are in place, it will be important for the SBHC sponsor and school to have a strong understanding and respect of the parameters they are operating under and to determine how they will operationalize HIPAA and FERPA guidelines in their everyday interactions to serve their common goal: healthy students, in the classroom, ready to learn. Establishing procedures for student referrals and care coordination will be important for sharing information key to student well-being and academic success, upholding student/patient confidentiality, calling students from class for SBHC appointments with minimal disruption to their learning, and coordinating care.

Consent & Confidentiality

Consent for SBHC Services

School-based health centers (SBHCs) follow all federal and state laws governing health care and consent for health care services.

Students must be enrolled and provided a consent to care by a parent/guardian to receive the full range of services provided by the SBHC. These include services like well-child exams, sports physicals, care for chronic conditions, and sick care.
Some services provided in a SBHC require additional consents, as they would in any other healthcare setting. These services include, for example: mental health services, dental services, immunizations.

Students may self-consent for confidential services such as mental health, substance abuse or sexual/reproductive health services, if available in the SBHC, according to minor consent law in Washington—as they could with any other healthcare provider in the community.

Additional consents may be obtained for urgent or emergency care.
Each SBHC sponsoring agency will have its own protocols and forms for obtaining legal consent for services.

SBHC Enrollment / Registration

In order to inform parents/guardians and students about the SBHC services available, enroll students, and obtain consents, the SBHC sponsor will develop a SBHC registration and information packet that may include:

- How the SBHC collaborates with the school (this could come in the form of a letter from school administration)
- Types of services provided at the SBHC
- SBHC care team qualifications
- Patient's rights and responsibilities
- Student information, including student ID number for patient registration
- Parent/guardian information for patient registration
- Health insurance information for billing purposes
- Health history form
- Consent for services form, including explanation of Washington State's minor consent laws
- FERPA consent form
- Other services consent forms, e.g. oral health screenings, etc.

Duration of enrollment. SBHC registration packets can be developed to have a student registered for SBHC services for the entire time that they are enrolled in the school to avoid having parents re-register their student annually. If a SBHC sponsor would like to use this strategy, the SBHC consent to care form needs to explicitly state that the parent is consenting for their student to receive care until they graduate from the school or the parent/guardian rescinds consent via a written letter.

Parent/guardian consent for students to be seen unaccompanied. It is also important that the consent form is explicit about the parent/guardian consenting for their child to be seen without the parent/guardian physically present. SBHC appointments are generally scheduled during the school day for the convenience of students and their families. It is also helpful to include how the SBHC coordinates with the parent/guardian if they are not present at an appointment.

Translation. Translating the registration packets into the top languages used by families at home in the community will be key for outreach, equitable access to care, and reaching populations potentially most in need of SBHC services.

Electronic signature. It is helpful to have SBHC registration packets and other supplemental consent forms available to complete online through a platform for electronic signatures, if possible.

Release of Information (ROI)

The SBHC sponsor should develop a release of information (ROI) form that aligns with HIPAA guidelines.

General ROI. A general, limited ROI form can be included in the SBHC registration packet and outline that the SBHC is allowed to share basic information with the school such as "*the student is a SBHC patient*."

Additionally, a fillable ROI form that allows students and/or parents to consent to sharing specific personal health information with specific school staff for the purposes of care coordination can be valuable. The SBHC provider should explain the benefits of care coordination with the student and/or parent/guardian. The ROI form must outline what type of information the student and/or parent consents to sharing and with whom at the school.

ROI's ad Care coordination/ student advocacy. Integrated with the school, SBHC providers have the opportunity to get to know their students on a deeper level than a community-based provider. This means they can advocate for the physical, behavioral health, and personal needs of students within the school community. SBHC providers can be invited to share their clinical perspective on students through student intervention team meetings or other care and service coordination strategies utilized by the school. With an ROI in place, the SBHC provider can be a powerful advocate for the student's needs.

With an ROI in place, care coordination that could be beneficial includes: care plan progress, triggers, and techniques that work best for de-escalation. The type of health information that can be shared could be written in to allow the student and/or parent/guardian to stipulate the limits of the information that can be shared. A signed ROI can help both parties work

together to improve the health and academic outcomes of a student receiving support services from school staff in addition to health care services through the SBHC.

Without an ROI, an SBHC provider can still communicate with school staff about general trends and topics they see as a whole. Examples include: “in a, b, c circumstances, you could try x, y, z strategies” or “if a student is exhibiting these [examples] behaviors, it could be beneficial to offer x, y, z services.” However, if a teacher or counselor comes to the SBHC provider to discuss certain circumstances or behaviors related to one student without an ROI, the SBHC provider cannot share information about a student.

Care coordination between the school and the SBHC also looks like school staff referring students to the SBHC and following up to learn if the student was connected to services. Unless consent is provided by the student to share information, the SBHC provider or coordinator can only share if the referral was received and followed up on; they cannot disclose the services that the student is receiving.

Family Involvement & Communication Protocols

SBHC best practice is to make every effort to involve students’ families in their care. In addition to legal consents, each SBHC will establish their own best practice protocols regarding the appropriate involvement, notification, and communication with parents/guardians. Some common practice examples might include:

- Receiving parent/guardian’s verbal permission for initiating care (after the family enrolls the student and provides written consent for care)
- Re-establishing family contact before re-initiating care in a new school year
- Involving parent/guardian in person or by phone/video in a student appointment or contacting parent/guardian before and/or after SBHC visits, especially for younger students

See the Planning, Operating and Sustaining a SBHC page on the WA SBHA website for more information on HIPAA and FERPA and links to SBHC sponsors’ websites (for examples of registration packets including FERPA consents). Webinar recordings and resources on *Consent & Confidentiality in School-Based Health Care* can also be found on the Webinar & Conference Archive page.

Resources:

- HIPAA/FERPA Decision Making Flowchart
- Resource Guide to HIPAA/FERPA from National SBHA and National Center for Youth Law