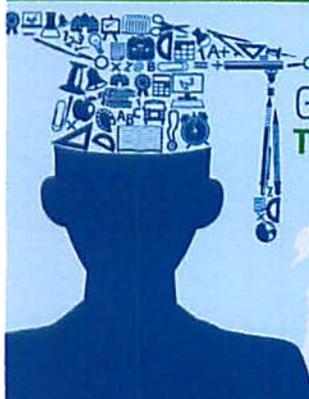


65th CONFERENCE ON EXCEPTIONAL CHILDREN



GRADUATION:
The Measure of Tomorrow
Confronting the
Prescription Pad
IEP
 James G.
 Middlebrooks

PUBLIC SCHOOLS OF NORTH CAROLINA
State Board of Education, Department of Public Instruction

November 18-20, 2015

The Prescription Pad IEP

Gil Middlebrooks



DD FORM 1289
 1 NOV 71

DOD PRESCRIPTION

FOR: (Full name, address & phone number) (If under 12 years, give age)

1 [REDACTED]

MEDICAL FACILITY: WAMC DATE: 9/17/13

Rx Pt may benefit from a single folder to contain his homework and assignments. Pt needs agenda/outline to clearly reflect expectation. Pt may complete but verify.

APPRO: [REDACTED] EXP. DATE: [REDACTED]
 LOT NO.: [REDACTED] FULFILLED BY: [REDACTED]

R NUMBER: [REDACTED] SIGNATURE, TITLE AND DEGREE: [REDACTED]

EDITION OF 1 JAN 60 MAY BE USED.

CERTIFICATE

05 July 2012
(Date)

FOR: [Redacted]

This is to certify that according to medical records at Womack Army Medical Center, Fort Bragg, North Carolina 28310, [Redacted] (Patient's Name) was examined at the facility on 7/5/12. The attending physician has recommended the following:

- Did not ___ days.
- May not return to work for ___ days.
- May not return to school for ___ days.
- May / May not participate in Physical Education Classes.
- May / May not participate in contact sports.
- May return to work.
- May return to school.

Remarks: 18 y/o with comorbidities, encopresis, ADD, Anxiety Disorder, Reading Disorder followed by Womack, Duke & UNC. Due to his significant anxiety and due to regular peer social support, it is being strongly recommended that [Redacted] change from his current school to Mary McArthur Elementary school which provides learning through the arts (as per IEP Psychologist [Redacted]).

[Redacted]
(Type Name and Title)
[Redacted]
(Telephone Number)



DEPARTMENT OF THE ARMY
WOMACK ARMY MEDICAL CENTER
3817 RIBBLY ROAD
FORT BRAGG, NORTH CAROLINA 28310-7124

MCHC/PE

19Aug2014

MEMORANDUM FOR Chair, Cumberland County Board of Education

SUBJECT: [Redacted]

1. This is a medical statement for above patient, DOB [Redacted].
2. Mr. [Redacted] is a 13y/o Male who has been followed in my clinic after sustaining 2 separate /traumatic Brain Injury (TBI) events. As a result of these events, [Redacted] has developed severe post concussive syndrome with sequelae including: loss of memory, poor concentration, headaches, decreased auditory perception, decreased balance, and behavior changes. He has been evaluated by multiple medical specialties who all agree with these diagnoses. The long term management for Mr. [Redacted] is intensive neurorehabilitation. The requirements for successful rehabilitation will significantly impact his schooling.
3. It is my medical opinion that [Redacted] be placed on a 504 plan by your school district. I believe he will be best served by at home schooling by a dedicated tutor that can better work with the requirements of neurorehabilitation. [Redacted] will be better served with few distractions to his teaching.
4. I recommend that the 504 be inclusive of the time recommended by the neurorehabilitation team. After completion of rehab, he shall be integrated back into his normal school program with any new adjustments to his IEP.
5. Please feel free to contact the undersigned at [Redacted] or [Redacted].

FOR THE CHAIR: [Redacted]

By the end of today,
you will be able to...

1. UNDERSTAND HOW AN IEP IS SUPPOSED TO WORK.
2. IDENTIFY SPECIAL EDUCATION PROBLEMS.
3. EFFECTIVELY ADVOCATE FOR PATIENTS WITH SPECIAL EDUCATION PROBLEMS.
4. USE A "PRESCRIPTION PAD" TO HELP PATIENTS WITH SPECIAL EDUCATION PROBLEMS.

Prescription Pads for Education Problems

Take an IEP and call me in the spring...

Form letters to get started

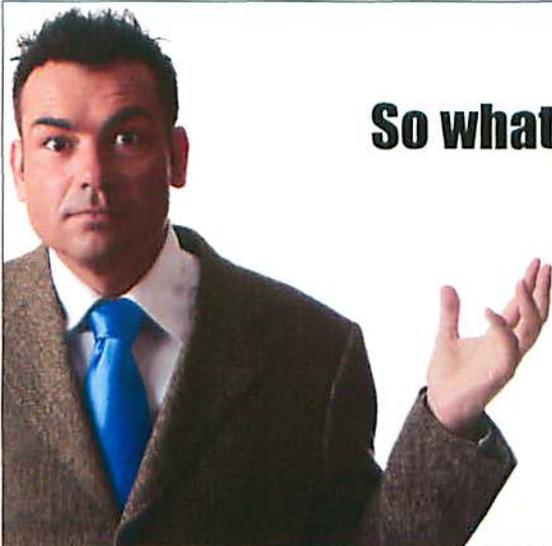


- Request an IEP evaluation
- Request written copies of evaluations
- Request school records
- Provide a diagnosis

Credibility



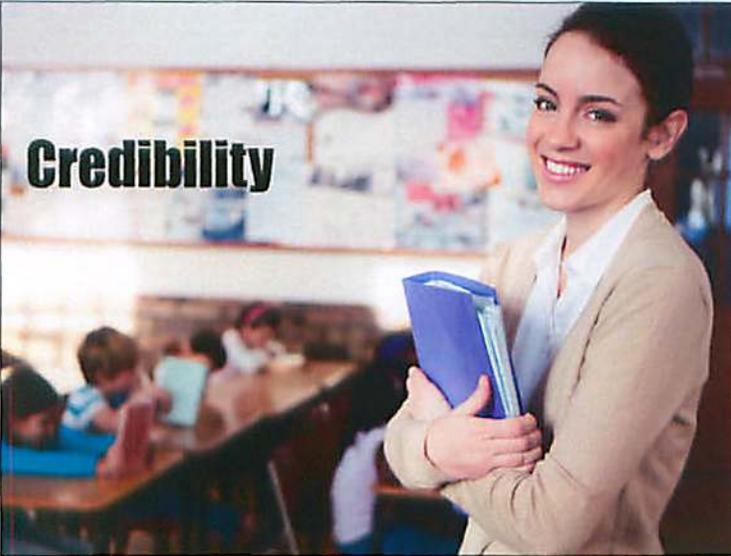
So what?



