

HIPAA + FERPA:

WHAT PEDIATRIC MENTAL HEALTH CARE ACCESS PROGRAMS WORKING WITH SCHOOL-BASED HEALTH CENTERS NEED TO KNOW

Overview

School-Based Health Centers (SBHCs) are an effective and equitable model for providing comprehensive, integrated health-care in schools to improve student education and health outcomes.¹ **Pediatric Mental Health Care Access Programs (PMHCAs)** are expanding into SBHCs in recognition of their common goals to increase access to equitable and high-quality mental health care for children and adolescents.

PMHCAs partnering with SBHCs or schools need to know which confidentiality laws apply to information related to students about whom they are consulting. Depending on the type of information and who created and controls it, different laws may apply. **A critical question** is whether the information is subject to the federal Family Educational Rights and Privacy Act (FERPA) or the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. An SBHC's records may be subject to HIPAA or FERPA, depending on a number of factors. This will impact how and what student information may be shared with a PMHCA and what may happen with information shared with the SBHC by the PMHCA.

The School-Based Health Alliance (SBHA), in partnership with the **National Center for Youth Law**, aims to guide SBHCs in navigating federal privacy laws. PMHCAs can improve the quality of their support and consultation to SBHCs by learning more about HIPAA and FERPA.

What is HIPAA?

The HIPAA Privacy Rule is a federal law that protects the privacy of individually identifiable health information held by "covered entities" such as healthcare providers who transmit health information in electronic form related to certain types of transactions.

What is FERPA?

FERPA is a federal law that protects the privacy of students' personally identifiable information in education records created or held by two types of institutions that receive federal funds from the U.S. Department of Education (DOE): schools, which provide direct instruction; and school districts and state education departments, which direct or control schools.

HIPAA vs FERPA

	SIMILAR	DIFFERENT
Type of information they protect		+
Signed release to share information	+	
Type of release required to share information		+
Person authorized to sign the release to share information		+
Allow information to be shared when a legally sufficient release is in place	+	
Exceptions that require or allow sharing of information without a signed release in some cases	+	
Exception terms of when, with whom, and why they allow information to be shared without a release, which may impact the type of collaboration that can occur unless a signed release is in place		+
Role parents and guardians play		+
Parents and guardians right to access their child's health information		+



+ HIPAA or FERPA: Why it Matters?

Whether FERPA or HIPAA applies and how those interact with state confidentiality laws will impact SBHC operations, from framing how school staff and healthcare providers collaborate and share information with each other and with students and families; to shaping policies about how to deal with referrals and emergencies; from determining the content of required notices and consent forms to how and where records are stored.

+ Which Confidentiality Law Applies in an SBHC Setting?

State Law can apply where ...

neither HIPAA nor FERPA apply.

HIPAA and State Law can apply at the same time ...

HIPAA generally defers to more Protective State Laws.

FERPA and State Law can apply at the same time ...

FERPA generally preempts, but where FERPA is permissive and it is possible to comply with both FERPA and State Law, follow the more Protective Law.

If FERPA applies ...

HIPAA does not.

▶ FOR MORE INFORMATION,
please see our comprehensive guide:
Information Sharing and Confidentiality Protection in School-Based Health Centers: A Resource Guide to HIPAA and FERPA



¹ The Community Guide. Task Force Recommends School-Based Health Centers to Promote Health Equity. <https://www.thecommunityguide.org/news/task-force-recommends-school-based-health-centers-promote-health-equity.html>.