



Central Valley School Health Services Coalition

March 15, 2019 Meeting

Tracy Macdonald Mendez, Executive Director

Amy Ranger, Director of Programs



Bienvenidos

你好

Welcome

Hi

Chào

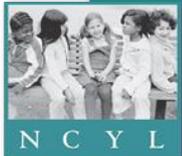
Mabuhay

Medical Consent, Confidentiality and Sharing Information in a School Setting

*Rebecca Gudeman
National Center for Youth Law*

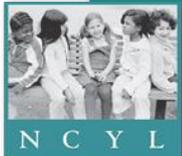
NATIONAL CENTER FOR YOUTH LAW

Using the law to help children in need



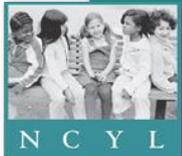
Scenarios in school

- Student needs health services and asks for your help.
- Student needs to leave school for care.
- You identify a student that you think should be referred for medical or mental health care.
- You overhear a conversation in the hall that concerns you.
- IEP meetings
- New healthy sex education mandates



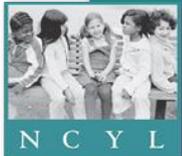
Agenda:

- Medical Consent
- Medical Confidentiality and Information Exchange
- School Confidentiality and Information Exchange
- Case Studies



MEDICAL CONSENT: General Rule

Who Consents for a Minor's Care?



CONSENT for MINOR'S CARE

General Rule

- Minors need parent or guardian to consent to care

Exceptions:

- Caregiver
- Special rules for court-involved youth
- Special rules for Emergencies
- Minor Consent



CASE EXAMPLE: James

James, a 7th grader, needs a Tdap (pertussis) booster so that he can enroll in school. The school refers him to the local clinic. James arrives at the health clinic with his aunt. They tell the provider that James's parents are in the process of relocating to California but are in another state and he is staying with his aunt.

Who may consent for James's vaccine?



CONSENT for MINOR: Options

If parent not available:

- Legal guardian
- Letter from parent
- Caregiver Authorization Affidavit
- Others

PR-E-LP-023

CAREGIVER'S AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5 through 8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: _____
2. Minor's birth date: _____
3. My name: _____
4. My home address: _____ (adult giving authorization)
5. I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of "qualified relative").
6. Check one or both (for example, if one parent was advised and the other cannot be located):
 I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.
 I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.
7. My date of birth: _____
8. My California driver's license or identification card number: _____

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

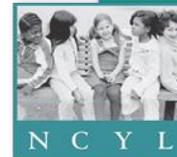
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ Signed: _____

NOTICES

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

PR-E-LP-023 (Revised October 11, 2011) CAREGIVER'S AUTHORIZATION AFFIDAVIT Page 1 of 2
www.saccourt.ca.gov



CONSENT: Caregiver Authorization Affidavit

A “Qualified Relative” caregiver may consent to most medical and mental health care for the youth in their care after completing a caregiver affidavit.

A Non Related Caregiver may consent to school related health care after completing an affidavit.

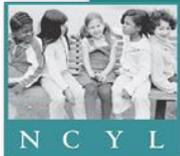


CONSENT: Minor Consent Exceptions



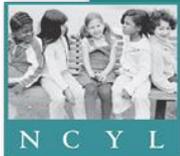
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Creating Safe Spaces for Care

- ◆ Adolescents report willingness to talk to providers about sensitive topics, including relationships and violence
- ◆ Trust and confidentiality are critical to care-seeking, particularly for adolescents
- ◆ Independence? Privacy? Autonomy? **It's all a part of normal adolescent development!**



Privacy Issues- *Significant Barrier to Care*

Concerns about privacy prevent many teens from seeking care.



- ◆ Family planning clinic survey (Reddy et al. *JAMA*, 2002).
- ◆ If parents were notified: 50% of sexually active girls under age 18 would stop using the clinic. But, only 1% would stop having sex.

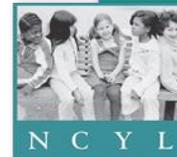
Privacy Issues- *Significant* Barrier to Care



Privacy concerns also affect the quality of care received.

- ◆ Teens who are concerned about privacy are less likely to communicate openly. (Thrall, 2000)
- ◆ Less likely to report experiences of violence

Many choose to involve parent/caretaker - but want to be asked!



CONSENT: Minor Consent Exceptions

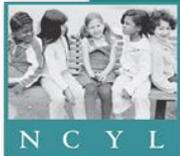
- Status
- Service



CONSENT: Status Exceptions

Minors may consent to their own medical care if:

- Married/Divorced
- Armed Forces
- Emancipated by Court
- 15 or older, Living Apart from Parents, and Managing Own Financial Affairs



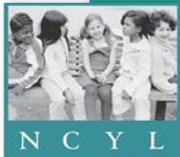
CONSENT: Service Exceptions

Minors may consent to their own care for the following:

- Pregnancy related services at any age
- Outpatient mental health services*
- Reportable communicable diseases/STDs *
- HIV counseling and testing*
- Drug and alcohol treatment*
- Rape services*

* ≥ 12 years

(Note age restrictions on certain services)

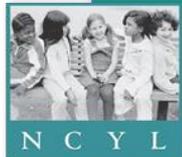


SERVICE EXCEPTIONS: Reprod. care

- **Care for prevention and treatment of pregnancy AT ANY AGE.**
 - Contraception
 - Pregnancy Testing
 - Prenatal Care
 - Abortion