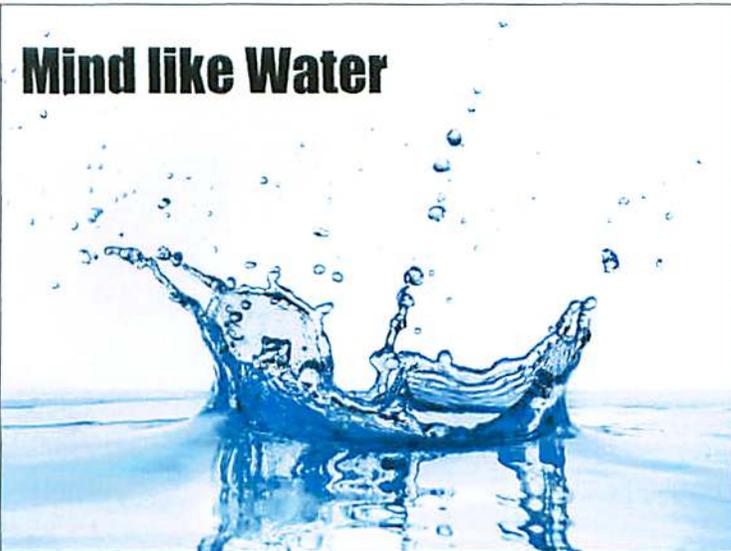
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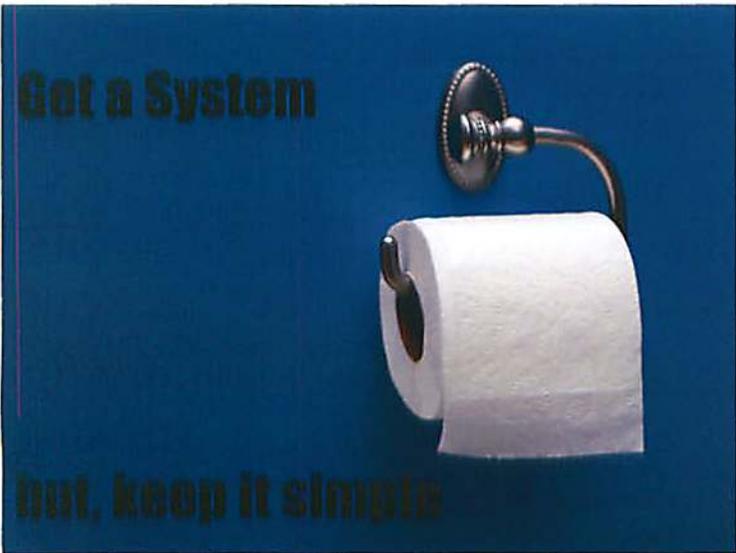
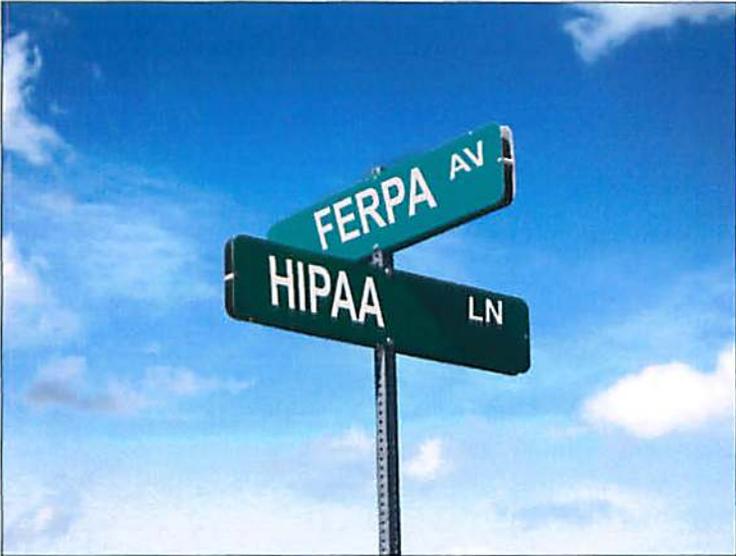
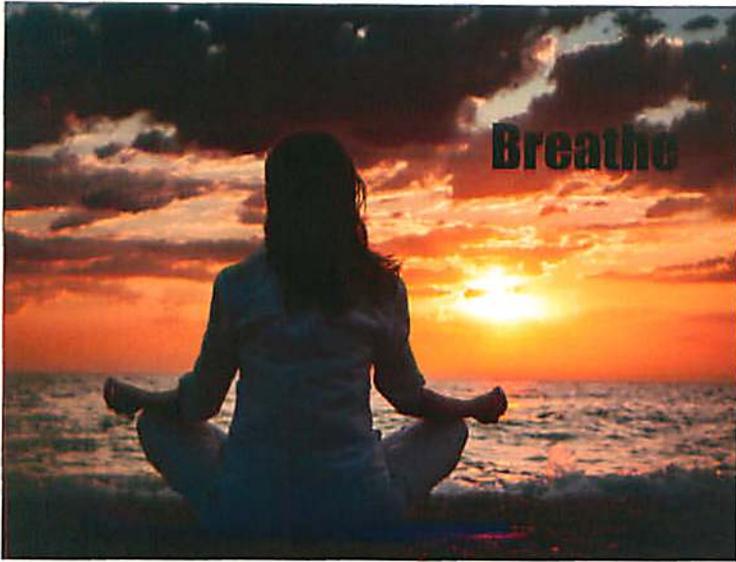


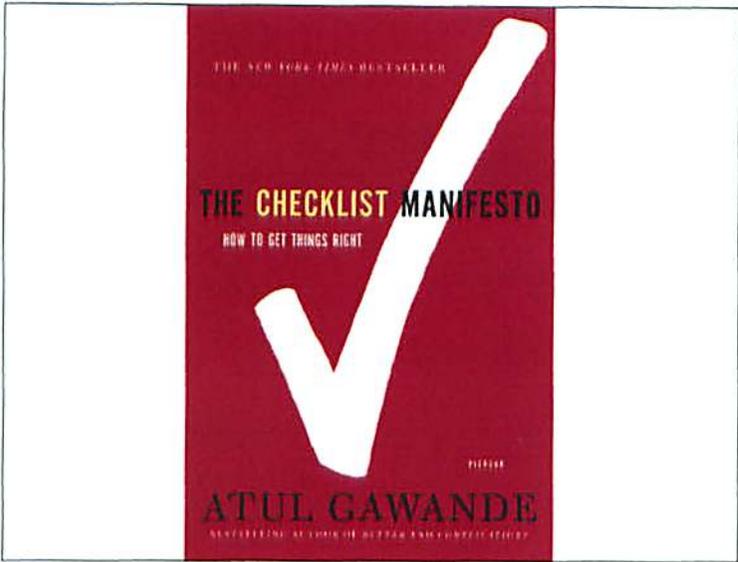
Credibility



Mind like Water







Make your questions sticky



- * Say "Thank You"
- * We Know This Kid
- * More Info = Better
- * Copy to Parents

Perfect Demographic

Name: [Redacted]
Address: [Redacted]
DOB: [Redacted]
Sex: Female

To Whom It May Concern:

[Redacted] is currently under my care for treatment and management of post-traumatic migraines. Due to this condition the child has been having severe and persistent migraines which will wake and wake in intensity. These can be unpredictable and lead to additional symptoms such as pain, nausea, and loss of sound sensitivity and fatigue. During the time she is typically incapacitated making it difficult for her to maintain her daily activities. She has been struggling with her headaches for several months and it has been brought to my attention that this has caused her to miss several days of school.

Due to her headaches she has also required intravenous treatments for her acute headaches requiring injections such as Dilaudid along with medications for nausea. She is also undergoing trial of different preventative and abortive medications to try and treat her headaches. One aspect frequently seen in migraines is that stress may lead to worse headaches. Additional stress related to her difficulties with school currently could be exacerbating her current state.

At this time it is my medical opinion that due to her frequent absence from her severe headaches, the child may benefit from a home bound status. Should you have any additional questions, please feel free to contact my office at your earliest convenience.

