

# HIPAA/FERPA REFRESHER



# YOR CA PROJECT

The Youth Opioid Response (YOR) California project is part of the California Statewide Opioid Response.

This presentation is funded by YOR CA and Anthem Blue Cross.

# GOALS

- Provide attendees with a basic understanding of federal HIPAA and FERPA regulations and relevant California laws.
- Understand errors and pitfalls common to those working in school health settings.
- Provide examples of appropriate information sharing across disciplines with an emphasis on substance use.
- Briefly introduce an online toolkit where school health collaborators can go to find more information.

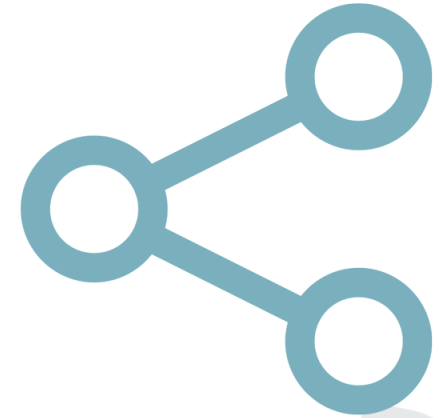


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Access code  
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The webinar is  
being recorded



Supporting  
materials will be  
shared



## **Presenter**

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Senior Director – Health, National  
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## **Moderator**

**Sierra Jue-Leong, MPH**

Project Director, California School-  
Based Health Alliance

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# HIPAA or FERPA?: School Health Information Sharing in California



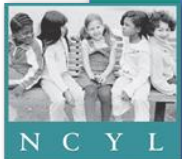
## **HIPAA or FERPA?** **A Primer on Sharing School Health Information in California**

Second Edition

*Rebecca Gudeman*  
*National Center for Youth Law*

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John is in 9th grade. He has been distracted and fidgeting in advisory recently. His teacher refers John to the mental health counselor from a local nonprofit who comes to campus once a week. The counselor discovers that John's aunt recently passed away and that John is scared about losing other family members. He hasn't been sleeping well and is feeling anxious. He's been using some pills he found in his mom's bathroom to sleep. The counselor wants to refer him for additional services. John's teacher reaches out to the counselor to ask if there is anything she can do to help John.



# Disclosure vs Privacy



# Balanced exchange is possible!

All confidentiality laws allow exchange of some information in different ways.



# Confidentiality Laws

**Federal and State statutes establish:**

- What **must not** be disclosed
- What **may** be disclosed\*
- What **must** be disclosed

MUST NOT  
disclose

MAY disclose,  
or keep  
confidential

MUST  
disclose



# Questions Presented Today:

1. What law(s) control release of health records?
2. What law(s) control release of school records?
3. What law(s) control release of school based health service records?
4. Given the laws, what and how can agencies appropriately share information?





# Updated Primer on Sharing



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

Second Edition

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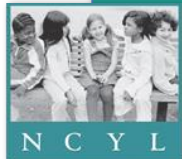


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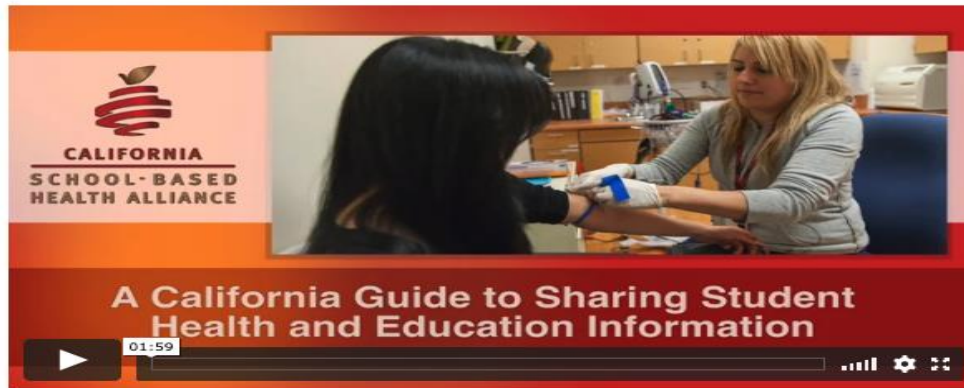
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Legal information, not legal advice

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# Available on a new website!