- **Testing, treatment, and preventive care, for sexually transmitted diseases for teens 12 and older**

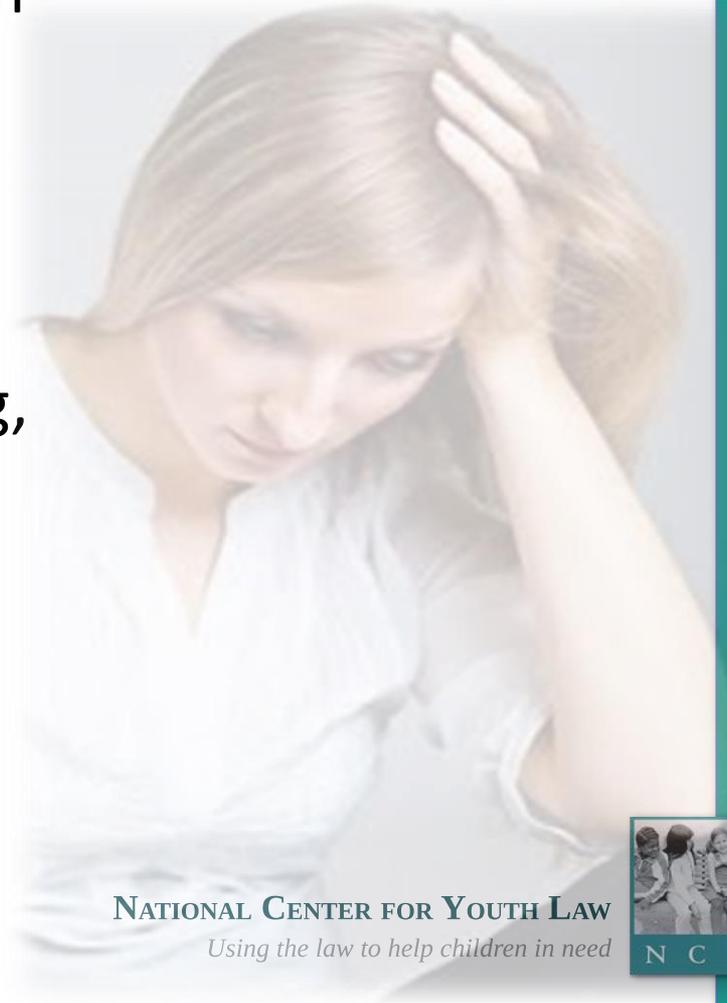
- **Title X consent regulations when services are funded by federal Title X program**



Case Example: Elena

Elena, 16, goes to her local health center. She explains that she thinks she may be pregnant. After discussions with Elena, the nurse practitioner wants to do a pregnancy test, some STD testing, and prescribe birth control.

Who may consent for Elena's care?



Case Example: Elena

Elena was 16 years old in the previous case.

What if Elena were 11 years old?



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Case Example: Elena

Elena was seeking care at a local clinic.

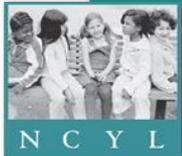
Do the consent rules change at all when services are provided at a school based clinic?



CASE EXAMPLE: Joanna

16 year old Joanna comes to a counselor asking to talk. When asked about her parents, she says she doesn't want her parents involved in her mental health care because she doesn't live with them.

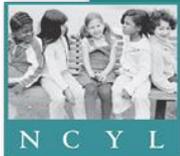
Can the provider evaluate/treat this teen without parent consent?



SERVICE EXCEPTION: MH - H&S 124260

Minors may consent to their own mental health counseling and outpatient treatment when:

- (1) 12 years of age or older;
- (2) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.



SERVICE EXCEPTION: Mental Health

What services does this exception cover?

- Assessment
- Counseling
- Outpatient Treatment

Does NOT cover:

- Inpatient Treatment
- Psychotropic Medications
- Psychosurgery

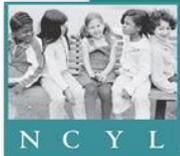


SERVICE EXCEPTION: Drug Treatment

Minors 12 and older consent to alcohol and drug treatment services, including counseling.

Who can provide minor consent drug treatment services?

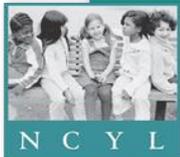
“Counseling means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to WIC 5600 or HS 11750”



CASE EXAMPLE: Stefanie

Stefanie is pregnant and in 11th grade. Because of the pregnancy, her mom kicked her out and she now lives with her aunt. She is trying to attend prenatal appointments regularly. When she tries to check herself into school after a recent appointment, the school says her mom must send in a note or she will get an unexcused absence.

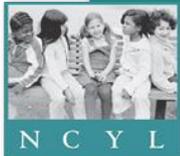
Can Stefanie leave school to obtain her prenatal care without her mom's involvement?



Case Example: Sara

Sara and her boyfriend have been going out since 10th grade. At the end of 11th grade, Sara discovers that she is pregnant. Her mother, quite upset, grounds Sara and prohibits her from seeing anyone or going anywhere except school. This includes a prohibition on going to the doctor.

Sara is very worried about her pregnancy and wants to see a doctor. What can she do?



School Release for Confidential Care

The California Attorney General:

“We conclude that a school district may not require that a student obtain written parental consent prior to releasing the student from school to receive confidential medical services [and] ...may not adopt a policy pursuant to which the school will notify a parent when a student leaves school to receive confidential medical services.”