Sincerely,

[Redacted] MD
Virginia Board of Psychiatry and Licensure
Subspecialty: Sleep Medicine

Dear Dr. [Redacted]

Yesterday, we received an undated letter from you regarding [Redacted] and her condition. You invited us to contact you if we had questions, and that is the purpose of this letter.

Your letter indicates that [Redacted] headaches are unpredictable and may prevent her from maintaining her daily activities. You indicate that "this has caused her to miss several days of school." We are concerned because [Redacted] has missed much more than "several days," and we know that some of the time that she has missed has nothing to do with illness. As her health always comes first, when she has been here at school, she has demonstrated that she can perform her academic work with some accommodations and get the benefit of learning with her peer group.

We would appreciate you providing us the following information:

1. An explanation detailing the reasons why you are of the opinion (assuming that to be the case) that [Redacted] cannot physically come to school when she is not incapacitated from headaches.
2. An explanation detailing the medical barriers that [Redacted] may face with completing assignments at home.
3. An opinion as to the estimated amount of time that [Redacted] will be unable to physically attend school, and
4. Any information that you might have that would shed light on [Redacted] being able to travel for family events but not come to school.
5. If [Redacted] were to come to school, what do you suggest as the steps to take if she develops a headache? For example, if we allowed her to lie down in a quiet dark space, how long should we do that before we agree that she should go home for the remainder of the day? Do you have suggestions for steps that we might take to help her avoid getting headaches while she is here?

We have a wealth of experience with [Redacted] as she joined [Redacted] at the beginning of last school year, but the information that you can provide will truly help us to be even more knowledgeable regarding [Redacted] educational ability and needs at this time. As noted below, we are sending a copy of this letter to [Redacted] mother. Thank you for your time.

[Redacted]
Principal

March 8, 2015

Perfect Demographic

Name: [Redacted]
Address: [Redacted]
DOB: [Redacted]

Dear Ms. [Redacted]

Our office received your request for dates and times [Redacted] office visits at [Redacted]. Please see below the days, times, and doctor [Redacted] visits. If you have any further questions, please do not hesitate to contact our office.

Date	Time	Doc.
04/23/14	1:45 PM	Dr. [Redacted]
06/02/14	9:45 AM	Dr. [Redacted]
06/09/14	9:45 AM	Dr. [Redacted]
06/16/14	1:30 PM	Dr. [Redacted]
11/20/14	12:45 PM	Dr. [Redacted]
12/09/14	11:45 PM	Dr. [Redacted]
12/16/14	3:00 PM	Dr. [Redacted]
01/27/15	11:00 AM	Dr. [Redacted]
03/11/15	next sept.	Dr. [Redacted]

[Redacted] was also seen at the Outpatient Infusion . . . Hospital for DME infusions for her headaches on the following dates: 6/23/14, 6/17/14, and 3/12/15.

Sincerely,
[Redacted] MD

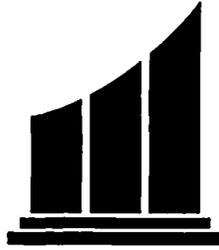
Thanks!



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CONFRONTING THE PRESCRIPTION PAD IEP

JAMES G. MIDDLEBROOKS

65TH CONFERENCE ON EXCEPTIONAL CHILDREN
NOVEMBER 2015



SPECIAL ED LAW

www.ncspecialedlaw.com

Introduction

Smart education professionals welcome information about their students from all **relevant** sources, but they recognize that not all information is entitled to the same weight. How much weight each bit of information should be given depends totally upon the circumstances and context. Critical analysis, healthy skepticism, and asking relevant questions are must-have tools.

Information from medical providers often comes in the form of a directive. For example, one day after school, Johnny breaks his ankle in a bicycling accident. He misses a few days, and when he comes back, cast and all, he brings a note from his doctor that states: “Johnny may not participate in weight-bearing PE activities until his cast comes off, which I anticipate to be in approximately six weeks.” Most educational professionals would view this note as (a) easy to understand; (b) easy to follow; and (c) completely within the physician’s “medical domain.”

But what about situations when the doctor’s message is not so easily cataloged as being completely within the “medical domain”? Consider this scenario: Mary is a 12-year-old seventh-grader with an undisputed diagnosis of ADHD. Her treating physician sends a letter, stating “In my medical opinion, because of her attentional issues, Mary needs to have a planning agenda where she can track her assignments. She should capture her assignments by writing in the agenda, and each teacher should initial the agenda at the end of the class period to confirm that Mary has recorded the assignment correctly.” Although it states that this suggestion is based in the doctor’s “medical opinion,” is what the doctor prescribes a “medical” treatment or an educational one? That’s the first of many issues that a savvy educator will think about upon receipt of such a letter.

In this presentation, we will explore the rules applicable to communication between educational and medical professionals¹, how that communication occurs, and discuss strategies that

¹ Note the choice of terminology. One way of moving past the intimidation factor of doctors is to characterize them properly. Doctors are professionals with their own area of expertise that is different from (but not better than) the expertise of educators.

will improve educators' responses to physician directives. Those strategies should lead to better communication between the professions and, thus, to better student outcomes.

The Intersection of FERPA and HIPAA

A good starting point in the quest for improved communication between educational and medical professionals is to understand the federal laws that govern the disclosure of relevant information. The focus here will be on the intersection between the two laws as opposed to an in-depth discussion of both.

Relevant FERPA Basics

The Family Educational Rights and Privacy Act (20 U.S.C. § 1231g; 34 C.F.R. Part 99) gives parents (or eligible students) the right (a) to access a student's educational records; (b) to seek correction of those records if they contain false or misleading information; (c) to control (in many, but not all, situations) the disclosure of information from those records. The term "educational records" means those records that contain information directly related to a student and are maintained by the educational agency or its agent.

One significant provision of FERPA allows school districts to disclose "directory information": name, address, email address, dates of attendance, grade level, participation in officially recognized activities and honors, etc. Parents (and eligible students) must be given notice of what a school district considers to be "directory information" and be given an opportunity to prohibit the release of such information. Many districts in North Carolina comply by listing the information in the Parent-Student Handbook distributed at the first of each school year.

FERPA also allows the disclosure of information educational records in connection with an emergency if the information is necessary to protect the health or safety of the student or other individuals. This exception is limited to the duration of the emergency. For purposes of today's presentation, the "health/safety emergency" rule will not be in play.

Relevant HIPAA Basics

The Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d; 45 C.F.R. Parts 160, 162, and 164) protects the privacy of “protected health information” that resides in the possession of “covered entities.”

A “covered entity” includes any health care provider, plan, or clearinghouse that transmits health information electronically (usually for reimbursement from governmental or private health insurance plans). Thus, a school district could be considered a “covered entity” if it transmits health information electronically (*e.g.*, to obtain Medicaid reimbursement for related services).

“Protected health information” is defined in HIPAA’s regulations as individually identifiable health information regarding (a) an individual’s physical or mental health condition or status; (b) the provision of health care to that person; (c) or payment issues relating to the provision of health care for that individual. HIPAA specifically exempts from its purview and regulation information contained in educational records that is governed by FERPA. Accordingly, medical and health information in the typical student cumulative file is regulated under FERPA rather than HIPAA.

HIPAA prevents the disclosure of “protected health information” without written authorization. For purposes of this presentation, educational professionals should remember that the burden for getting authorization to release “protected health information” rests with the medical professional.²

Like FERPA, HIPAA has several exceptions to the requirement for written authorization. The most relevant one for this discussion is the disclosure for “treatment” purposes. “Treatment” is defined as the provision, coordination, or management of health care and related services by one or more health care providers, including care coordination or management by a health care provider with a third party.

