NARRATOR: Welcome to a presentation on FERPA: An Overview for California School Health Professionals.

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This video provides legal information only and is accurate as of June 2020. To understand how this information might apply to you or to a specific situation, please talk to legal counsel for specific advice.

FERPA is the Family Educational Rights and Privacy Act.

In this video, we will review the basics of FERPA regulations and relevant California law.

After reviewing the laws, specific case studies will show how these laws may apply to sharing information in a school setting.

Let's start by reviewing the confidentiality laws.

Confidentiality laws include three important things: what must **not** be disclosed, what may **be** disclosed, and what **must** be disclosed.

Having the right tools in place, such as compliant forms and memoranda of understanding forms, can support and encourage appropriate and balanced sharing of information.

Next, let’s review the laws that apply to control the release of education information and records, which is the information held by an educational agency or individual who works for an educational agency.

At the **federal level**, there is FERPA, which protects the privacy of individually identifiable education records held by certain educational agencies.

There also are state laws in the California Education Code that protect the privacy of pupil records, including a state statute that provides special protections for Educational Counseling information.

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

Now let’s review who must comply with and what is protected by FERPA.

FERPA protects the privacy of students’ personal records held by “educational agencies or institutions.”

“Educational agencies or institutions” receive federal funds administered through the federal Department of Education and provide direct instruction to students, such as schools; as well as educational agencies that direct or control schools, such as school districts and state education departments.

Almost all public schools and public school districts receive some form of federal education funding and must comply with FERPA.

FERPA applies to education records. Education records are records, filings, recordings, or other documented information which contain information directly relating to a student, and are maintained by an educational agency or individual who works for an educational agency.

It can include health information, such as immunization information, or testing and evaluation related to an Individualized Education Program, also known as an IEP.

FERPA does not treat health information in an education record any differently than it does other information that would commonly be found in an education record. Not all records created on a school site are subject to FERPA.

For more information on which records would be subject to FERPA, visit the FERPA Basics section at [schoolhealthcenters.org/hipaa-ferpa](https://schoolhealthcenters.org/hipaa-ferpa).

When a health care provider works for a school or in a school setting, their records may, but don’t always, become part of an education record subject to FERPA.

You can find a flowchart that can help health care providers in a school setting understand when their records are subject to HIPAA or FERPA at [schoolhealthcenters.org/flowchart](https://schoolhealthcenters.org/flowchart).

The general rule under FERPA and California law is that an educational agency must protect the confidentiality of personally identifiable information, also known as PII, in an education record.  And in general, this information cannot be shared with third parties unless a signed written consent allows release of the information.

However, there are exceptions that allow disclosure without need of a consent in some cases.

Who signs a FERPA release?

The parent signs a release for any student **under 18** years old. If the student is **18 or older**, the student signs.

FERPA defines *parent* for this purpose as a natural parent, guardian, or individual acting as a parent in the absence of a parent or guardian. It’s also important to look at local school district policy because it may define the term *parent* and who can sign more specifically.

Now let’s review some case studies showing how FERPA might apply in a school health setting.

We will be reviewing the cases of Nita, Phuong, and Sam.

Nita is eleven and has been receiving therapy from a clinician at a school-based health center that is part of the local Children’s Hospital. Their records are subject to HIPAA. Nita’s father wants her school to share her attendance, grades, and results from her most recent IEP evaluation with the school-based health center clinician.

**May the school share this information with the clinician based on the father’s verbal consent?**

The answer is **no**. The information sought is in the education record and protected by FERPA.

FERPA **does require** a FERPA-compliant signed release in order to share records and no exception would allow disclosure in this case without a release. Nita’s father would sign the release form.

In this case, since everyone involved supports disclosure, that requirement should not be a barrier to collaboration.

FERPA requires certain elements in a release form.

A written consent to release information needs to specify that records may be disclosed, state the purpose of disclosure, identify the party to whom the disclosure may be made, and must be signed and dated.

There are some exceptions in FERPA that allow release without a written form in place. Some examples include for emergencies, child abuse reporting, and research. There is more information about each of these exceptions in the schoolhealthcenter.org website.

We will discuss one of these exceptions using the following case study.

Phuong, age 16, is sent to his school nurse after he passes out in class. The school nurse does a physical exam. Phuong shares that he has been using substances every day to address anxiety and stress he feels at school. The school nurse documents everything in the education file. Phuong’s parents call the school the next day and ask for a copy of the school nurse’s records.

**Can the parents see this information based on a verbal request?**

**It depends**. Generally, a parent has the right to review their minor child’s education record. They do not need to provide a written consent. However, if a school believes that disclosing records may put a student in danger, or believes that this parent does not have custody of the student, the school should contact legal counsel for advice on how to proceed.

We will discuss another exception in FERPA using the following case study.

Sam, *who u*ses the gender neutral pronoun *they,* is 10 years old and enrolls in a new school. Their parents share on the enrollment forms that Sam has anxiety and occasionally has panic attacks. The principal wishes to share this information with their teacher and the school counselor.

**May the principal share this information?**

**Yes**. The information is in the education record and thus subject to FERPA. The information can always be shared with a written parent consent in place. Even without a parent consent, the principal may still be able to share it under the “legitimate educational interest” exception to FERPA.

Legitimate Educational Interest is one FERPA exception.

The legitimate educational interest exception to FERPA says that school officials may share information from an education record with other school officials in the same educational entity as long as that official has a legitimate educational interest in the information being shared. Legitimate educational interest can be defined to mean that the official needs the information in order to fulfill their professional responsibility.

This exception creates an opportunity for individuals working in the same school system to share information and collaborate around students with whom they all are working.

A school official is defined to include most people working at a school site.

School officials can include the teachers, principals, school nurses, school counselors, and others who are working in that system.

The content for this video was developed by the National Center for Youth Law in partnership with the California School-Based Health Alliance.

For more information on FERPA and school professionals, please visit “A Guide for Sharing Student Health and Education Information” on the California School-Based Health Alliance’s website at [schoolhealthcenters.org/hipaa-ferpa](https://schoolhealthcenters.org/hipaa-ferpa).