KEY POINTS

HIPAA BASICS

FERPA BASICS

FAQS

ADDITIONAL RESOURCES

BACKGROUND



## School-Based Health Center Staff

"I want to be a good partner to the teachers and school leaders we work with but still be compliant with health care laws so we can stay open and serve our students."



## School Principal

"I need to keep all students on campus safe, and having information empowers me to make the best decisions to keep all students on campus safe."



## Behavioral Health Provider

"Keeping confidentiality helps me build close relationships with students and families, but sometimes it would help if I could talk with school staff."

A California Guide for Sharing Student Health and Education Information

Key Points about HIPAA and FERPA in California

HIPAA Basics

FERPA Basics

Frequently Asked Questions

Additional Resources

Background

Health Insurance Outreach & Enrollment

Patient-Centered Medical Home

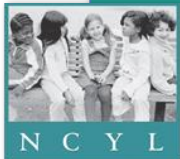
Electronic Health Records

Member Resources

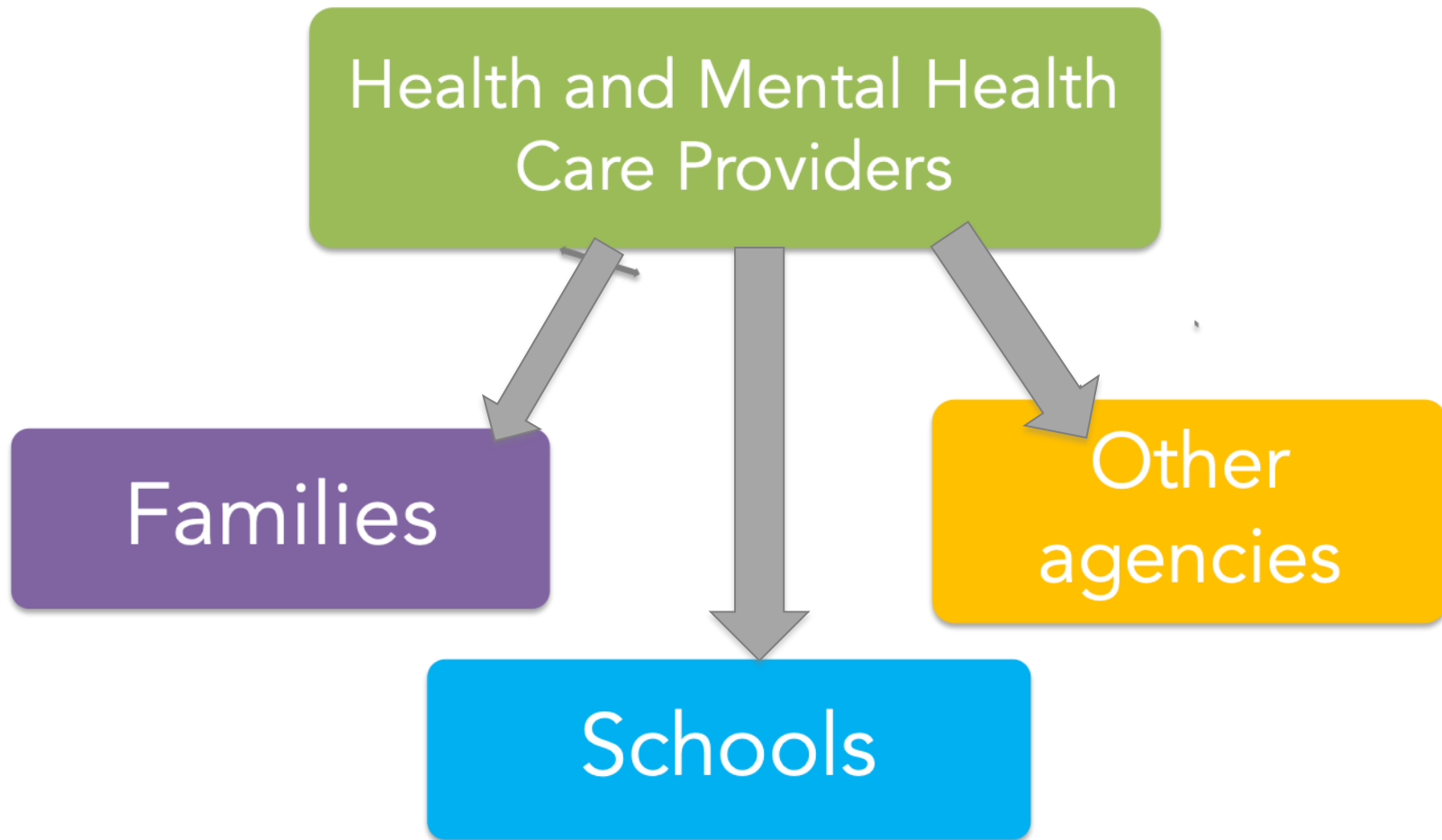
<https://www.schoolhealthcenters.org/hipaa-ferpa>