87 Ca. Op. A.G. 168 (2004)

School Release for Confidential Care

Implementation?

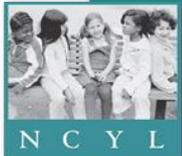
Required and recommended tools:

- Notice to parents and students about release (Ed 46010.1)
- Board policies - (e.g. BP 5113)
- Administrative Regulation (e.g. AR 5113)

School Release for Confidential Care

Administrative Regulations describe:

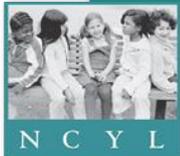
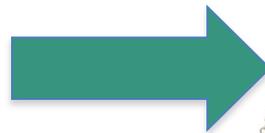
- Verification of excused and unexcused absences
- Approved methods of verification
- Verifying confidential appointments



Confidentiality and Information Sharing



Confidentiality and Information Sharing



Updated Primer on Sharing



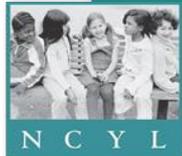
HIPAA or FERPA?
A Primer on Sharing
School Health
Information
in California
 Second Edition

Contents

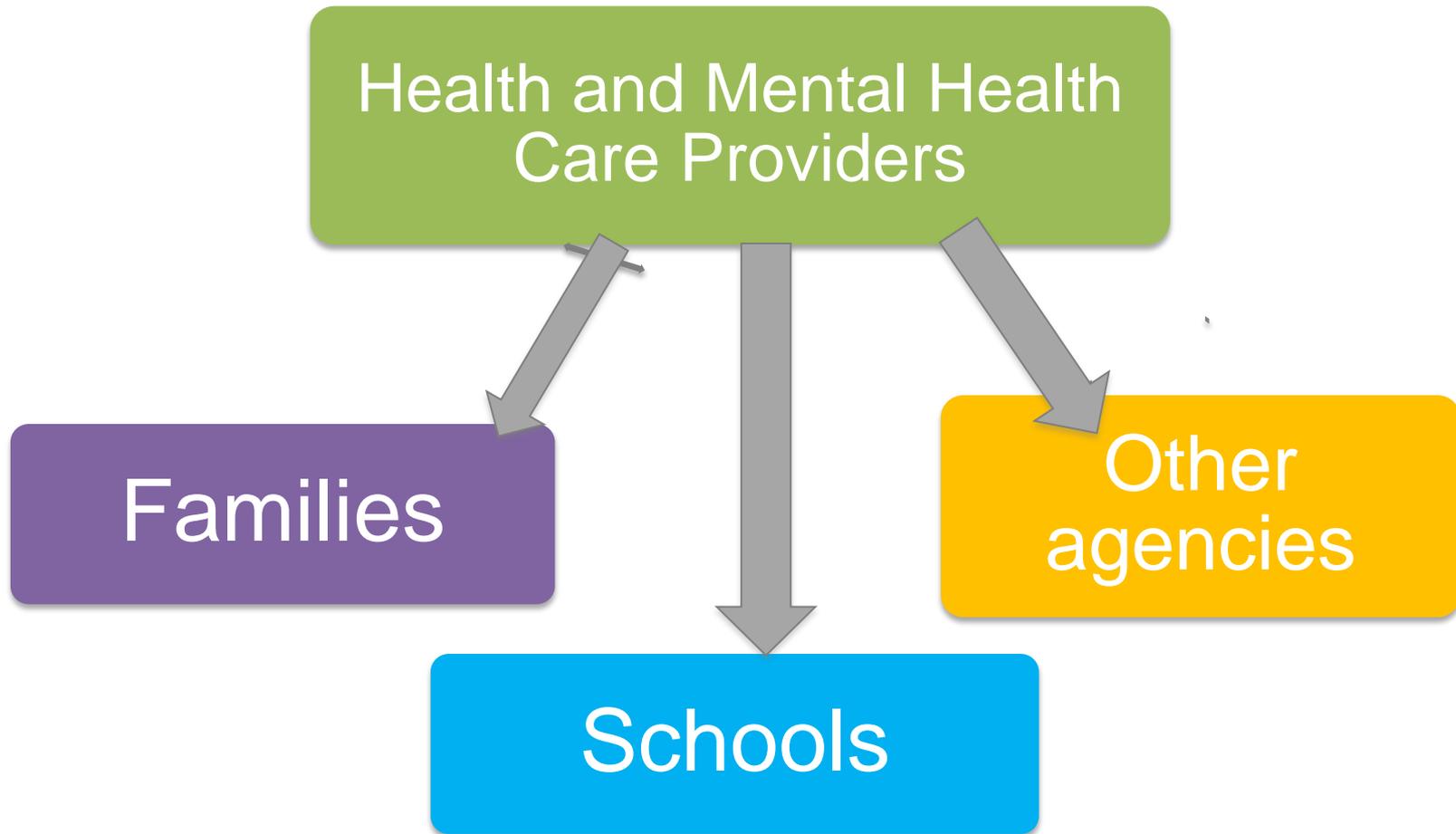


- Introduction** 1
- HIPAA – The Basics** 1
- FERPA – The Basics** 10
- Comparing HIPAA and FERPA** 17
- HIPAA – FERPA, Health or Education?** 18
- Separately School-Covered** 20
- Shared School Records and Communications** 20
 - 1. Does FERPA or HIPAA apply to a school nurse’s records? 20
 - 2. Does FERPA still apply to a school nurse’s vital records from an agency not subject to FERPA, such as a local health department or the Department of Health? 20
 - 3. Why a school provider’s specialty code (HIPAA), such as a student’s pediatrician, does not preclude the health information in the school nurse? 20
 - 4. Why a school nurse maintains a separate records health file on a child? 24
 - 5. Why a school nurse does share information regarding the student’s health record outside without writing consent? 24
- Shared School/Health Provider Records and Communications** 24
 - 1. Does FERPA or HIPAA apply to a school health provider’s records? 24
 - 2. Why a school health provider’s records health provider maintains a separate file separate from the school file? 24
 - 3. Does FERPA apply to a school mental health provider’s records if the information is from an agency not subject to FERPA, such as a community mental health agency? 27
 - 4. Why a private genetic provider’s confidential health information subject to HIPAA with a school’s consent is not an item subject to FERPA? 27
 - 5. Why a health provider’s information obtained in the course of counseling a student in the school campus, regarding the student’s threat to commit suicide? 27
- More FERPA Questions** 28
 - 1. Why a school health program operates under FERPA, rather than under an agency’s rules that trigger? 28
 - 2. Why a school or district does information from the school records, such as the student’s ability, attendance, or grades, with a school health provider’s specialty code (FERPA), such as a school nurse, for purposes of writing a prescription? 28

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Confidentiality and Disclosure of Health Information

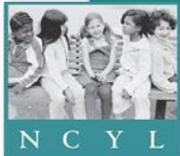


"HIPAA" and Other Medical Confidentiality Laws

- **Health Insurance Portability and Accountability Act (HIPAA) – *Federal***
- **Confidentiality of Medical Information Act (CMIA) – *California***
- **Lanterman-Petris-Short Act (LPS) – *California***



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The law to help children in need



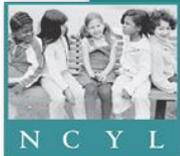
What is the rule?

General Rule in HIPAA and California law:

- Health care providers must protect the confidentiality of personal health information.
- Providers must have a signed “authorization” in order to share protected health information.

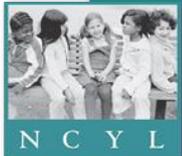
Exceptions allow or require disclosure of records absent signed release in some cases:

- e.g. to other providers for treatment purposes, child abuse reporting, reporting certain violence.



Remember

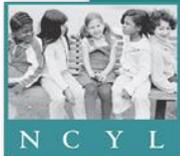
- Health providers can always share information if there is a **valid written authorization** to release.
- Otherwise, they only may share if there is an exception that allows or requires disclosure.



HIPAA and CA law: What must an authorization look like?

To comply with HIPAA and CA law, an authorization to release information must include:

- Expiration Date or Event
- Generally no compound document
- Describes info to be disclosed in meaningful way
- Description of purpose for release
- Signature
- 14 point font or more

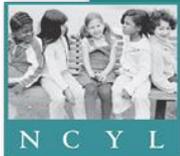


Example: Release forms

HIPAA requires several notices, including:

- Right to revoke and how to revoke.
- No conditioning treatment on release.
- Right to refuse to sign form.
- The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer be protected by HIPAA.

THIS IS NOT A COMPLETE LIST OF REQUIREMENTS!



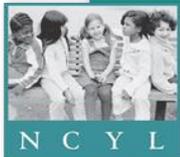
HIPAA/CA Law: Authorizations

Who signs the authorization?

The minor must sign if records relate to services that minor consented to or could have consented to.

In all other cases:

- CMIA says the minor's "**legal representative**" must sign.
- LPS says the minor's "**parent, guardian, guardian *ad litem*, or conservator**" must sign.



CASE EXAMPLE: SYLVIA

Sylvia, 16, is pregnant and receiving prenatal care at a community clinic. Her health provider recommends she speak to her school in order to help the administration understand what support she needs in class.

May the health provider talk to the school based on Sylvia's verbal permission?

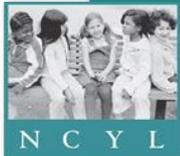
If a written "authorization" is necessary, who signs it?

CASE EXAMPLE: JOEY

Joey, 9, is receiving mental health therapy from a private clinician in the community. His parents want his therapist to talk to Joey's homeroom school teacher in order to help the teacher understand what support Joey needs in class.

May the therapist talk to the teacher based on the parents' verbal permission?

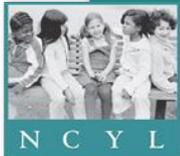
If a written "authorization" is necessary, who signs it?



HIPAA/Ca Law: Exceptions that allow disclosure absent signed authorization

Some exceptions to confidentiality allow providers to release medical information even in absence of signed release. Examples:

- Sharing for Payment Purposes
- Treatment exception
- Care Coordination exception
- Emergency exception
- Child Abuse Reporting exception
- Court Order/Subpoena exception
- Other



CASE EXAMPLE: Liam

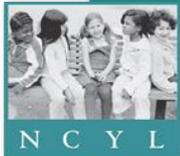
Liam and his parents visit Nancy Nurse to discuss the headaches he has been having more and more frequently. Liam's parents mention that he just started taking some new allergy medication prescribed by Patty Provider at the local clinic, but can't remember which one. While in the exam room, Nancy calls Patty to ask for the name of the prescription.



What, if anything, may Patty tell Nancy Nurse on the phone?

