

## HIPAA AND FERPA

Sometimes schools handle health information, and health care entities handle education information. Imagine a public school's psychologist who maintains her students' mental health records or a mental health treatment facility administrator that keeps students' education records for the facility's on-grounds school. Only one of these laws at a time can apply to a piece of information, and each law treats sharing differently, so it is essential to identify which law applies and to know what it allows. [\[32\]](#)

Education records, including any health care information in them, are covered by FERPA and not HIPAA's Privacy Rule. [\[33\]](#) This is because HIPAA Privacy Rule excludes from its definition of *protected health information* any individually identifiable health information contained in an *education record* covered by FERPA, as well as *treatment records* that are included in a student's education record. [\[34\]](#)

As a result, in most cases, HIPAA does not apply to health information maintained by an elementary or secondary school because the school either: (1) is not a HIPAA covered entity or (2) is a HIPAA covered entity but maintains health information only on students in records that are by definition "education records" under FERPA. HIPAA might apply to health services at a private elementary or secondary school that receives no federal funding or a public school that outsources its health care to a HIPAA-covered entities such as hospitals, clinics, or government health departments. Conversely, FERPA will apply to the health information contained in education records at schools that have health centers operated by schools. For example, records maintained by a school nurse employed by, or under contact to, a school district are education records governed by FERPA. Therefore, parents (and eligible students) have access to these education records and generally control third-party access to them. [\[35\]](#)

Like FERPA, HIPAA limits initial disclosures to the minimum amount of information necessary to accomplish the intended purpose. Unlike FERPA (20 U.S.C. 1232g(b)1(L)), HIPAA does *not* allow for the unauthorized release of records to child welfare caseworkers. But caseworkers may receive PHI through other means. A child welfare agency may receive a child's PHI if it the agency is a covered entity that receives PHI to perform certain administrative or financial transactions. The agency might also receive PHI as a result of mandatory reporting or disclosure. And, of course, the parent can consent to the disclosure. Moreover, unlike FERPA, HIPAA does not prohibit redisclosure.

Finally, both HIPAA and FERPA have special provisions that allow for the release of records without consent in various situations, detailed above, such as court orders, subpoenas, and emergencies. Both laws also have special provisions that to apply to children in detention and placement. FERPA facilitates the release of education records when children are detained pre-adjudication and when they are released from detention or placement. HIPAA applies to medical providers in secure placements and detention, but youth who are detained aren't entitled to a privacy notice or a copy of PHI resulting from treatment while in placement/detention.