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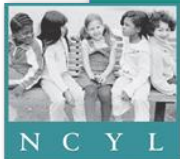


# Confidentiality and Disclosure of Health Information



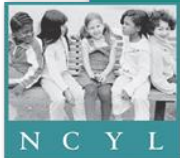
# “HIPAA” and Other Medical Confidentiality Laws

- **Health Insurance Portability and Accountability Act (HIPAA) – *Federal***
- **Confidentiality of Medical Information Act (CMIA) – *California***
- **Lanterman-Petris-Short Act (LPS) – *California***
- ***Other federal and state laws may apply based on funding stream, provider or type of services provided***



# Who must comply with HIPAA?

- HIPAA Rules apply to covered entities and business associates
- **Covered entities include:**
  - Health plans
  - Health care clearinghouses
  - Health care providers who conduct certain financial and administrative transactions electronically.
- **Business associates include:**
  - Subcontractors that receive or transmit protected health information on behalf of the business associate





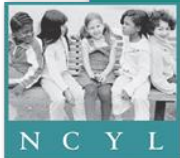
# What is the rule?

## 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

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



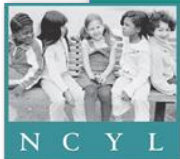
# HIPAA/CA Law: Authorizations

## 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.



# CONSENT: Minor Consent

## Includes:

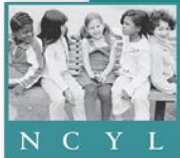
- Pregnancy related care, including abortion and contraception AT ANY AGE
- Outpatient mental health counseling, 12 and older
- STD/communicable disease testing/treatment/prevention, 12 and older
- Substance abuse treatment, 12 and older
- Sexual assault treatment AT ANY AGE
- 15 and older, living apart from parents, and managing own financial affairs

SEE [www.TeenHealthLaw.org](http://www.TeenHealthLaw.org) for more detailed information.

# Case Example: Jordan

Jordan, a 9<sup>th</sup> grader, comes to the SBHC because they are using their parent's prescription for benzodiazepines (an opioid commonly prescribed to control anxiety) for anxiety since they started high school. Jordan is running low and is starting to feel anxious about not having any more. The SBHC provider talks with Jordan about substance misuse and Jordan decides they would like to be connected to services but do not want their parent to know.

**Can Jordan access services without parent/guardian consent?**





# 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?**

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

## Physical health/Mental Health Records (CMIA):

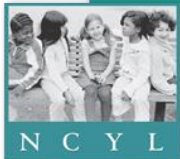
Providers may share information with providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient, all but psychotherapy notes. Civ. 56.10 et seq.