² This is a critical point to remember when working at the intersection of FERPA and HIPAA.

Working at the Intersection of FERPA and HIPAA

When school staff receive letters or notes (or even “prescriptions”) from doctors, they often fail to subject the communication to any meaningful critical analysis. To better serve their students, this reticence must give way to better communication between medical and educational professionals. The first step is understanding the procedural rules that apply at the intersection of FERPA and HIPAA.

Take Johnny’s broken ankle example from above. The medical professional might not need authorization under HIPAA to write her note to the school about prohibiting weight-bearing PE activities if she views that communication as care coordination between herself (the “health care provider”) and the school (“third party”). A key concept to remember in representing education clients here is that the medical professional, and usually not the school, is responsible for complying with HIPAA. Except in the very narrow instance where the school is acting as a “covered entity,” it need worry only about FERPA compliance.

If the school staff had questions about Johnny’s ankle injury and his recovery, the most straightforward approach is to obtain a two-way release/authorization from the parents that would allow the educators and physicians to exchange information. (I have provided a sample two-way authorization for the exchange of information with these materials). Obviously, if a parent signs the authorization, then the threshold procedural niceties have been satisfied.

What if the parents won’t sign? Then, the first step is to determine if the parents asked the district not to disclose FERPA directory information. That form should be maintained in the student’s cumulative folder. If they did seek to prohibit release of directory information, then a school district may be stymied unless one of the other FERPA exceptions apply. For the balance of this discussion, I will assume that the parents placed no such restriction on directory information.

With that assumption in place, here are suggested procedural steps when deciding how to respond to a doctor’s letter about a student:

- Involve the relevant teachers and support professionals. Do not leave this to one educator.
- The first contact should almost always be in writing.
- If the doctor closed her letter with an invitation to contact her with any questions, make it clear that you are accepting that invitation in the start of the letter.

For example: “We received your letter dated July 13th regarding Johnny Jones. At the close of your letter, you invited us to contact you if we had questions, and that is the purpose of this letter.”

- Written communication from the school should always show both in the body of the document and in the “cc” line that the parent is being copied.
- Given that the parent did not give the district a two-way release, consider the following way of dealing with consent and notice the parents:

“We assume that Johnny’s parents authorized you to continue to share information with us given that your letter closes with an invitation to contact you with additional questions. As you can tell, we are sending a copy of this letter to his parents. We greatly appreciate the information that you might be able to provide.”

Analyzing the Medical Professional’s Communication

Before forming the response to the medical professional, school staff should carefully analyze the communication. My goal in analyzing and perhaps responding to a communication from a medical professional is to help the educational professionals realize that it is just another piece of information. It may be a great, or it may not be worthy of attention. But educators should not move forward without analyzing both the communication and (just as importantly) its context. Moreover, given the unbelievable deference that society (including some judges) seem to give to medical doctors, your school client must tread carefully — especially if litigation might be on the horizon.

Here are the questions and issues that I suggest putting on your list (Obviously, you have to tailor the questions to the particulars of the communication):

- How does what the medical professional describe compare to what the educators experience with the student at school on a daily basis? If what the doctor describes “rings true,” then the communication may be entitled to more weight.

- If it does not “ring true.” is the doctor describing something that the educators should have seen at school? If the communication seems significantly at odds with what the staff experiences with the student, look for reasons that might explain the doctor’s statements.
- If the condition was something that should have been observable only at particular times (*e.g.*, after lunch), make sure you are asking the right teachers about it. If it is an all-day issue, then ask all the teachers.
- The school works with the student for about 6.5 hours per day (at least). That’s over 30 hours per week. How much time has the doctor spent with the student? How many office visits have there been in the current academic year? Or is this a situation where the contact with the doctor is largely by telephone?
- Is the doctor’s communication clear and understandable? If it is handwritten, are you certain about what each word is? (It’s a problem.) Once you have identified the words, do they make sense? Doctors can be just as guilty as the rest of us for failing to communicate clearly. If the note is filled with medical jargon, you might need clarification of its meaning before you can determine if it fits what you see at school.
- Can the reader tell who provided the “history” portion of the report? A solid medical report will clearly inform the reader of the source of each piece of information. For example, rather than saying that Johnny has been diagnosed with PTSD, the better statement would be that Dr. Monica Merit of Mercy Medical Group diagnosed Johnny with PTSD in 2005. Often, the parents serve as the source of the medical “history” without attribution. Determine whether it is important to ask about that. I’ve encountered medical reports that make incorrect and harmful statements about school issues without attribution. Educational professionals should not be afraid to politely but firmly set the record straight in writing and to ask the medical professional about the source of that information.
- Are the statements, suggestions, or directives in the communication “medical,” “educational,” or somewhere in the murky in-between? In the example above, telling the school that Johnny should not have weight-bearing PE activities while his broken ankle heals certainly sounds like it lies in the “medical” column. By contrast, the following suggestion is most certainly not a “medical” statement despite the doctor’s language: “It is my medical opinion that Johnny be placed on a 504 plan by your school district. I believe he will be best served by at home schooling by a dedicated tutor that can better work with the requirements of neurorehabilitation.”
- How well has the school staff done its job of documenting its work with the student? How confident are they as a team in making sound educational decisions?
- Did the doctor close with an invitation to “Please feel free to contact me if you have any questions”?
- What are the pros and cons of contacting the doctor for clarification or more information? Will a judge look unkindly on a district’s failure to follow-up on the doctor’s invitation “to contact me if you have any questions”?

- If the matter might be headed to litigation, how will it look if you contacted the doctor without prior parental authorization? (Remember, the school district would not be disclosing anything other than directory information under FERPA.) Does the physician's invitation to contact him imply consent from the parents (because the doctor presumably is acting as the parents' agent on this topic)?
- If the school district decides to contact the doctor, who is the best person to do that in writing? If you ultimately need to have a verbal exchange of information, who is in the best position to handle that task?
- When you review the draft of the letter back to the doctor, can you (and more importantly, can the educators) explain the relevance of each question you ask?
- For each question that you intend to ask, consider how the educators can and should respond to the various answers those questions will generate.

Contacting the Medical Professional for More Information

Once the decision is made to contact the medical professional for additional information or clarification, an educational professional (and her school attorney) should proceed as if every step will be scrutinized by a reviewing judge. Here are suggested points to consider:

- Should the contact be oral or in writing? I strongly believe that written communication is far better — especially at the beginning. When issues are placed in writing, there can be no misunderstanding about what someone said or how a problem was described.
- Every “rule” has its exception: If the doctor has provided a handwritten document and you are not completely certain about what the words are, call his office and get someone to tell you what it says. Read it back to the office staffer, and confirm that you have it right.
- Make sure every word and every thought in the school's letter is professional and relevant.
- Start the letter by acknowledging the communication and thanking the medical professional for her input: “Thank you very much for your letter dated July 14th concerning Mary Merit, which we received yesterday.”
- Next, if the medical professional put in the “please contact me if you have questions” line, tell them that you are accepting the invitation: “In your letter, you kindly invited us to contact you with any questions we might have, and that is the purpose of this letter.”
- Make your questions relevant. For example, do not ask a question about how many times the student has seen the doctor and for what period of time unless you conclude that it might be productive to compare and contrast the amount of time the doctor has spent with the student with the amount of time education professionals spend with the student.
- If the medical professional mentions medication changes, consider asking what the changes are, when were they made, what change in the student would the doctor expect to occur by

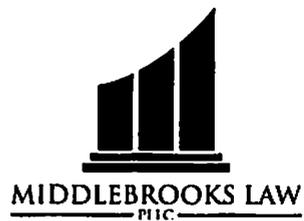
virtue of the medication change, and what the education professionals should be watching for. Again, ask these questions only if the answers are relevant to your decision-making process.