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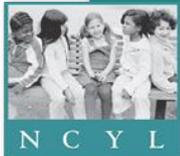
HIPAA/CA Law: Discretion to release to other health and mental health providers

Physical health/Mental Health Records (CMIA):

Providers may share information with providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient, all but psychotherapy notes. Civ. 56.10 et seq.

Mental health Records (LPS):

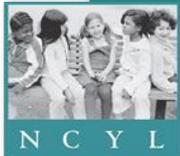
- Providers may share outpatient information “in communication between qualified professionals in the provision of services or referrals” -- all but psychotherapy notes.
- May share inpatient records with professional outside inpatient facility if professional has medical or psychological responsibility or patient’s care. WIC 5328(a)



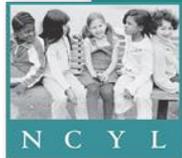
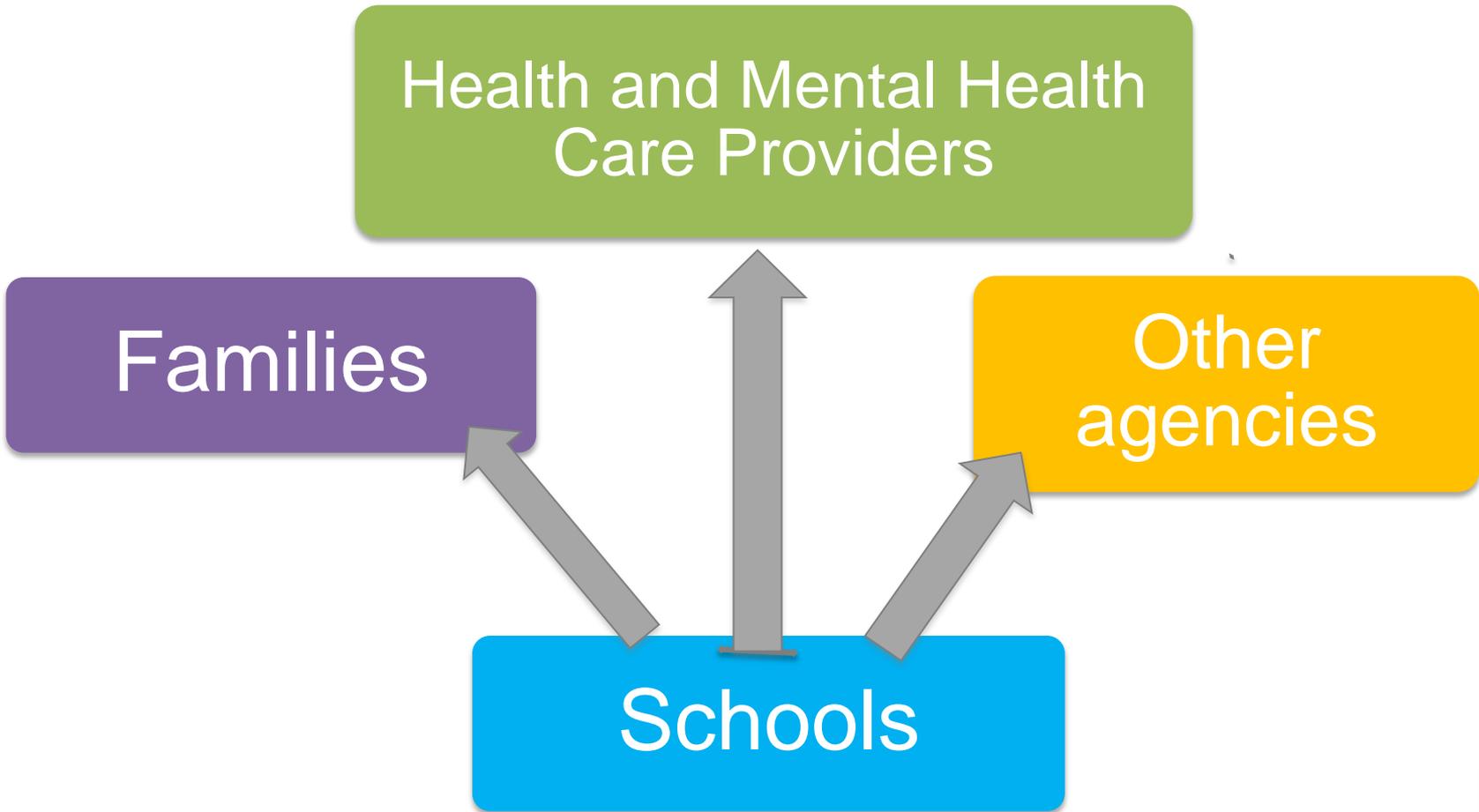
HIPAA/CA Law: Emergency exception

EMERGENCY exception:

“The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat...” (Cal Conf. Med. Info. Act)



Confidentiality and Disclosure of School Information



Schools and Confidentiality

- ◆ FERPA
- ◆ CA Education Code



If state law conflicts with FERPA,
FERPA usually preempts state law.

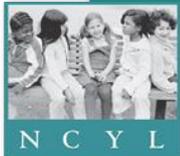
Who must comply with FERPA?

Educational agencies and institutions:

1. Any public or private agency or institution which is the recipient of funds administered by the Sec. of Education under any applicable program if the agency provides educational services or instruction to students, or the agency is authorized to direct and control schools.