## 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).

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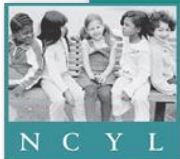
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# Exception: Special protection for most substance abuse treatment records

## Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act 42 C.F.R. Part 2

- CAAPTR restricts the disclosure and use of patient identifying information about individuals in substance abuse treatment
- **CANNOT disclose information unless** there is written authorization from patient or specialized court order, with few exceptions
- Strict limits on re-disclosure of information received
- Doesn't apply to records from every agency



# CASE EXAMPLE: Liam

Liam visits Nancy Nurse to discuss the headaches he has been having more and more frequently. As part of services, Liam admits to what he thinks is an addiction to pills to get through the school day. Nancy Nurse refers Liam to the local drug treatment program for assessment and possible services. They jointly make an appointment for him scheduled for the next day. Several days later, Nancy calls the treatment clinic to confirm that Liam showed up for his appointment. **What, if anything, may the clinic tell Nancy Nurse on the phone?**

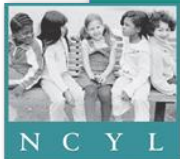


# CASE EXAMPLE: Liam

Liam is receiving substance use treatment for an addiction to pills. During a counseling session, the therapist notices burn marks on Liam's arm. He admits that his dad got really pissed at him, while high, and burned Liam with a blunt. The substance treatment program is subject to federal drug treatment confidentiality law.