- Consider whether to ask the medical professional to chime in on information that the educators have but that the parent might have kept from the doctor. For example, the doctor's letter tells you that a child is too sick to come to school and needs homebound instruction, but you know that the child is traveling frequently out of state to visit family. What are the pros and cons of asking the doctor about her thoughts on why the student might be too sick to come to school but still be able to travel for non-medical reasons?
- Put your questions/requests for information in a numbered list. That helps the educators and reviewing judges to match the school's questions to the doctor's response.
- Toward the close of the letter, put in a statement that reminds the medical professional that the educational professionals have tons of experience with this student and that the information she provides will assist them in making *educational* decisions. Here is one suggested form: "As you probably know, Mary has been a student here since 2005, and we have a wealth of experience with her. We always believe that additional information might lead us to make even better educational decisions for Mary."
- Thank the medical professional again for her input, and note that you are sending a copy of the letter to the parent: "Thank you again for your letter and your willingness to provide this requested clarification. Please note that we are sending a copy of this letter to Mary's parents."
- After you finished the draft, review it for simplicity, brevity, and clarity.
- Look over it again to confirm that the letter does not make an unauthorized disclosure of student information protected by FERPA.
- Consider who should sign the letter on behalf of the school district. My default is usually the school psychologist. It should be the person who is in the best position (a) to conduct any verbal discussions with the doctor or her staff and/or (b) to explain the thinking behind the questions and the meaning of any responses to a third-party like a reviewing judge.

Conclusion

Medical professionals can be indispensable partners with education professionals in the never-ending quest for improving student services and outcomes. Educators need to understand that the information that doctors provide can be helpful but that it should not automatically control their educational decisions for the student. Asking questions that have been thoroughly considered in advance is often the most direct way of testing information from medical professionals — especially in situations where the school suspects that the parents are pushing their child's doctor to dictate a specific educational course that differs from the school's.

My own closing invitation: Feel free to reach out to me if you have these issues. If you have faced them in the past, let me know because I continue to collect information and additional examples.



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U.S. Department of Health
and Human Services



U.S. Department of Education

**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**

November 2008

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	14. Does FERPA permit a postsecondary institution to disclose a student’s treatment records or education records to law enforcement, the student’s parents, or others if the institution believes the student presents a serious danger to self or others?	
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I. Introduction

The purpose of this guidance is to explain the relationship between the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)* Privacy Rule, and to address apparent confusion on the part of school administrators, health care professionals, and others as to how these two laws apply to records maintained on students. It also addresses certain disclosures that are allowed without consent or authorization under both laws, especially those related to health and safety emergency situations. While this guidance seeks to answer many questions that school officials and others have had about the intersection of these federal laws, ongoing discussions may cause more issues to emerge. Contact information for submitting additional questions or suggestions for purposes of informing future guidance is provided at the end of this document. The Departments of Education and Health and Human Services are committed to a continuing dialogue with school officials and other professionals on these important matters affecting the safety and security of our nation's schools.

II. Overview of FERPA

FERPA is a Federal law that protects the privacy of students' "education records." (See 20 U.S.C. § 1232g; 34 CFR Part 99). *FERPA* applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. This includes virtually all public schools and school districts and most private and public postsecondary institutions, including medical and other professional schools. If an educational agency or institution receives funds under one or more of these programs, *FERPA* applies to the recipient as a whole, including each of its components, such as a department within a university. See 34 CFR § 99.1(d).

Private and religious schools at the elementary and secondary level generally do not receive funds from the Department of Education and are, therefore, not subject to *FERPA*. Note that a private school is not made subject to *FERPA* just because its students and teachers receive services from a local school district or State educational agency that receives funds from the Department. The school itself must receive funds from a program administered by the Department to be subject to *FERPA*. For example, if a school district places a student with a disability in a private school that is acting on behalf of the school district with regard to providing services to that student, the records of that student are subject to *FERPA*, but not the records of the other students in the private school. In such cases, the school district remains responsible for complying with *FERPA* with respect to the education records of the student placed at the private school.

An educational agency or institution subject to *FERPA* may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student's written consent. See 34 CFR § 99.30. *FERPA* contains several exceptions to this general consent rule. See 34 CFR § 99.31. An "eligible student" is a student who is at least 18 years of age or who attends a postsecondary institution at any age. See 34 CFR §§ 99.3 and 99.5(a). Under *FERPA*, parents and eligible students have the right to inspect and review the student's education records and to seek to have them amended in certain circumstances. See 34 CFR §§ 99.10 – 99.12 and §§ 99.20 – 99.22.

The term "education records" is broadly defined to mean those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the

agency or institution. See 34 *CFR* § 99.3. At the elementary or secondary level, a student's health records, including immunization records, maintained by an educational agency or institution subject to *FERPA*, as well as records maintained by a school nurse, are "education records" subject to *FERPA*. In addition, records that schools maintain on special education students, including records on services provided to students under the *Individuals with Disabilities Education Act (IDEA)*, are "education records" under *FERPA*. This is because these records are (1) directly related to a student, (2) maintained by the school or a party acting for the school, and (3) not excluded from the definition of "education records."

At postsecondary institutions, medical and psychological treatment records of eligible students are excluded from the definition of "education records" if they are made, maintained, and used only in connection with treatment of the student and disclosed only to individuals providing the treatment. See 34 *CFR* § 99.3 "Education records." These records are commonly called "treatment records." An eligible student's treatment records may be disclosed for purposes other than the student's treatment, provided the records are disclosed under one of the exceptions to written consent under 34 *CFR* § 99.31(a) or with the student's written consent under 34 *CFR* § 99.30. If a school discloses an eligible student's treatment records for purposes other than treatment, the records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements.

The *FERPA* regulations and other helpful information can be found at:
<http://www.ed.gov/policy/gen/guid/fpco/index.html>.

III. Overview of *HIPAA*

Congress enacted *HIPAA* in 1996 to, among other things, improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Collectively, these are known as *HIPAA*'s Administrative Simplification provisions, and the U.S. Department of Health and Human Services has issued a suite of rules, including a privacy rule, to implement these provisions. Entities subject to the *HIPAA* Administrative Simplification Rules (see 45 *CFR* Parts 160, 162, and 164), known as "covered entities," are health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions. See 45 *CFR* § 160.103. "Health care providers" include institutional providers of health or medical services, such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See 45 *CFR* § 160.103 (definitions of "health care provider" and "transaction") and 45 *CFR* Part 162, Subparts K–R.

The *HIPAA* Privacy Rule requires covered entities to protect individuals' health records and other identifiable health information by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

IV. Where *FERPA* and *HIPAA* May Intersect

When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a “health care provider” as defined by *HIPAA*. If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under *HIPAA*. As a covered entity, the school must comply with the *HIPAA* Administrative Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions. However, many schools, even those that are *HIPAA* covered entities, are not required to comply with the *HIPAA* Privacy Rule because the only health records maintained by the school are “education records” or “treatment records” of eligible students under *FERPA*, both of which are excluded from coverage under the *HIPAA* Privacy Rule. See the exception at paragraph (2)(i) and (2)(ii) to what is considered “protected health information” (PHI) at 45 *CFR* § 160.103. In addition, the exception for records covered by *FERPA* applies both to the *HIPAA* Privacy Rule, as well as to the *HIPAA* Security Rule, because the Security Rule applies to a subset of information covered by the Privacy Rule (i.e., electronic PHI). Information on the *HIPAA* Privacy Rule is available at: <http://www.hhs.gov/ocr/hipaa/>. Information on the other *HIPAA* Administrative Simplification Rules is available at: <http://www.cms.hhs.gov/HIPAAGenInfo/>.