Others:

2. Can include organizations that contract with or consult with an educational agency
3. Any person acting for or employed by such agency

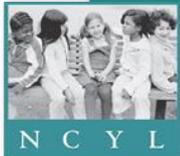


What is protected?

“Education Record”:

Records, files, recordings, other documents, which:

- ◆ Contain information directly related to a student; and
- ◆ Are maintained by an educational agency or institution or by a person acting for such agency or institution



What is not an “education record”?

Education records do not include:

- Oral communications, personal impressions
- Records of instructional, supervisory, and administrative personnel in the sole possession of the maker and which are not accessible to any other person except a substitute aka “sole possession” records
- Records on students eighteen years or older made by a physician, psychologist or other recognized professional and used only in connection with the provision of medical treatment

See Primer for more information

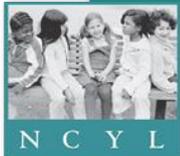
FERPA: What is the rule?

General Rule:

- ◆ Generally, FERPA prohibits educational agencies from releasing any personally identifiable information (PII) in the education record without written consent. A written consent must include certain elements to be valid.
- ◆ There are some exceptions.

Remember

- Schools can always share information if there is a **valid written authorization** to release.
- Otherwise, they only may share if there is an exception that allows or requires disclosure.



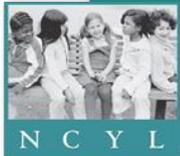
FERPA : Who signs the release?

Who must sign a release for PII?

- “Parent” for students under 18 years old
- “Student” if student is 18 or older

Who is a parent for this purpose?

- Parent “includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.”
- (See local policy).

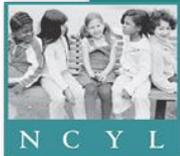


FERPA: Exceptions that allow disclosure absent signed authorization

Some exceptions in FERPA allow or require education agencies to release PII without need of signed release.

Examples:

- ◆ Legitimate educational interests
- ◆ Parents exception
- ◆ Juvenile Justice exception
- ◆ Research exception
- ◆ Child Abuse Reporting exception
- ◆ Court Order
- ◆ Others



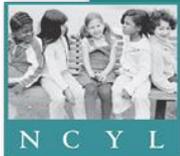
FERPA Exceptions: “Legitimate Educational Interests”

School officials may share PII with other school officials in the same school with legitimate educational interests in the information

“Legitimate educational interest” can be defined to mean simply that the “official needs to review the education record in order to fulfill his or her professional responsibility.”

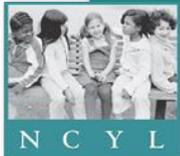
(See U.S. DOE Model Notification on School Officials)

Important: How is this defined in local policy?



FERPA Exceptions: Health or Safety Emergency

May release PII in connection with an emergency “to appropriate parties in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individual.”



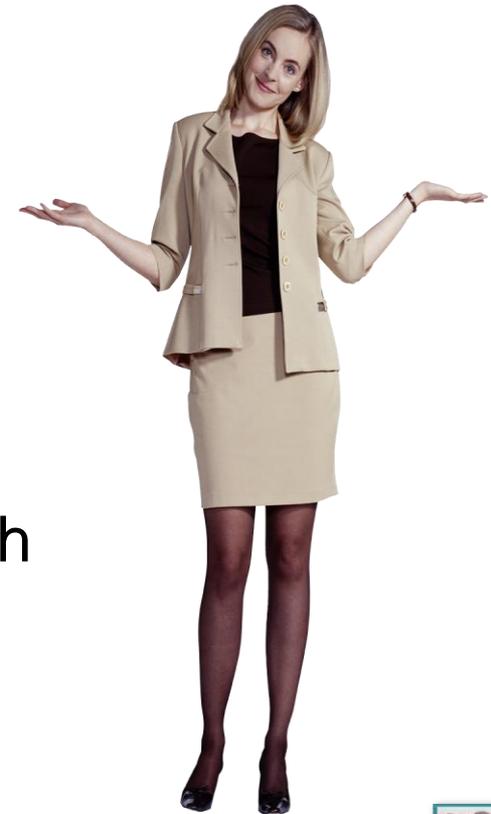
What law applies to the records of a school based health clinic?

Community health clinic employees generally must follow **HIPAA**.

The records of school employees are generally subject to **FERPA**.

School-based health and mental health care?

It depends!!



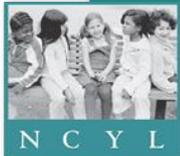
HIPAA, FERPA, Both or Neither?

