

Considerations for Special Education Administrators

Current as of March 12, 2020

9. Are there FERPA and HIPAA privacy issues that school officials should consider when working with health departments and other agencies?

The [Privacy Technical Assistance Center and the Student Privacy Policy Office](#) developed a guidance document specific to COVID-19 which is worth reviewing for the answer to this question. However, schools should note the following from the guidance document:

- “FERPA prohibits educational agencies (e.g., school districts) and institutions (i.e., schools) from disclosing PII (personally identifiable information) from students’ education record without the prior written consent of a parent or “eligible student,” *unless an exception to FERPA’s general consent rule applies*. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.
- “For instance, pursuant to one such exception, the “health or safety emergency” exception, educational agencies and institutions *may disclose to a public health agency* PII from student education records, without prior written consent in connection with an emergency *if the public health agency’s knowledge of the information is necessary to protect the health or safety of students or other individuals*. 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36. For all other situations where an exception to FERPA’s general consent requirement does not apply, educational agencies and institutions must obtain prior written consent of a parent or eligible student to disclose PII from student education records. 20 U.S.C. §§ 1232g(b)(1) and (b)(2); 34 C.F.R. §§ 99.30 and 99.31.”
- “This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release of PII from student education records. Typically, law enforcement officials, public health officials, trained medical personnel, and parents (including parents of an eligible student) are the types of appropriate parties to whom PII from education records may be disclosed under this FERPA exception.”
- **Wondering what an emergency is? “For purposes of FERPA’s health or safety emergency exception, the determination by an educational agency or institution that there is a specific emergency is not based on a generalized or distant threat of a possible or eventual emergency for which the likelihood of occurrence is unknown, such as would be addressed in general emergency preparedness activities. *If local public health authorities determine that a public health emergency, such as COVID-19, is a significant threat to students or other individuals in the community, an educational agency or institution in that community may determine that an emergency exists as well.*”**

There is MUCH more in [this guidance document](#) and school administrators looking for answers to the tough questions should review the document in its entirety. However, know that there are exceptions to FERPA for emergency situations like COVID-19.

About CASE

CASE, [The Council of Administrators of Special Education](#), is the largest division of the [Council for Exceptional Children](#). With close to 4500 members, it is the professional organization of choice for special education administrators across the country. CASE’s mission is to provide leadership and support to members by shaping policies and practices that impact the quality of education.