V. Frequently Asked Questions and Answers

1. Does the *HIPAA* Privacy Rule apply to an elementary or secondary school?

Generally, no. In most cases, the *HIPAA* Privacy Rule does not apply to 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* and, therefore, is not subject to the *HIPAA* Privacy Rule.

- *The school is not a HIPAA covered entity.* The *HIPAA* Privacy Rule only applies to health plans, health care clearinghouses, and those health care providers that transmit health information electronically in connection with certain administrative and financial transactions (“covered transactions”). See 45 *CFR* § 160.102. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See the definition of “transaction” at 45 *CFR* § 160.103 and 45 *CFR* Part 162, Subparts K–R. Thus, even though a school employs school nurses, physicians, psychologists, or other health care providers, the school is not generally a *HIPAA* covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services. It is expected that most elementary and secondary schools fall into this category.
- *The school is a HIPAA covered entity but does not have “protected health information.”* Where a school does employ a health care provider that conducts one or more covered transactions electronically, such as electronically transmitting health care claims to a health plan for payment, the school is a *HIPAA* covered entity and must comply with the *HIPAA* Transactions and Code Sets and Identifier Rules with respect to such transactions. However, even in this case, many schools would not be required to comply with the *HIPAA* Privacy Rule because the school maintains health information only in student health records that are “education records” under *FERPA* and, thus, not “protected health information” under

HIPAA. Because student health information in education records is protected by *FERPA*, the *HIPAA* Privacy Rule excludes such information from its coverage. See the exception at paragraph (2)(i) to the definition of “protected health information” in the *HIPAA* Privacy Rule at 45 *CFR* § 160.103. For example, if a public high school employs a health care provider that bills Medicaid electronically for services provided to a student under the *IDEA*, the school is a *HIPAA* covered entity and would be subject to the *HIPAA* requirements concerning transactions. However, if the school’s provider maintains health information only in what are education records under *FERPA*, the school is not required to comply with the *HIPAA* Privacy Rule. Rather, the school would have to comply with *FERPA*’s privacy requirements with respect to its education records, including the requirement to obtain parental consent (34 *CFR* § 99.30) in order to disclose to Medicaid billing information about a service provided to a student.

2. How does *FERPA* apply to health records on students maintained by elementary or secondary schools?

At the elementary or secondary school level, students’ immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are “education records” subject to *FERPA*, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district. Some schools may receive a grant from a foundation or government agency to hire a nurse. Notwithstanding the source of the funding, if the nurse is hired as a school official (or contractor), the records maintained by the nurse or clinic are “education records” subject to *FERPA*.

Parents have a right under *FERPA* to inspect and review these health and medical records because they are “education records” under *FERPA*. See 34 *CFR* §§ 99.10 – 99.12. In addition, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to *FERPA*’s general consent requirement. For instance, one of these exceptions allows schools to disclose a student’s health and medical information and other “education records” to teachers and other school officials, without written consent, if these school officials have “legitimate educational interests” in accordance with school policy. See 34 *CFR* § 99.31(a)(1). Another exception permits the disclosure of education records, without consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 *CFR* §§ 99.31(a)(10) and 99.36.

3. Does *FERPA* or *HIPAA* apply to elementary or secondary school student health records maintained by a health care provider that is not employed by a school?

If a person or entity acting on behalf of a school subject to *FERPA*, such as a school nurse that provides services to students under contract with or otherwise under the direct control of the school, maintains student health records, these records are education records under *FERPA*, just as they would be if the school maintained the records directly. This is the case regardless of whether the health care is provided to students on school grounds or off-site. As education records, the information is protected under *FERPA* and not *HIPAA*.

Some outside parties provide services directly to students and are not employed by, under contract to, or otherwise acting on behalf of the school. In these circumstances, these records are not “education records” subject to *FERPA*, even if the services are provided on school grounds, because the party creating and maintaining the records is not acting on behalf of the school. For example, the records created by a public health nurse who provides immunization or other health services to students on school grounds or otherwise in connection with school activities but who is not acting on behalf of the school would not be “education records” under *FERPA*. In such situations, a school that wishes to disclose to this outside party health care provider any personally identifiable information from education records would have to comply with *FERPA* and obtain parental consent. See 34 *CFR* § 99.30.

With respect to *HIPAA*, even where student health records maintained by a health care provider are not education records protected by *FERPA*, the *HIPAA* Privacy Rule would apply to such records only if the provider conducts one or more of the *HIPAA* transactions electronically, e.g., billing a health plan electronically for his or her services, making the provider a *HIPAA* covered entity.

4. Are there circumstances in which the *HIPAA* Privacy Rule might apply to an elementary or secondary school?

There are some circumstances in which an elementary or secondary school would be subject to the *HIPAA* Privacy Rule, such as where the school is a *HIPAA* covered entity and is not subject to *FERPA*. As explained previously, most private schools at the elementary and secondary school levels typically do not receive funding from the U.S. Department of Education and, therefore, are not subject to *FERPA*.

A school that is not subject to *FERPA* and is a *HIPAA* covered entity must comply with the *HIPAA* Privacy Rule with respect to any individually identifiable health information it has about students and others to whom it provides health care. For example, if a private elementary school that is not subject to *FERPA* employs a physician who bills a health plan electronically for the care provided to students (making the school a *HIPAA* covered entity), the school is required to comply with the *HIPAA* Privacy Rule with respect to the individually identifiable health information of its patients. The only exception would be where the school, despite not being subject to *FERPA*, has education records on one or more students to whom it provides services on behalf of a school or school district that is subject to *FERPA*. In this exceptional case, the education records of only those publicly-placed students held by the private school would be subject to *FERPA*, while the remaining student health records would be subject to the *HIPAA* Privacy Rule.

5. Where the *HIPAA* Privacy Rule applies, does it allow a health care provider to disclose protected health information (PHI) about a troubled teen to the parents of the teen?

In most cases, yes. If the teen is a minor, the *HIPAA* Privacy Rule generally allows a covered entity to disclose PHI about the child to the child’s parent, as the minor child’s personal representative, when the disclosure is not inconsistent with state or other law. For more detailed information, see 45 *CFR* § 164.502(g) and the fact sheet regarding personal representatives at: <http://www.hhs.gov/ocr/hipaa/guidelines/personalrepresentatives.pdf>. In some cases, such as when a minor may receive treatment without a parent’s consent under applicable law, the parents are not treated as the minor’s personal representative. See 45 *CFR* § 164.502(g)(3). In such cases where

the parent is not the personal representative of the teen, other *HIPAA* Privacy Rule provisions may allow the disclosure of PHI about the teen to the parent. For example, if a provider believes the teen presents a serious danger to self or others, the *HIPAA* Privacy Rule permits a covered entity to disclose PHI to a parent or other person(s) if the covered entity has a good faith belief that: (1) the disclosure is necessary to prevent or lessen the threat and (2) the parent or other person(s) is reasonably able to prevent or lessen the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 *CFR* § 164.512(j)(1)(i).

In addition, the Privacy Rule permits covered entities to share information that is directly relevant to the involvement of a family member in the patient's health care or payment for care if, when given the opportunity, the patient does not object to the disclosure. Even when the patient is not present or it is impracticable, because of emergency circumstances or the patient's incapacity, for the covered entity to ask the patient about discussing his or her care or payment with a family member, a covered entity may share this information with the family member when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 *CFR* § 164.510(b).