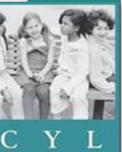
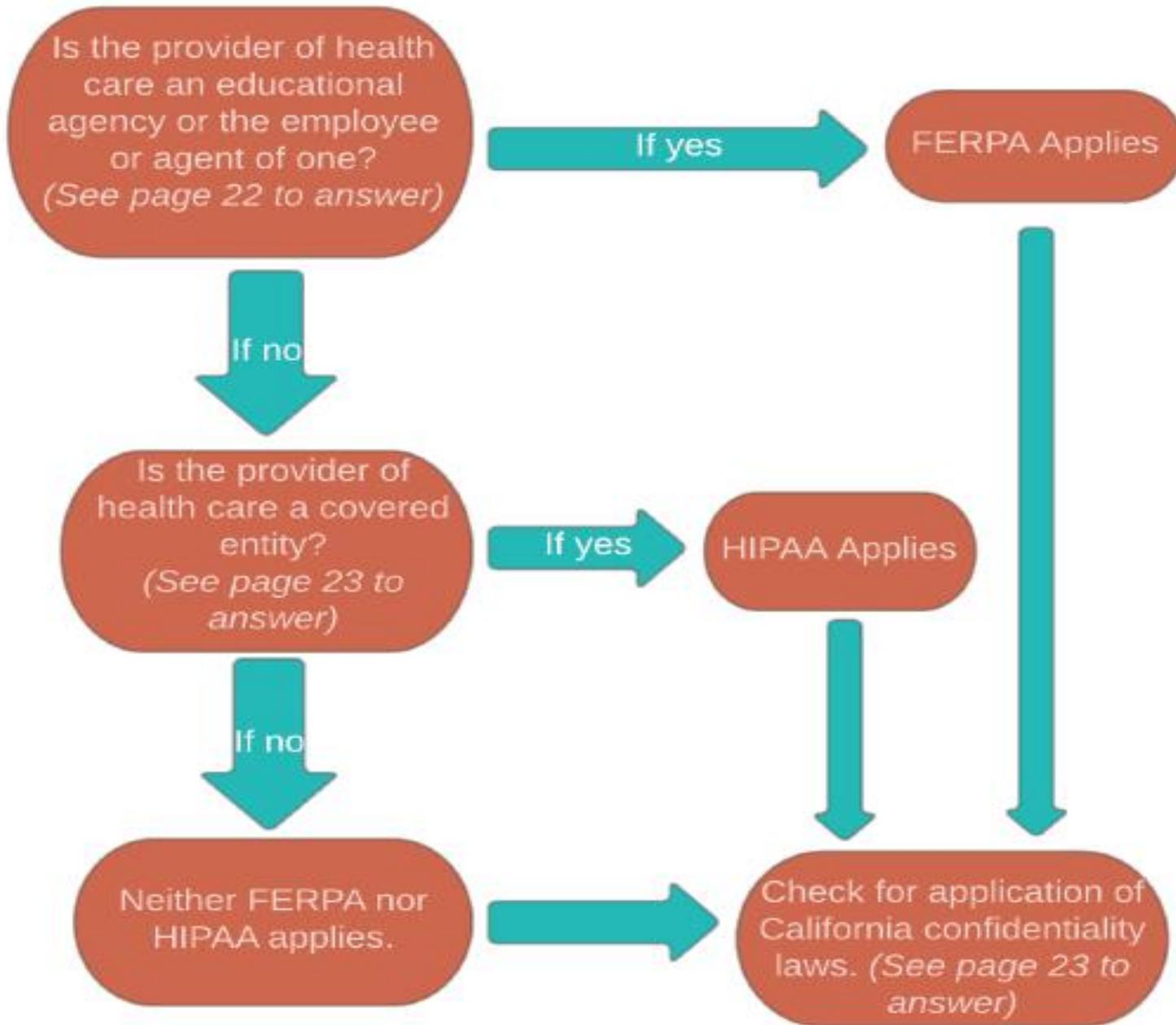


Is it possible to operate under FERPA and HIPAA at the same time?

HIPAA explicitly states that its rules do not apply to health information held in an education record subject to FERPA. Thus,

If FERPA applies, HIPAA does not.



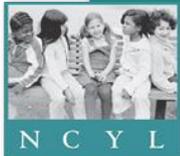


1. IS the health provider an educational agency employee or agent of one?

Joint Guidance from federal Department of Health and Human Services and federal Department of Education

Case by case assessment. Relevant factors include:

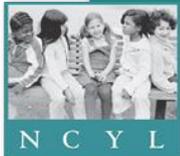
- operational and administrative control
- services and functions provided
- financing



This is hard. Can't we just designate a provider as HIPAA or FERPA in an MOU or contract?

Not really. If all the legal factors align to make clear that FERPA (or HIPAA) applies to a set of records, this cannot be changed by contract. For example, a school can't just contract its pupil records out of FERPA.

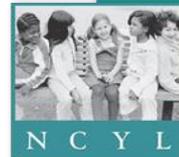
But it can be helpful to address confidentiality in an MOU. **This is why it is so important to work with legal counsel.**



Practical Implications:

What are implications for access and confidentiality:

- Parent access
- Minor consent and confidentiality laws
- Access by other school staff or other medical providers
- School nurse/counselor's ability to coordinate care
- Public health reporting
- Administrative rules



Case: Immunizations

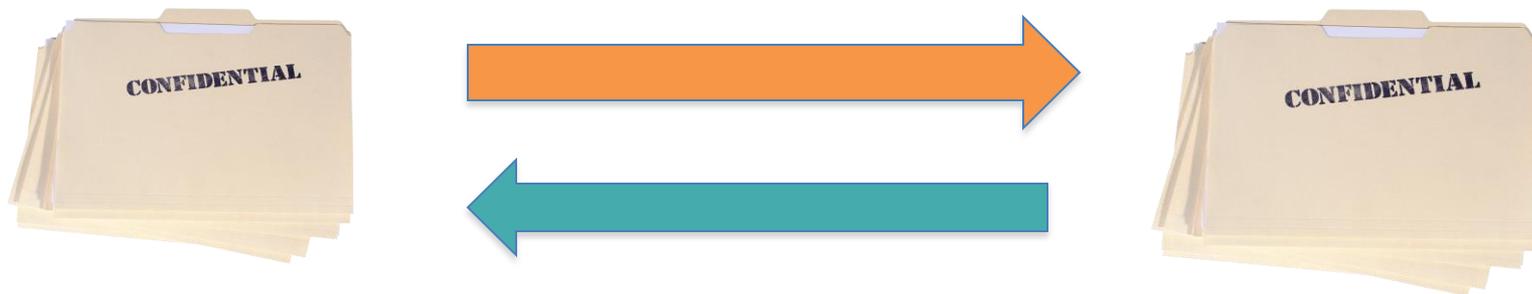
Happy elementary school houses a school based health center run by the local children's hospital. The SBHC often provides immunizations to the students attending the clinic. In order to ensure children don't receive the same immunization twice, the SBHC and school nurse want to coordinate information.