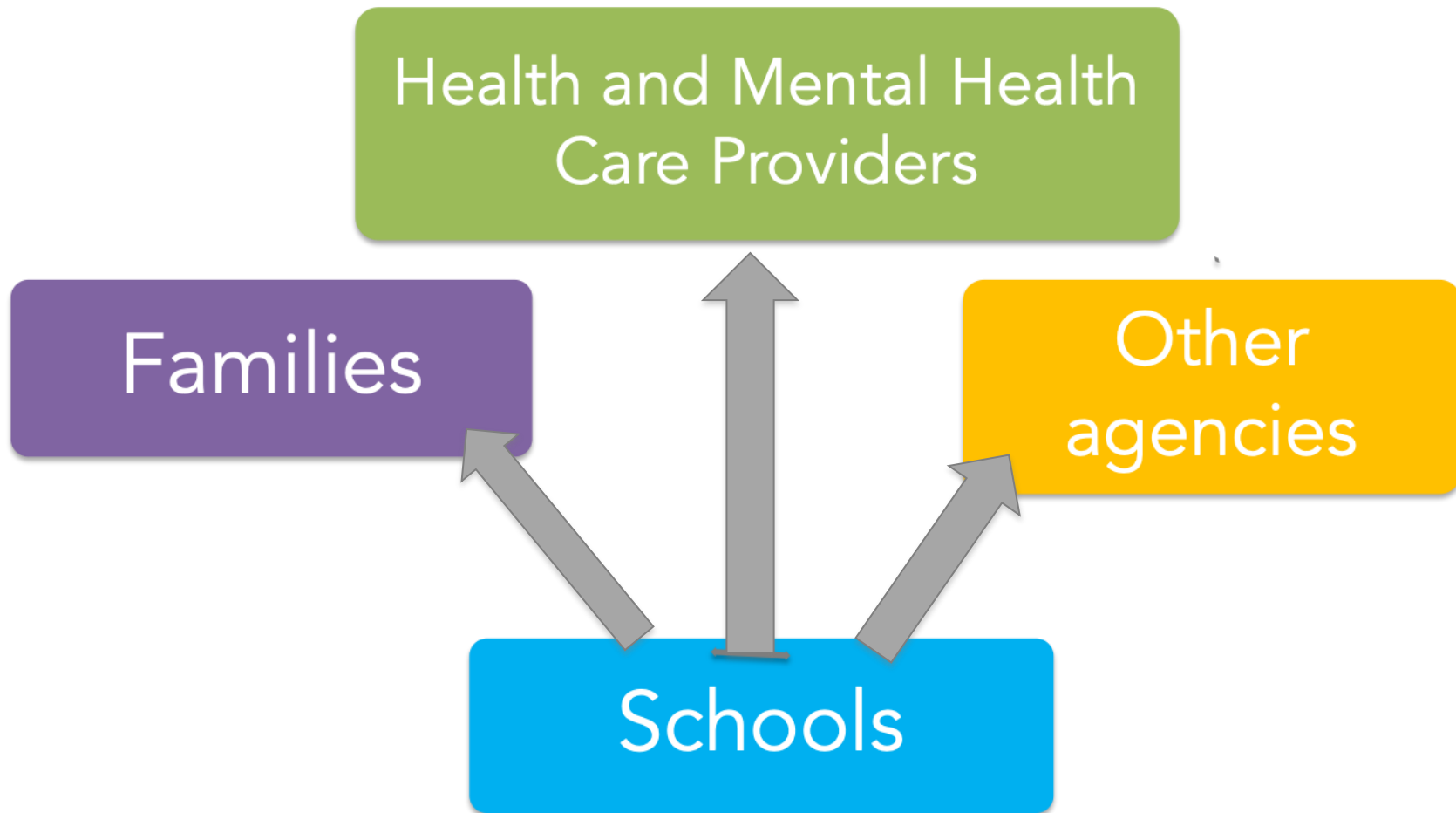


**May the provider make a child abuse report, if the provider believes there is a reasonable suspicion of abuse?**





# Confidentiality and Disclosure of School Information



# Schools and Confidentiality

## ◆ FERPA

## ◆ CA Education Code



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

# What is FERPA?

What is FERPA?

Family Educational Rights and Privacy Act



Intended to:

1. Protect the privacy of educational records
2. At the same time, assure parental access to records



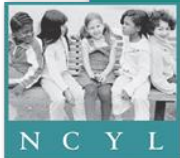
# Who must comply with FERPA?

## 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 protected?

**Education Record** may include some health information. Examples:

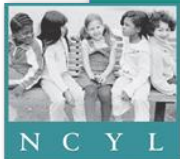
- Immunization records
- IEP, including testing and evaluation records



# 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

- You can always share information if there is a **valid written authorization** to release.
- Otherwise, you 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



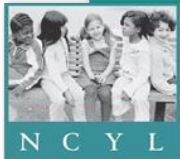
# FERPA Exceptions: “Legitimate Educational Interests”

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?**



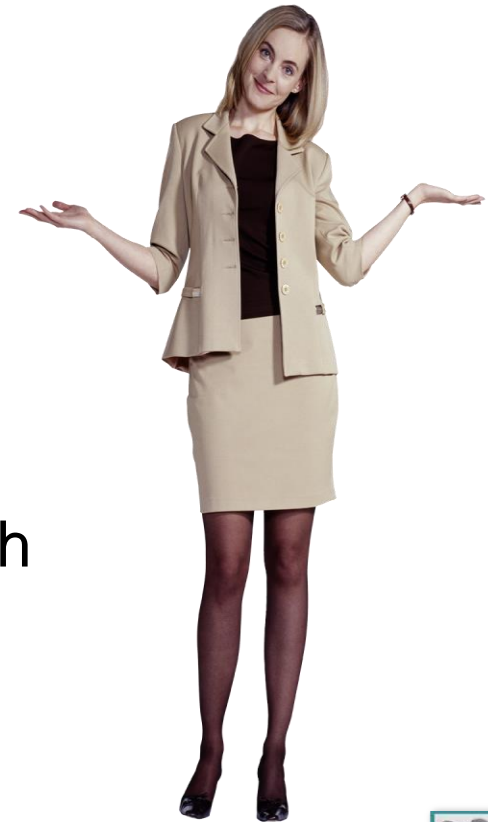
# What law applies to the records of a school based health clinic?

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

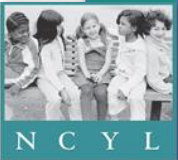
The records of school employees are generally subject to **FERPA**.

School-based health and mental health care?