6. Where the *HIPAA* Privacy Rule applies, does it allow a health care provider to disclose protected health information (PHI) about a student to a school nurse or physician?

Yes. The *HIPAA* Privacy Rule allows covered health care providers to disclose PHI about students to school nurses, physicians, or other health care providers for treatment purposes, without the authorization of the student or student's parent. For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.

7. Does *FERPA* or *HIPAA* apply to records on students at health clinics run by postsecondary institutions?

FERPA applies to most public and private postsecondary institutions and, thus, to the records on students at the campus health clinics of such institutions. These records will be either education records or treatment records under *FERPA*, both of which are excluded from coverage under the *HIPAA* Privacy Rule, even if the school is a *HIPAA* covered entity. See the exceptions at paragraphs (2)(i) and (2)(ii) to the definition of "protected health information" at 45 *CFR* § 160.103.

The term "education records" is broadly defined under *FERPA* to mean those records that are: (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. See 34 *CFR* § 99.3, "Education records."

"Treatment records" under *FERPA*, as they are commonly called, are:

records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records

can be personally reviewed by a physician or other appropriate professional of the student's choice.

See 20 U.S.C. § 1232g(a)(4)(B)(iv); 34 CFR § 99.3, "Education records." For example, treatment records would include health or medical records that a university psychologist maintains only in connection with the provision of treatment to an eligible student, and health or medical records that the campus health center or clinic maintains only in connection with the provision of treatment to an eligible student. (Treatment records also would include health or medical records on an eligible student in high school if the records otherwise meet the above definition.)

"Treatment records" are excluded from the definition of "education records" under *FERPA*. However, it is important to note, that a school may disclose an eligible student's treatment records for purposes other than the student's treatment provided that the records are disclosed under one of the exceptions to written consent under 34 CFR § 99.31(a) or with the student's written consent under 34 CFR § 99.30. If a school discloses an eligible student's treatment records for purposes other than treatment, the treatment records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements, including the right of the eligible student to inspect and review the records.

While the health records of students at postsecondary institutions may be subject to *FERPA*, if the institution is a *HIPAA* covered entity and provides health care to *nonstudents*, the individually identifiable health information of the clinic's *nonstudent* patients is subject to the *HIPAA* Privacy Rule. Thus, for example, postsecondary institutions that are subject to both *HIPAA* and *FERPA* and that operate clinics open to staff, or the public, or both (including family members of students) are required to comply with *FERPA* with respect to the health records of their student patients, and with the *HIPAA* Privacy Rule with respect to the health records of their *nonstudent* patients.

8. Under *FERPA*, may an eligible student inspect and review his or her "treatment records"?

Under *FERPA*, treatment records, by definition, are not available to anyone other than professionals providing treatment to the student, or to physicians or other appropriate professionals of the student's choice. However, this does not prevent an educational institution from allowing a student to inspect and review such records. If the institution chooses to do so, though, such records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements.

9. Under *FERPA*, may an eligible student's treatment records be shared with parties other than treating professionals?

As explained previously, treatment records, by definition, are not available to anyone other than professionals providing treatment to the student, or to physicians or other appropriate professionals of the student's choice. However, this does not prevent an educational institution from using or disclosing these records for other purposes or with other parties. If the institution chooses to do so, a disclosure may be made to any party with a prior written consent from the eligible student (see 34 CFR § 99.30) or under any of the disclosures permitted without consent in 34 CFR § 99.31 of *FERPA*.

For example, a university physician treating an eligible student might determine that treatment records should be disclosed to the student's parents. This disclosure may be made if the eligible student is claimed as a dependent for federal income tax purposes (see 34 *CFR* § 99.31(a)(8)). If the eligible student is not claimed as a dependent, the disclosure may be made to parents, as well as other appropriate parties, if the disclosure is in connection with a health or safety emergency. See 34 *CFR* §§ 99.31(a)(10) and 99.36. Once the records are disclosed under one of the exceptions to *FERPA*'s general consent requirement, the treatment records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements as "education records" under *FERPA*.

10. Under what circumstances does *FERPA* permit an eligible student's treatment records to be disclosed to a third-party health care provider for treatment?

An eligible student's treatment records may be shared with health care professionals who are providing treatment to the student, including health care professionals who are not part of or not acting on behalf of the educational institution (i.e., third-party health care provider), as long as the information is being disclosed only for the purpose of providing treatment to the student. In addition, an eligible student's treatment records may be disclosed to a third-party health care provider when the student has requested that his or her records be "reviewed by a physician or other appropriate professional of the student's choice." See 20 *U.S.C.* § 1232g(a)(4)(B)(iv). In either of these situations, if the treatment records are disclosed to a third-party health care provider that is a *HIPAA* covered entity, the records would become subject to the *HIPAA* Privacy Rule. The records at the educational institution continue to be treatment records under *FERPA*, so long as the records are only disclosed by the institution for treatment purposes to a health care provider or to the student's physician or other appropriate professional requested by the student.

If the disclosure is for purposes other than treatment, an eligible student's treatment record only may be disclosed to a third party as an "education record," that is, with the prior written consent of the eligible student or if one of the exceptions to *FERPA*'s general consent requirement is met. See 34 *CFR* § 99.31. For example, if a university is served with a court order requiring the disclosure of the mental health records of a student maintained as treatment records at the campus clinic, the university may disclose the records to comply with the court order in accordance with the provisions of § 99.31(a)(9) of the *FERPA* regulations. However, the mental health records that the university disclosed for non-treatment purposes are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements as "education records" under *FERPA*.

11. Are all student records maintained by a health clinic run by a postsecondary institution considered "treatment records" under *FERPA*?

Not all records on eligible students that are maintained by a college- or university-run health clinic are treatment records under *FERPA* because many such records are not made, maintained, or used only in connection with the treatment of a student. For example, billing records that a college- or university-run health clinic maintains on a student are "education records" under *FERPA*, the disclosure of which would require prior written consent from the eligible student unless an exception applies. See 34 *CFR* § 99.30. In addition, records relating to treatment that are shared with persons other than professionals providing treatment to the student are "education records" under *FERPA*. Thus, to the extent a health clinic has shared a student's treatment information with

persons and for purposes other than for treatment, such information is an “education record,” not a treatment record under *FERPA*.

12. Does *FERPA* or *HIPAA* apply to records on students who are patients at a university hospital?

Patient records maintained by a hospital affiliated with a university that is subject to *FERPA* are not typically “education records” or “treatment records” under *FERPA* because university hospitals generally do not provide health care services to students on behalf of the educational institution. Rather, these hospitals provide such services without regard to the person’s status as a student and not on behalf of a university. Thus, assuming the hospital is a *HIPAA* covered entity, these records are subject to all of the *HIPAA* rules, including the *HIPAA* Privacy Rule. However, in a situation where a hospital does run the student health clinic on behalf of a university, the clinic records on students would be subject to *FERPA*, either as “education records” or “treatment records,” and not subject to the *HIPAA* Privacy Rule.

13. Where the *HIPAA* Privacy Rule applies, does it permit a health care provider to disclose protected health information (PHI) about a patient to law enforcement, family members, or others if the provider believes the patient presents a serious danger to self or others?