Case: Immunizations

May the SBHC inform the school nurse of the immunizations it provides?

May the school nurse provide the SBHC with the immunization records in the students' files before they give any shots?



Case: Matthew

Matthew is a fourth-grade student who is receiving mental health services through a school-based program. Matthew is exhibiting aggressive behavior. He is being released from class for twice weekly sessions with the clinician but the behavior persists. His teacher asks the clinician about the therapy and why Matthew's behavior has not improved.



Case: Matthew

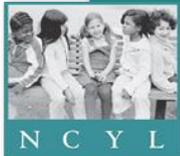
If this clinician is operating under HIPAA, may the clinician share any information with the teacher?

What if the clinician is a school employee?



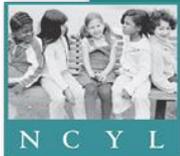
Case: Accessing School Records

Eleven year-old Andre has been receiving mental health counseling at his SBHC. The clinician believes Andre is progressing but wants to see if the progress is translating into better behavior in the classroom and better academic results. She asks to see the grades and class reports on Andre.



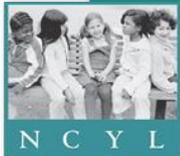
Case: Accessing School Records

1. May the school give the SBHC clinician access to that information?
2. Is there any way for the clinician to get access to that information?



Case: Natalie

16-year-old Natalie is brought to the school health clinic by a teacher's aide. Natalie appears sluggish and dazed. She says she cannot tolerate rumors at school that she and another girl are sharing the same boyfriend. She admits that she tried to take 10 aspirin several weeks ago, but stopped herself.



Case: Natalie

She denies being suicidal at this time (“I won’t do it again; I learned my lesson”). And she reports that she has always had difficulty expressing her feelings. In the interview, she is quiet, guarded, and initially quite reluctant to talk.

What can/should therapist do?

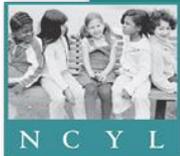
May therapist speak to other staff about this concern?

May therapist contact Natalie’s parents?

Does it matter if the therapist works under HIPAA or FERPA?

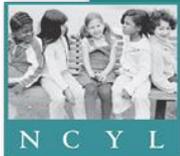
NATIONAL CENTER FOR YOUTH LAW

Using the law to help children in need

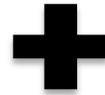


Resources:

- *HIPAA or FERPA? A Primer on School Health Information Sharing in California*
- *Understanding Confidentiality and Consent in California: A Provider Toolkit*
- *Other Minor Consent and Confidentiality Charts and Publications*
- *Confidential Medical Release: Frequently Asked Questions from Schools*



Conference!



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Schedule

Thursday, May 9, 2019

9am-10am	Breakfast & registration for pre-conference
10am-1pm	Pre-conference workshops (optional)
12:30-1pm	Lunch* & check in for mobile clinic tour
1:15-2:30pm	Speakers
2:30-4pm	Mobile clinic tour
5-6:30pm	Welcome reception & poster session

Friday, May 10, 2019

8-9am	Breakfast & registration
9-10:15am	Opening Plenary
10:15-10:45am	Break
10:45am-12pm	Breakout Session 1
12-1:15pm	Lunch*
1:15-2:30pm	Breakout Session 2
2:30-3pm	Break
3-4:15pm	Breakout Session 3
4:15-5pm	Closing Remarks



Pre-Conference

Thursday, May 9th

Featured Pre-conference Workshop

“Expanding Access and Choice for all Contraceptives, Including IUDs & Implants”



- Trauma-Informed Training
- Self-Care & Mindfulness 101
- Substance Use Prevention & Intervention
- Immigration
- Mental Health Funding

Plus Mobile Clinic Site Visits/Tours!

Friday Workshops

Friday, May 10th Conference: (21 workshops)

- HIPAA/FERPA – NCYL
 - Trauma-Informed
 - Youth Engagement (for adults)
 - Academic Success & Health
 - Reproductive & Sexual Health
 - Immigration
 - Oral Health
 - Food Insecurity
 - SBIRT
- 

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Registration for our main conference (May 18). Members of CSHA get an exclusive discount. Find the discount code on the members-only section of our website at <http://bit.ly/CSHAMemberresources>.

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\$260.00 + \$15.29 FEE

Attend our main conference (May 18) + pre-conference workshops (May 17). Members of CSHA get an exclusive discount. Find the discount code on the members-only section of our website at <http://bit.ly/CSHAMemberresources>.

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3RD ANNUAL
Central Valley Convening

Closeout/Action Steps

Announcements?

Next Meeting: When in June? Day/week?

Feedback/ideas to Amy at

aranger@schoolhealthcenters.org

Best Practices Checklist