**It depends!!**



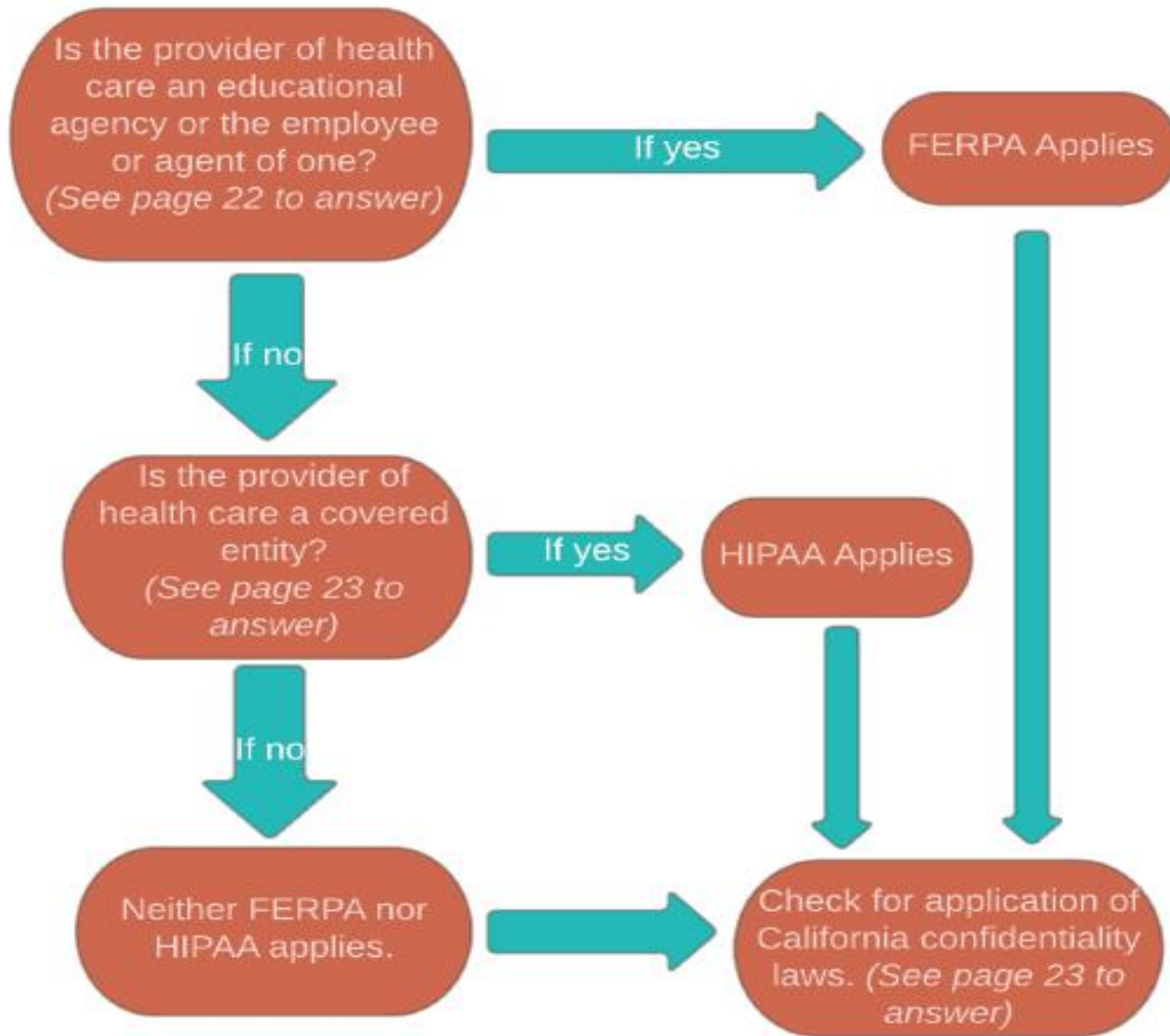
# HIPAA, FERPA, Both or Neither?