The *HIPAA* Privacy Rule permits a covered entity to disclose PHI, including psychotherapy notes, when the covered entity has a good faith belief that the disclosure: (1) is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others and (2) is to a person(s) reasonably able to prevent or lessen the threat. This may include, depending on the circumstances, disclosure to law enforcement, family members, the target of the threat, or others who the covered entity has a good faith belief can mitigate the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 *CFR* § 164.512(j)(1)(i). For example, consistent with other law and ethical standards, a mental health provider whose teenage patient has made a credible threat to inflict serious and imminent bodily harm on one or more fellow students may alert law enforcement, a parent or other family member, school administrators or campus police, or others the provider believes may be able to prevent or lessen the chance of harm. In such cases, the covered entity is presumed to have acted in good faith where its belief is based upon the covered entity’s actual knowledge (i.e., based on the covered entity’s own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member or other person). See 45 *CFR* § 164.512(j)(4).

For threats or concerns that do not rise to the level of “serious and imminent,” other *HIPAA* Privacy Rule provisions may apply to permit the disclosure of PHI. For example, covered entities generally may disclose PHI about a minor child to the minor’s personal representative (e.g., a parent or legal guardian), consistent with state or other laws. See 45 *CFR* § 164.502(b).

14. Does *FERPA* permit a postsecondary institution to disclose a student’s treatment records or education records to law enforcement, the student’s parents, or others if the institution believes the student presents a serious danger to self or others?

An eligible student's education records and treatment records (which are considered education records if used or made available for any purpose other than the eligible student's treatment) may be disclosed, without consent, if the disclosure meets one of the exceptions to *FERPA*'s general consent rule. See 34 *CFR* § 99.31. One of the permitted disclosures is to appropriate parties, which may include law enforcement or parents of a student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 *CFR* §§ 99.31(a)(10) and 99.36.

There are other exceptions that apply to disclosing information to parents of eligible students that are discussed on the "Safe Schools & FERPA" Web page, as well as other information that should be helpful to school officials, at:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html/>.

15. Are the health records of an individual who is both a student and an employee of a university at which the person receives health care subject to the privacy provisions of *FERPA* or those of *HIPAA*?

The individual's health records would be considered "education records" protected under *FERPA* and, thus, excluded from coverage under the *HIPAA* Privacy Rule. *FERPA* defines "education records" as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 *CFR* § 99.3 ("education records"). While *FERPA* excludes from this definition certain records relating to employees of the educational institution, to fall within this exclusion, such records must, among other things, relate exclusively to the individual in his or her capacity as an employee, such as records that were created in connection with health services that are available only to employees. Thus, the health or medical records that are maintained by a university as part of its provision of health care to a student who is also an employee of a university are covered by *FERPA* and not the *HIPAA* Privacy Rule.

16. Can a postsecondary institution be a "hybrid entity" under the *HIPAA* Privacy Rule?

Yes. A postsecondary institution that is a *HIPAA* covered entity may have health information to which the Privacy Rule may apply not only in the health records of nonstudents in the health clinic, but also in records maintained by other components of the institution that are not education records or treatment records under *FERPA*, such as in a law enforcement unit or research department. In such cases, the institution, as a *HIPAA* covered entity, has the option of becoming a "hybrid entity" and, thus, having the *HIPAA* Privacy Rule apply only to its health care unit. The school can achieve hybrid entity status by designating the health unit as its "health care component." As a hybrid entity, any individually identifiable health information maintained by other components of the university (i.e., outside of the health care component), such as a law enforcement unit, or a research department, would not be subject to the *HIPAA* Privacy Rule, notwithstanding that these components of the institution might maintain records that are not "education records" or treatment records under *FERPA*.

To become a hybrid entity, the covered entity must designate and include in its health care component all components that would meet the definition of a covered entity if those components were separate legal entities. (A covered entity may have more than one health care component.) However, the hybrid entity is not permitted to include in its health care component other types of components that do not perform the covered functions of the covered entity or components that do

not perform support activities for the components performing covered functions. That is, components that do not perform health plan, health care provider, or health care clearinghouse functions and components that do not perform activities in support of these functions (as would a business associate of a separate legal entity) may not be included in a health care component. Within the hybrid entity, most of the *HIPAA* Privacy Rule requirements apply only to the health care component, although the hybrid entity retains certain oversight, compliance, and enforcement obligations. See 45 *CFR* § 164.105 of the Privacy Rule for more information.

VI. Conclusion

The *HIPAA* Privacy Rule specifically excludes from its coverage those records that are protected by *FERPA*. When making determinations as to whether personally identifiable information from student health records maintained by the educational agency or institution may be disclosed, school officials at institutions subject to *FERPA* should refer to *FERPA* and its requirements. While the educational agency or institution has the responsibility to make the initial, case-by-case determination of whether a disclosure meets the requirements of *FERPA*, the Department of Education's Family Policy Compliance Office is available to offer technical assistance to school officials in making such determinations.

For quick, informal responses to routine questions about *FERPA*, school officials may e-mail the Department at FERPA@ed.gov. For more formal technical assistance on the information provided in this guidance in particular or *FERPA* in general, please contact the Family Policy Compliance Office at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, D.C. 20202-8520

You may also find additional information and guidance on the Department's Web site at: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

For more information on the *HIPAA* Privacy Rule, please visit the Department of Health and Human Services' *HIPAA* Privacy Rule Web site at: <http://www.hhs.gov/ocr/hipaa/>. The Web site offers a wide range of helpful information about the *HIPAA* Privacy Rule, including the full text of the Privacy Rule, a *HIPAA* Privacy Rule summary, over 200 frequently asked questions, and both consumer and covered entity fact sheets.

In addition, if you would like to submit additional questions not covered by this guidance document or suggestions for purposes of informing future guidance, please send an e-mail to OCRPrivacy@hhs.gov and FERPA@ed.gov.

CONSENT TO EXCHANGE STUDENT INFORMATION

Date of Consent: _____ Expiration (one year from signature): _____

Student Name (last, first, middle): _____ DOB: _____

Reason for Request and Means of Communication: The reason for this request is to aid in present and future educational planning and decisions. This consent authorizes employees and agents of the Smith County Board of Education and _____ to exchange records (as described below) and to engage in a verbal exchange of information relating to those records and their content.

Specific Information to be Exchanged: (Circle as Appropriate)

All Student Records	Treatment records	Other: _____
Special Education Records	Psychiatric Evaluation	
Report Cards	Psychological Evaluation	
Other: _____	Medical information	

Authorization for Exchange of Information and Acknowledgement:

It is my understanding that the exchange of information will be used in the educational planning for the student named above. I hereby authorize the employees and/or agents of the Smith County Board of Education to release to and to discuss with the persons/entities named above the information named above. I also hereby authorize the above listed source to release to and to discuss with the employees and/or agents of the Smith County Board of Education the information specified above for the student listed above. This may include, but is not necessarily limited to, (1) all medical records or other information regarding the treatment and/or patient care for all psychological, medical, and/or physical conditions; (2) information about how any past or present medical condition affects ability to complete tasks and activities of daily living in and around the school setting, including but not limited to classroom, gymnasium, and playground. I acknowledge this to be a valid consent under both the Family Educational Rights and Privacy Act as well as the Health Insurance Portability and Accountability Act of 1996. I understand that I am not required to sign this authorization. I have a right to inspect and obtain a copy of any information disclosed. I authorize the use of fax, photocopy, and e-mail of this form for the exchange of information described on this form. I understand that this authorization, except for action already taken, may be voided at any time. Notification to revoke consent must be in writing. If no expressed revocation is issued, this authorization will expire one year from the date indicated after my signature or upon the following date, event, or condition:

I have had the opportunity to have this form explained to me and have my questions answered. I have been offered a copy of this form, and I agree to the two-way exchange of information.

Signature of parent/guardian/student (if over 18): _____

Date: _____

Signature of witness: _____ Date: _____