# 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.**



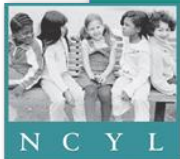


# 1. Is the health provider an educational agency employee or agent of one?

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

**Case by case assessment. Relevant factors include:**

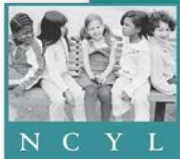
- operational and administrative control
- services and functions provided
- financing



## 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.

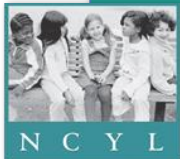
But it can be helpful to address confidentiality in an MOU. **This is why it is so important to work with legal counsel.**



# 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



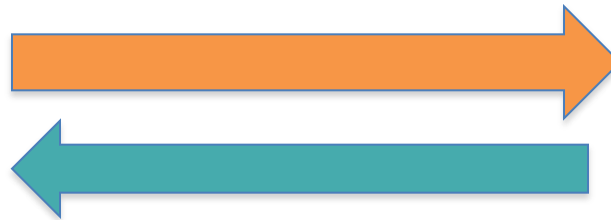
# Case: Accessing School Records

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. May the clinician participate in team meetings and share general information about Andre's treatment?



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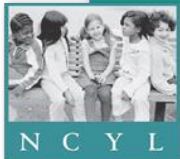
# Case: Team meetings

Happy High School has a SBHC run by a local community clinic on campus. There is a monthly meeting with various school staff and other on-campus supports, including the SBHC. A student who is already receiving substance use services at the SBHC comes up in the meeting. The school counselor suggests that her meetings with the youth lead her to want to connect the student with one of the other on-campus supports (not the health center) for substance use services.

**May the SBHC staffer inform the team that the youth is already receiving services from them?**

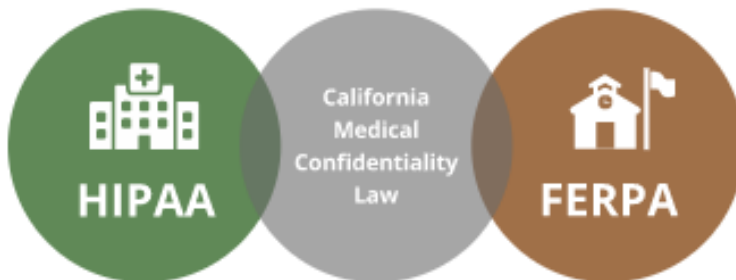
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# Questions? More info?

Check out the Primer in interactive form at  
**SchoolHealthCenters.org/hipaa-ferpa**



FERPA or HIPAA?

The screenshot shows the homepage of the California School-Based Health Alliance. The header includes the organization's name, a search bar, and a 'SIGN IN or BECOME A MEMBER' link. A navigation menu lists sections like 'ABOUT US', 'ABOUT SCHOOL-BASED HEALTH', 'HEALTH & LEARNING', 'START-UP & OPERATIONS', 'YOUTH IN ACTION', 'POLICY', and 'NEWS'. The main content area features a section titled 'KEY POINTS ABOUT HIPAA AND FERPA IN CALIFORNIA' with a star icon and a decorative leaf pattern. Below this is an 'Introduction' section discussing the legal considerations for school-based health programs. A sidebar on the right lists 'IN THIS SECTION' with links to various resources like 'School Health Program Models', 'Start an SBHC', 'Partner Collaboration', 'Engaging Youth and Families', 'Funding School-Based Health Care', 'Consent & Confidentiality', 'A California Guide for Sharing Student Health and Education Information', 'Key Points about HIPAA and FERPA in California', 'HIPAA Basics', 'FERPA Basics', 'Frequently Asked Questions', 'Additional Resources', 'Background', 'Health Insurance Outreach & Enrollment', 'Patient-Centered Medical Home', 'Electronic Health Records', and 'Member Resources'.

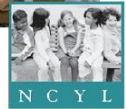
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Gracias

謝謝

Thank you

Cảm ơn

Salamat

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